

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

**GEORGE SUAREZ; TANIA SUAREZ;
ROSCOE PENDLETON; ADEL RAAD;
CHARAF RAAD; STEVEN BARRETT;
NATASHA ERVIN; TAXES BY NATASHA
ERVIN, a Florida Corporation; and ALFONSO
J. ERVIN, III, an individual,**

Plaintiffs,

vs.

**CITY OF OPA-LOCKA, FLORIDA, a
municipal corporation authorized to do business
under the laws of the State of Florida,
Defendant.**

CASE NO. 17-8285 CA-01 (43)
Complex Business Litigation Unit

CLASS REPRESENTATION
(INJUNCTIVE RELIEF REQUESTED)

FOURTH AMENDED COMPLAINT¹

Plaintiffs GEORGE SUAREZ, TANIA SUAREZ, ROSCOE PENDLETON, ADEL RAAD, CHARAF RAAD, STEVEN BARRETT, NATASHA ERVIN, TAXES BY NATASHA ERVIN, a Florida Corporation, and ALFONSO J. ERVIN, III, individually, *and on behalf of all similarly situated persons* pursuant to Rule 1.220, Fla. R. Civ. P., hereby sue Defendant CITY OF OPA-LOCKA, FLORIDA, a municipal corporation (“OPA-LOCKA” or City), and allege as follows:

¹ The Order on Defendant’s Motion to Dismiss Third Amended Complaint, entered November 23, 2020, authorized the repleading of Count VII (Failure to Abate Unlawful Liens). In accordance with the relief requested in Plaintiffs’ November 24, 2020 Motion for Reconsideration of Order Dismissing Counts I And II with Prejudice and Motion for Leave to Replead Counts I and II, this Fourth Amended Complaint includes revised Counts I and II. The City’s opposition memorandum, filed on December 4, 2020, does not contain argument opposing the request for leave to replead. Pursuant to the Court’s May 16, 2017, Order on Motions and Memo Requirements, the Court may grant the motion for leave to replead Counts I and II as unopposed.

NATURE OF THE ACTION

1. This is a class action lawsuit for breach of contract, conversion, declaratory relief, and preliminary and permanent injunctive relief arising the City's mismanagement of its water utilities. The City has converted, misused, misappropriated, and failed or refused to return and safeguard Plaintiffs' water utility deposits and overcharged Plaintiffs for water utilities in violation of state law, county and City codes, and in breach of the City's contractual obligations to Plaintiffs.

JURISDICTION AND VENUE

2. The amount in controversy exceeds \$30,000.00, exclusive of interest, costs, and attorney's fees, and is thus within the jurisdiction of this Court.

3. This Court has jurisdiction over this action pursuant to § 26.012, Florida Statutes.

4. To the extent necessary as to each cause of action, the Defendant either waived or is otherwise divested of sovereign immunity by fact or operation of law.

5. Venue is proper in Miami-Dade County as the place in which the causes of action accrued and where the Defendant exists, is headquartered, and transacts business and governmental activities.

THE PARTIES

6. Plaintiff GEORGE SUAREZ is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

7. Plaintiff TANIA SUAREZ is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and

paid a deposit as required by law.

8. Plaintiff ROSCOE PENDLETON is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

9. Plaintiff ADEL RAAD is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

10. Plaintiff CHARAF RAAD is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

11. Plaintiff STEVEN BARRETT is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

12. Plaintiff NATASHA ERVIN is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

13. Plaintiff TAXES BY NATASHA ERVIN is a Florida Corporation with its principal

place of business in Opa-Locka, Florida, and is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

14. Plaintiff ALFONSO J. ERVIN, III is an individual, *sui juris*, and a resident of Opa-Locka, Florida, who is and was required to enter into a contract with the City for the purchase of water utility services, pursuant to City ordinance. Plaintiff entered into a contract for such services and paid a deposit as required by law.

15. Defendant City of Opa-Locka Florida, is a municipal corporation authorized to do business under the laws of the State of Florida. Pursuant to Florida law and ordinance, the City is authorized and obligated to provide water utility services by contract to residents and businesses within its jurisdiction.

16. This Complaint involves facts identical to each prospective class member arising from the City's improper handling of its water utilities billing system, and damages arising from the equally applicable facts – all of which are in the City's possession.

17. The City is in possession, or is required to be in possession, of all water utility deposit accounts and, to the extent the City has failed or refused to return water utility deposits or has misappropriated those deposits, damages as to each potential Class member are ascertainable.

18. The City is in possession of all water utility billing statements and historical usage information, and therefore can prove with certainty the actual amount of water each potential Class member consumed during the relevant period. Accordingly, damages in the form of overpayments involving each potential Class member – both residential and business – are readily ascertainable with certainty and precision.

19. With respect to injunctive relief, the Plaintiffs demand that the City be required to implement an accurate, fair, and reliable system of accounting and billing for the water utility services it is required by law to provide.

20. Additionally, the City must return all converted or misappropriated water utility deposits to be held in accordance with the law and be prohibited from terminating any customer's water service until corrective action is implemented.

21. All conditions precedent to the bringing of this action have been met, waived, or would be futile.

22. All required notices and notifications, including but not limited to any required by §768.28(6), Florida Statutes, have been made, met, or satisfied as of the initiation of the Complaint.

23. Plaintiffs retained counsel and agreed to pay the undersigned lawyers a reasonable fee for their services in this action.

24. The allegations in this Complaint pertain to the time-period beginning January 1, 2000, to the extent any limitations period allows, and continuing through the present time.

BACKGROUND

25. Water is a necessary component of an adequate quality of life and the operation of ongoing businesses in the City of Opa-Locka and elsewhere in the State of Florida.

26. The City has an exclusive express contract with all City of Opa-Locka residents and businesses to provide water services, as established in the City of Opa-Locka Code.

27. This Express Contract has never been in doubt and the City has acknowledged and affirmed its existence for decades.

28. Specifically, the City is required to provide water service at reasonable rates and in a manner that is not arbitrary, irrational, or capricious.

29. Pursuant to Chapter 21 of the Code of the City of Opa-Locka, the City is required to provide Plaintiffs and all water customers within the City's jurisdiction, are required to purchase, water utility services from the City of Opa-Locka in order to obtain water utility services within the City of Opa-Locka. A copy of Chapter 21 is attached as Exhibit A.

30. The express contract established by Chapter 21 is unambiguous and clear.

31. Studies by the City, County, and private vendors have demonstrated that the City's water meters do not, and have not, worked for many years – more than a decade – and that the City has been aware of that fact. A copy of the recent Avanti Report is attached as Exhibit B.

32. A copy of the sworn testimony of former City Finance Director Charmaine Parchment is attached as Exhibit C.

Q. (Detra Shaw-Wilder) I have a few questions for you just to follow up on your testimony. I would like the start with the issue of the contract that you testified about on direct. Do I understand that your testimony is that there's a contract between the City that says the City is to provide water and bills to the residents, and the residents are to pay for the water. Is that your testimony?

A. (C. Parchment): That is a contract based on an ordinance that the City provide water in exchange for payment.

Notwithstanding the City's obligations under this Contract, the City has not informed the Plaintiffs, the potential class members, or other water customers of this fact concerning the status of the deficient and defective water meters and water services billings, even though the City and its responsible officials have known and reasonably understood the fact of the deficient water system.

33. Thus, Plaintiffs and all members of the potential Class have contracted with the City of Opa-Locka to obtain water service in exchange for reasonable payment for the water service provided and used. A representative copy of an Application for such service is attached hereto as Exhibit D. The City received, and is in possession of, the applications of all Plaintiffs

and all potential Class members as these are public records once submitted.

34. Plaintiffs and all members of the potential Class are customers and water users of the City of Opa-Locka.

35. Plaintiffs and all members of the Class paid required deposits for the contracted for water service, or the deposit requirement was waived by the City of Opa-Locka. A representative copy of a water deposit slip is attached hereto as Exhibit E. The City received and is in possession of the ledger of deposit receipts from which this slip was detached with respect to all the Plaintiffs and all potential Class members as these are public records once deposits are paid.

36. The City of Opa-Locka contracted with the Plaintiffs and all Class members to provide continuous water service, to install and maintain accurate water meters, to bill for water service at allowable and published rates, to maintain customer deposits as segregated and accounted for funds absent an ordinance otherwise allowing for their appropriation, to read water meters properly and accurately, and to bill each customer for only the water used by each water utility customer.

37. The City of Opa-Locka further agreed and contracted with its water customers to comply with the City's Code, Florida Law, and the Constitution of the State of Florida in providing water service to customers and to accurately bill for water service.

38. The City of Opa-Locka expressly contracted with the Plaintiffs and all other water utility customers and at all times agreed to provide a payment and billing system that was accurate and not arbitrary and capricious.

39. Plaintiffs and similarly situated persons and entities agreed to purchase and did purchase water utility services from the City of Opa-Locka.

THE WATER UTILITIES CONTRACT

40. As set forth in attached Exhibit A to obtain water utility services in the City of Opa-Locka, residents and businesses must expressly contract with the City by applying for an account and paying a deposit to the City:

Sec. 21-1. - Department established.

There is hereby created and established a department of the City to be known as the public utilities department.

Sec. 21-3. - Departmental responsibilities.

The public utilities department shall be charged with the responsibility for all matters concerning the administration of water, sewer, and stormwater systems within the City, including the construction, improvement, repair, maintenance and operation of water, sewer and stormwater systems and facilities, and the enforcement of all obligations of privately owned and operated water, sewer and stormwater systems and facilities, if any, within the City.

Sec. 21-15. - Connection to City system required.

Premises shall be required to be connected to the City water distribution system when and as required by the Code of Metropolitan Dade County, Florida.

Sec. 21-23. - Application for service required; nature of contract.

Service is to be furnished only upon signed application accepted by the department, and the conditions of such application and the resulting contract for service are binding upon the consumer as well as upon the department. Applications are accepted by the department with the understanding that there is no obligation on the part of the department to render service other than that which is then available from its existing equipment.

Sec. 21-24. - Applications by agents.

Applications for service requested by firms, partnerships, associations, corporations, etc., shall be submitted to the department only by duly authorized agents. When service is rendered under a contract entered into between the department and an agent of the applicant for service, the use of such service by the applicant shall constitute full and complete ratification by him of such contract.

Sec. 21-25. - Right to deny service until debts paid.

The department may withhold or discontinue service rendered under an application made by any member or agent of a family, household, organization or business until all prior indebtedness to the department of such family, household, organization or business has been paid in full.

Sec. 21-26. - Expiration, renewal of contracts for service.

All contracts for water supply service shall expire at the end of the next succeeding calendar month from date of application, but shall be automatically renewed from month to month unless ten (10) days' notice is given in writing from either party to the other of the desire to terminate the contract at the expiration of the then calendar month.

Sec. 21-34. - Change of occupancy.

- (a) When change of occupancy takes place on any premises supplied by the department with water service, written notice thereof shall be given at the office of the department not less than two (2) days prior to the date of change by the outgoing party, who will be held responsible for all water service rendered to such premises until such written notice has been received and the department has had a reasonable time to discontinue service.
- (b) Provided, if such written notice has not been received by the department, the application of a succeeding occupant for water service will automatically terminate the prior account without, however, discharging the obligation of the former occupant.

Sec. 21-38. - Grounds for discontinuing service.

Contracts for water service shall be subject to cancellation, and service thereunder discontinued by the City, for any of the following reasons, to wit:

- (a) For misrepresentations or concealment in the application.
- (b) For waste or excessive use of water through improper or imperfect pipes and fixtures, or appliances, or in any other manner.
- (c) For refusal or neglect to make any advance payment required by the department, or for refusal or neglect to comply with any requirements of the department as to meter or service connection maintenance, alteration or renewal.
- (d) For the use of water supply service for or in connection with or for the benefit of any other premises or purposes other than that specified in the application.
- (e) For an interference or tampering, whether by act of commission or omission, with the meter measuring the water supply or with seals of any meter, or with any meter box or vault, or service pipes, or valves or any seals thereon, or with the curb stop cock, or with any appliances of the department or with any appliance of the owner which was or is required by the department to control or regulate the water supply service. For the purpose of this section, an interference or tampering with any appliance used in connection with or for the control or regulation of the water supply service to any premise, shall be construed and taken to be the act of the owner and consumers using the water service at the said premises.
- (f) In case of continued vacancy of the premises.

- (g) For violation of any of the provisions of this article.
- (h) Where there has been a change in ownership of the premises, but no application from the new owner or owners has been made for approval by the department.
- (i) Where there has been discontinuance of the use of water or the service of the department.
- (j) Where the contract has been in any way terminated by the owner.
- (k) Where any owner or consumer refuses or neglects payment of any bill, account or charge, or where the department is being defrauded in any way.

Sec. 21-65. - By-passing meter.

That portion of the consumer's installation for domestic water service shall be so arranged that all domestic water service shall pass through the meter. No temporary pipes, nipples or spacers are permitted and under no circumstances are connections allowed which may permit water to bypass the meter or metering equipment.

Sec. 21-77. - Schedule of rates generally.

Meter Size	1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
3/4"	\$4.15	\$4.48	\$4.84	\$5.23	\$5.65
1"	23.78	25.68	27.73	29.95	32.35
1.5"	26.90	29.05	31.37	33.88	36.59
2"	55.06	59.46	64.22	69.36	74.91
3"	64.43	69.58	75.15	81.16	87.65
4"	81.95	88.51	95.59	103.24	111.50
6"	99.46	107.42	116.01	125.29	135.31
8"	116.86	126.21	136.31	147.21	158.99

Water usage rates per 1,000 gallons:

		1/1/15	10/1/15	10/1/16	10/1/17	10/1/18
Residential	Gallons					
Block 1	1—5,000	\$2.74	\$2.96	\$3.20	\$3.46	\$3.74
Block 2	5,001—10,000	3.43	3.70	4.00	4.32	4.67
Block 3	10,001—15,000	11.15	12.04	13.00	14.04	15.16
Block 4	All Use > 15,000	16.72	18.06	19.50	21.06	22.74
Commercial	Gallons					
Block 1	All Use	7.37	7.96	8.60	9.29	10.03

Sewer monthly service charge (residential and commercial):

Meter Size	1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
3/4"	\$4.15	\$4.48	\$4.84	\$5.23	\$5.65
1"	23.78	25.68	27.73	29.95	32.35
1.5"	26.90	29.05	31.37	33.88	36.59
2"	55.06	59.46	64.22	69.36	74.91
3"	64.43	69.58	75.15	81.16	87.65
4"	81.95	88.51	95.59	103.24	111.50
6"	99.46	107.42	116.01	125.29	135.31
8"	116.86	126.21	136.31	147.21	158.99

Sewer usage rate per 1,000 gallons:

		1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
Residential	Gallons					
Block 1	1—5,000	\$4.47	\$4.83	\$5.22	\$5.64	\$6.09
Block 2	5,001-10,000	\$6.38	\$6.89	\$7.44	\$8.04	\$8.68
Block 3	All Use > 10,000	\$14.39	\$15.54	\$16.78	\$18.12	\$19.57
Commercial	Gallons					
Block 1	All Use	\$10.53	\$11.37	\$12.28	\$13.26	\$14.32

Storm water utility rate:

	1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
Rate	\$4.00	\$6.00	\$9.00	\$12.00	\$15.50

Fire hydrant service charges. A fire hydrant service charge as specified in the City of Opa-Locka schedule of rates, fees and charges for water and sewer service, shall apply for all customers within the City's service area. This charge covers the cost of installation, replacement, repair and maintenance of fire hydrants, in addition to the cost of upgrading water mains to provide required fire flows. The charges are as follows:

Water Meter Size (inches)	Charge Per Month
3/4"	\$1.00
1"	5.00
1.5"	7.00

2"	10.00
3"	12.00
4"	15.00
6"	20.00
8"	25.00

Sec. 21-78. - Scope of minimum.

Every water supply service shall have a monthly minimum service charge on each service installed. This minimum monthly service charge shall be in accordance with the schedule in section 21-77(a) above, and shall entitle the consumer, without additional charge, to have supplied through the water meter the number of gallons of water set forth in the table in section 21-77(a) above.

Sec. 21-80. - Deposits.

There shall be deposited with the City, by each consumer of:

(a) *Water and sewer service, water only service, or sewer only service:*

Water Meter Size (inches)	Residential Customers	Commercial Customers
¾	\$170.00	\$250.00
1	1,000.00	1,000.00
1½	1,500.00	1,500.00
2	2,000.00	2,000.00
3	3,000.00	3,000.00
4	4,000.00	4,000.00
6	6,000.00	6,000.00
8	8,000.00	8,000.00

(b) *Water and sewer service, water only service, or sewer only service for customers discovered using water and sewer services without a deposit.* The deposit and all unbilled water and sewer charges must be paid to re-connection of services.

Water Meter Size (inches)	Residential Customers	Commercial Customers
¾	\$340.00	\$500.00
1	2,000.00	2,000.00
1½	3,000.00	3,000.00
2	4,000.00	4,000.00

3	6,000.00	6,000.00
4	8,000.00	8,000.00
6	12,000.00	12,000.00
8	16,000.00	16,000.00

(c) *Other miscellaneous fees:*

Tampering fees	\$450.00
Disconnection fee	25.00
Lock meter fee	40.00
Meter removal fee	50.00

Thereafter, the minimum deposit shall be increased or decreased to reflect changes in water, and sewer charges as approved by the City commission, but in no event shall the minimum deposit be less than the deposits as established above. Upon the request of the owner or consumer making such deposit or their assigns, for discontinuation of service and upon payment of all charges arising out of any service on said premises, the deposit shall be refunded. Existing consumers who prior to the effective date of this section have deposited minimum deposits with the City in accordance with the provisions of the Code of Ordinances shall be permitted to maintain said minimum deposit unless the said account is in default, delinquent, or a lien is filed by the City against the property served.

Sec. 21-83. - Billing procedure; penalty for late payment; lien.

(a) Utility charges levied at the rates established by ordinance shall be billed each month of the calendar year and payable upon billing. Bills shall be considered as having been received when delivered or mailed to the service address or to some other place mutually agreed upon. In case of failure to pay any bill for charges when due, a penalty of ten (10) per cent of such charge shall be added to such bill. In the event that service(s) is (are) discontinued for nonpayment of outstanding balances, a re-establishment fee of twenty-five dollars (\$25.00) per account will be paid along with all outstanding balances prior to re-establishing the supply of services.

(b) Each charge levied pursuant to this article, including any additions for equipment or special services, is hereby made a lien on the premises served thereby and if same is not paid within sixty (60) days, after it shall be due and payable, it shall be certified to and filed with the clerk of the circuit court of Dade County, Florida. The charges with interest, reasonable attorney's fee and penalties shall be collected as other municipal taxes are collected and enforced.

Sec. 21-85. - When bills due and payable; discontinuing service for nonpayment.

Bills are due when rendered, and if not paid within twenty-one (21) days thereafter, they shall become delinquent, and service may be discontinued and the prepayment, deposit or

guarantee applied toward settlement of the bill. Mailing of the next month's bill showing a previous balance shall constitute due notice. Discontinuance shall be in accordance with the Miami-Dade Water and Sewer Department, as well as provisions set forth in section 32-91 through section 32-101 of the Miami-Dade County Code of Ordinances. In such cases service will not be restored until the bill has been paid and the department has been reimbursed for extra expense incurred on account of the delinquent bill.

Sec. 21-87. - To whom payment made.

Payment of all water bills and accounts of the City must be made at the office of the water clerk in the City hall, or to an agent of the City duly designated and bonded for such purpose.

Sec. 21-88. - City to install, maintain meters.

Upon application and payment of the tapping charge, the department will install and properly maintain at its own expense a meter or meters and metering equipment as may be necessary to measure the water delivered to the consumer.

Sec. 21-91. - Testing of meters; adjustment of bill.

Upon request and due notice from the consumer, the department will test the consumer's meter or meters. If a meter is found to be not more than two per cent (2%) fast or slow, the expense of the test shall be borne by the consumer, the minimum charge therefor to be one dollar (\$1.00). If the meter exceeds these limits, the expense of the test shall be borne by the water department and billing adjustment for a period of not to exceed three (3) months will be made.

41. The City Code identifies the water utilities service as a "contract" between the City and its water customers.

42. At hearing in this case, the lawyer representing the City of Opa-Locka made the following admission on behalf of the City:

"MS. SHAW-WILDER: Right. So what this means is the City – you do an application. You're going to pay for water. We're going to give you water. You're going to give a deposit and we're going to give it back. That's the contract that is of record. That's what's before Your Honor."

43. Acceptance of an application for service by the City results in an express contract for service that is binding upon the consumer as well as upon the department. See Sec. 21-23 above and attached as Exhibit A; See also, sworn testimony of former City Finance Director

Charmaine Parchment attached as Exhibit C.

44. All City contracts for water service renew automatically.

45. Prior to any turn-off of the water service, the City is required to provide reasonable notice and an opportunity to be heard.

46. Section 21-38 of the City of Opa-Locka Code provides the grounds for discontinuing water service.

47. Plaintiffs and others within the City of Opa-Locka have complained to responsible City officials about erroneous water bills for many years.

48. Other individual consumers of the City's water service, numbering at least in the hundreds, receive water service for free and are not connected to the City's water billing system. In these situations, water service has been connected by City personnel and these "customers" receive water from the City, but their properties are not entered into the City's billing system, resulting in no billings for water service. This serves as an excuse for the City to artificially increase the costs to other water customers.

49. The City, aware that most of the water utility bills are inaccurate has refused to correct and rebill its water utility customers.

50. According to Se. 21-83 (b) of the Opa-Locka Code, erroneous water utility bills which are not paid to the City, automatically become a lien on the premises served. These knowingly fraudulent liens on private property are a violation of the property owner's due process rights under the Florida Constitution.

51. All the City's water customers are under constant threat of having their water turned off because the City takes the position that every water bill constitutes an immediate lien on every water customers property, a position implemented and/or threatened to be implemented on every

water customer.

52. All City water customers and all members of the class have liens on their property by virtue of the City's position that every water bill constitutes a lien and gives the City the right to so enforce.

CORRUPTION IN CITY OF OPA-LOCKA WATER SYSTEM

53. The water system in the City of Opa-Locka has been rife with corruption, mismanagement, and selective arbitrary enforcement for decades, resulting in damages to the Plaintiffs and all other similarly situated persons and businesses, including financial damages and the deprivation of contracted-for services.

54. Plaintiffs and all water customers are required to provide a deposit to the City of Opa-Locka as a condition of obtaining water service, which deposit was to be returned to the water customers. Deposit slips given to the water utility customers, including the Plaintiffs and proposed class members, state:

AS A DEPOSIT TO GUARANTEE THE DUE PAYMENT OF ANY AND ALL INDEBTEDNESS FOR WATER SERVICE OR CHARGES INCIDENT TO THE WATER DEPARTMENT CONNECTIONS, WHICH MAY BE OF BECOME DUE TO THE CITY OF OPA-LOCKA, FLORIDA, BY THE CONSUMER NAMED HEREIN. THIS DEPOSIT IS MADE WITH THE EXPRESS UNDERSTANDING AND AGREEMENT THAT ALL OR ANY PART THEREOF MAY BE APPLIED BY THE CITY OF OPA-LOCKA, FLORIDA, AT ANY TIME IN SATISFACTION OF SAID GUARANTEE; AND THAT THE CITY OF OPA-LOCKA, MAY USE SAID DEPOSIT AS FULLY AS IF THE SAID CITY WERE THE ABSOLUTE OWNER THEREOF. UPON DISCONTINUANCE OF ANY OR ALL SERVICES COVERED BY THIS DEPOSIT, AND THE PRESENTATION OF THIS RECEIPT, TOGETHER WITH PROPER IDENTIFICATION, THE CITY OF OPA-LOCKA AGREES TO REFUND TO THE SAID CONSUMER OR WHOEVER MAY BE LAWFULLY ENTITLED THERETO, THAT PORTION OF THE DEPOSIT APPLYING TO THE SERVICE OR SERVICES DISCONTINUED, LESS ANY AMOUNTS THEN DUE TO THE CITY OF OPA-LOCKA, FLORIDA. THIS DEPOSIT SHALL NOT PRECLUDE THE CITY OF OPA-LOCKA FROM DISCONTINUING ANY AND ALL SERVICE TO THE CONSUMER FOR FAILURE TO PAY ANY AND ALL INDEBTEDNESS TO THE SAID CITY REGARDLESS OF WHETHER OR NOT THE AMOUNT OF SAID DEPOSIT IS SUFFICIENT TO COVER THE AMOUNT OF SUCH INDEBTEDNESS.

THIS DEPOSIT SHALL NOT BE TRANSFERABLE.

The colon after “GUARANTEE” is central to its meaning.

55. Section 4.3 of the City Code states that:

Section 4.3. - Ordinances.

(A) Actions Requiring an Ordinance. In addition to other acts required by law or by specific provisions of this Charter to be affected or authorized by ordinance, those acts of the City Commission shall be by ordinance which:

- (1) Adopt or amend an administrative regulation or establish, alter or abolish any City office, department, board or agency;
- (2) Establish a rule or regulation the violation of which carries a penalty;
- (3) ***Levy taxes or appropriate funds;***
- (4) Grant, renew or extend a franchise;
- (5) Set service or user charges for municipal services or grant administrative authority to set such charges;
- (6) Authorize the borrowing of money in accordance with section 4.11;
- (7) Convey or lease or authorize by administrative action the conveyance or lease of any lands of the City;
- (8) Regulate land use through zoning and other means;
- (9) Amend or repeal any ordinance previously adopted, except as otherwise provided in this Charter

56. Although the deposit slip allows the City to use deposits as they see fit, the City never passed an ordinance allowing for the appropriation of these deposits for general (or even specific) purposes. These deposit funds cannot be used by the City “as fully as if the said City were the ultimate absolute owner” absent an ordinance. No such ordinance was ever passed allowing the funds to be appropriated for another purpose. See testimony of former City of Opa-Locka Finance Director Charmaine Parchment:

Q. Were water deposits -- is it true, is it a true statement that water deposits in the City of Opa-Locka were never segregated from other water utility funds?

A. That's not true. Prior to me, it was segregated and afterwards they were being done.

Q. Were water -- to your personal knowledge, were customer deposits in the City of Opa-Locka always placed in a segregated unique customer deposit bank account?

- A. Always in a separate bank account.
- Q. Always?
- A. Always.

57. The misappropriation of Plaintiffs' and potential Class members' water utility deposits by the City of Opa-Locka is not only a violation of the City Code, but, since at the time the deposits were placed, no ordinance was in place to allow for the use of these deposits for other purposes, this misappropriation becomes a conversion. See *Shavers v. Duval County*, 73 So.2d 684 (Fla.1954) (The laws in force at the time of the making of a contract enter into and form a part of the contract as if they were expressly incorporated into it); *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965, 967 n. 2 (Fla. 1st DCA 1984) (statutory provision governing contract cancellation rights); *Cycle Dealers Insurance, Inc. v. Bankers Insurance Company*, 394 So.2d 1123 (Fla. 5th DCA 1981) (statutory provision governing contract cancellation rights); 11 Fla.Jur.2d Contracts § 129, 17 Am.Jur.2d Contracts § 257.

58. City officials took the water deposits, converted them for unauthorized uses in violation of the City's code and the City's agreement and contract with the Plaintiffs and all similarly situated customers, and the City has not returned the deposits to the segregated accounts or to the customers.

59. In an official 2016 report from Merrett R. Stierheim, Special Assistant to the Chair of the Florida Oversight Board, to Melinda Miguel, Florida Oversight Board Chairperson, and the City of Opa-Locka Mayor and Commission, the following findings were highlighted. The report is attached as Exhibit F.

- a. Of 5,800 water and sewer accounts, 2,000 are manually read. A recent review indicated that approximately 50% of the water and sewer usage was estimated.
- b. Of the 5,800 accounts, approximately 600 (roughly 10% of the accounts) are

currently unknown and require research.

- c. The City does not follow up on invoices that have been returned.
- d. City employees handle both supervising billing and collection due to inadequate staffing, when reasonable and accepted standards of practice require the separation of the functions.

60. The March 14, 2017 Avanti/USMI Itron MV-RS AMR System Survey by Eric Corey, Dave Ratter, and Jason Wilczek was submitted to Miami-Dade County and Opa-Locka. The report is attached as Exhibit B. That official report, prepared under the direction of the City of Opa-Locka and Miami-Dade County, and paid for with government funds, contained factual findings concerning the City of Opa-Locka water meter system:

- a. The industry “read rate” standard for a healthy Automatic Meter Reading (AMR) System is a minimum of 98.5%. The City of Opa-Locka has a “read rate” of approximately 57%. This means that, in the City of Opa-Locka, less than one-half of water meters are being read. The accuracy of the “read rate” is below half, at approximately 37%.
- b. City of Opa-Locka System consist of 5,853 meters:
 - i. 5,637 meters were examined during the AMR survey;
 - ii. Of the 5,637 meters, 683 meters could not be located due to unforeseen circumstances like overgrown landscape, inaccessible landscape, dogs, locked gates, etc.;
 - iii. Of the 5,637 meters, 1,905 meters, approximately 33%, have a read rate consistent with the industry standard; and
 - iv. Of the 5,637 meters, 3,049 meters, approximately 52%, need

repair or replacement, and are inaccurate.

61. Merrett R. Stierheim's final official report, dated March 24, 2017, and attached as Attachment "G", confirms the City's "critically deficient public utility systems," including the water system.

62. In September 2019, Ambrose Obasi, a City of Opa-Locka employee who has been in charge of reading water meters in the City for more than 11 years, filed a verified whistleblower complaint alleging among other things:

11. For more than ten (10) years, the City of Opa-Locka has intentionally falsified the water billing records of customers by destroying and not using actual meter readings but charging residential and business water customers higher water rates based on fabricated usage numbers.

12. Specifically, on a daily basis for more than ten (10) years, for those meters that plaintiff was able to read, plaintiff presented his actual meter readings to the City's billing staff working under the direction and supervision of the City Manager.

13. Opa-Locka staff intentionally altered and falsified the water consumption records and meter readings to intentionally overbill residential and business water customers in order to make more revenue available for the City.

A copy of that Ambrose Obasi Verified Complaint is attached hereto as Exhibit G.

CLASS ALLEGATIONS

63. Plaintiffs bring this class action under Rule 1.220(b)(2) of the Florida Rules of Civil Procedure because Defendant has acted or refused to act on grounds generally applicable to all the members of the class, thereby making damages, final injunctive relief or declaratory relief concerning the class appropriate.

64. Plaintiffs also bring this class action under Rule 1.220(b)(3) of the Florida Rules of Civil Procedure, because a class action is superior to other available methods for the fair and

efficient adjudication of this controversy. Because the amounts of the claims of each individual member of the class are small relative to the cost and scope of this litigation, absent a class action, that misconduct would go unremedied.

65. Further, individual litigation would significantly increase the delay and cost to all parties and would burden the judicial system. There will be no manageability problems with prosecuting this case as a class action.

66. According to the latest census data from the U.S. Census Bureau, there are more than 15,000 residents in the City of Opa-Locka and more than 2,800 businesses – all having contracted for water utility services with the City of Opa-Locka. *See www.census.gov*

67. The following two Classes of water customers have already been determined to exist by Circuit Judge Butchko in an order entered on June 7, 2019.

68. A potential Class or classes, includes:

CLASS I:

All City of Opa-Locka residents and businesses, commencing as of the period of the statutes of limitations, required to place water deposits with the City, who are entitled to have those deposits safeguarded in segregated accounts, who are entitled to the return of those deposits, and who have not received the return of deposits from the City.

CLASS II:

All City of Opa-Locka water utility customers, commencing as of the period of the applicable statutes of limitations, who paid for water utility services in excess of the amounts they were liable to pay as calculated based on reasonable rates and functioning and accurate water meters and readings.

69. **NUMEROSITY:** Plaintiff and all potential Class members, numbering in the thousands, each entered into contracts with the City for water utility services and placed deposits which were subsequently unlawfully misappropriated by the City to meet other budgetary considerations.

70. PREDOMINANCE: Questions of law and fact common to the class(es) exist as to all potential Class members and predominate over any questions affecting only individual Plaintiffs or members of the class. In fact, the Administrative Judge in this circuit, has recognized this by moving to transfer or ordering the transfer of other Opa-Locka water utility disputes to one division and judge.

71. Additionally, the prosecution of separate claims by individual members of the class would create unnecessary and unacceptably expensive, duplicate litigation that carries significant unfair risk to the members as well as to the Defendant and the judicial system. As a practical matter, resolution of a single action could be dispositive of the interests of all members of the class who are not individual parties to the adjudication or would substantially impair or impede the ability of other members of the class who are not parties to the adjudication to protect their interests. Class representation is clearly superior to other available methods for a fair and efficient adjudication of this controversy.

72. The common legal and factual issues include the following:

- a. whether the Defendant mismanaged the water utility franchise in the City of Opa-Locka;
- b. whether the Defendant's mismanagement resulted in breach or breaches of the contract to supply water utility services as required by law;
- c. whether Plaintiffs or proposed class members were damaged by the City's breach or breaches;
- d. if Plaintiffs or proposed class members were damaged by the City's breach or breaches, what is the measure of those damages;

- e. whether the Defendants' misappropriation of Plaintiffs or proposed class members' deposits in violation of the City code constituted a conversion;
- f. if the Defendants' misappropriation of Plaintiffs or proposed class members' deposits in violation of the City code constituted a conversion, what is the measure of damages;
- g. if the Defendants' misappropriation of Plaintiffs or proposed class members' deposits in violation of the City code constituted a conversion, is injunctive relief available.

73. Again, and in sum, the Defendant entered into an express contract with each of the Plaintiffs and other potential Class members as the sole source of water utility services in the City of Opa-Locka, failed to maintain water meters, fabricated utility bills that automatically become and became liens on serviced properties in violation of the Florida Constitution and misappropriated customer water utility deposits without lawful authorization.

74. The City notified its water customers of the filing of liens for failure to pay the amounts demanded by the City and continues to threaten the water customers with termination of water service even though the City's billings are excessive, unauthorized, and in derogation of its legal and contractual obligations. Attached as Exhibit H are representative examples of the City's liens and termination threats for which the water customers have sought temporary or permanent abatement and have been forced to seek judicial protection to continue their water service.

75. REPERESENTATION: All Plaintiffs are willing and able to represent the class, are committed to the vigorous prosecution of this action and these claims are the same or substantially similar to those of the class members. Plaintiffs are adequate representatives of the

class and will fairly and adequately protect the interests of the class.

76. Plaintiffs' lawyers are capable and experienced in complex civil litigation, class representations, and the issues on which this case will proceed.

COUNT I
CONVERSION

77. Plaintiffs incorporate paragraphs 1 through 76 above as though fully set forth herein.

78. The timeframe for the conduct alleged herein commenced at least as early as January 1, 2000, and continues to the present time.

79. The City knowingly obtained and used the money, property, and deposits of the Plaintiffs and other water customers and temporarily or permanently deprived the Plaintiffs and all water customers of the right to the money, property, and deposits, and appropriated the money, property, and deposits for their own use.

80. The City obtained and used security deposit money belonging to the Plaintiffs and all water customers and, with wrongful intent either temporarily or permanently misappropriated and deprived the Plaintiffs and all water customers of the right to appropriate and expected sequestration of those funds by unlawful appropriate of those funds to its own use.

81. The City's exercise of wrongful dominion or control over the Plaintiffs' and all water customers' deposits was to the detriment of the rights of the actual owners, the Plaintiffs and all water customers, and constituted a conversion of the property.

82. City employees were acting within the course and scope of their employment as City employees when they converted the property of the Plaintiffs and all water customers. The City used the property of the Plaintiffs and all water customers for its own budgetary purposes.

83. The City has no sovereign immunity from being sued for conversion, as it is well established law in Florida that a governmental agency may not seize an individual's personal property with impunity for the claim. *E.J. Strickland Const., Inc. v. Dep't of Agric. & Consumer Services of Florida*, 515 So. 2d 1331, 1336 (Fla. 5th DCA 1987) ("We hold that a suit for conversion to recover for the loss of possession of the personal property is an appropriate remedy for the aggrieved party."); *Springer v. Florida Dept. of Nat. Res.*, 485 So. 2d 15, 15 (Fla. 3d DCA 1986).

84. Plaintiffs and all water customers have been injured because of the City's conversion and have been deprived of considerable money and property.

85. The Plaintiffs and all water customers have been deprived of their money and property amounting to at least \$20,000,000.00.

86. Plaintiffs are obligated to pay their lawyers a reasonable fee for legal services in connection with this action.

87. For these reasons, the Plaintiffs individually and as representatives of all similarly situated water customers demand judgment for damages, treble damages, costs, and attorney's fees and costs against the City.

COUNT II
BREACH OF CONTRACT
MISUSE OF SECURITY DEPOSITS

88. Plaintiffs incorporate paragraphs 1 through 76 above as if fully set forth herein.

89. Plaintiffs and all members of the Class paid required deposits for the contracted for water service, or the deposit requirement was waived by the City of Opa-Locka.

90. A representative copy of a water deposit slip is attached hereto as Exhibit E.

91. The Plaintiffs and all proposed class members entered into express contracts with

the City of Opa-Locka as more fully set forth above and in the attached Exhibit A.

92. The Plaintiffs and all proposed class members filled out applications with the City of Opa-Locka and placed deposits as required by their contracts and City code and established water utility accounts with the City of Opa-Locka.

93. All residential water contracts were identical for residential customers. All contracts with commercial water customers were identical for business customers.

94. Plaintiffs and all proposed class members complied with all terms of the contract for water service with the City of Opa-Locka.

95. Term of the express water services contract that governs the City of Opa-Locka's treatment of customer water deposits are:

- **Term 1:** "There shall be deposited with the city, by each consumer of . . . water only service." § 21-97(c)(1), City of Opa-Locka Code of Ordinances.
- **Term 2:** "There shall be deposited with the city, by each consumer of: (a) Water and sewer service, water only service, or sewer only service." § 21-80(a), City of Opa-Locka Code of Ordinances.
- **Term 3:** "Bills are due when rendered, and if not paid within twenty-one (21) days thereafter, they shall become delinquent, and service may be discontinued and the prepayment, deposit or guarantee applied toward settlement of the bill. Mailing of the next month's bill showing a previous balance shall constitute due notice." § 21-85, City of Opa-Locka Code of Ordinances.
- **Term 4:** "Bills are due when rendered, and if not paid within twenty-one (21) days thereafter, they shall become delinquent, and service may be discontinued and the prepayment, deposit or guarantee applied toward settlement of the bill. Mailing of the next month's bill showing a previous balance shall constitute due notice. Discontinuance shall be in accordance with the regulations of the Miami-Dade County Code of Ordinances, chapter 32, water and sewer regulations. In such cases service will not be restored until the bill has been paid and the department has been reimbursed for extra expense incurred on account of the delinquent bill." § 21-97(b), City of Opa-Locka Code of Ordinances.
- **Term 5:** "Upon the request of the owner or consumer making such deposit or their assigns, for discontinuation of service and upon payment of all charges arising out of any service on said premises, the deposit shall be refunded." § 21-80(c), City of

Opa-Locka Code of Ordinances.

96. The plain and unambiguous terms of the water services contract provide that only two options are allowable with a customer water deposit. First, in the event of a delinquent bill, the City may discontinue water service and apply the prepayment, deposit, or guarantee toward settlement of the water bill. Second, in the event of a request for discontinuation of water service by the customer, the deposit must be refunded after payment of all charges arising out of any service on the premises.

97. The City received and is in possession of the ledger of deposit receipts from which this slip was detached with respect to all of the Plaintiffs and all potential Class members as these are public records once deposits are paid.

98. The deposit slip is an express contract in its own right, the terms of which are also clear and unambiguous.

99. The Defendant agreed to accept and hold such deposits in guarantee of payment of water customer's water bills absent legal authority to use those deposits for some other purpose.

100. The City breached the terms of both the water services and deposit slip contracts by assuming complete ownership of Plaintiffs' and all potential Class members' deposits even though there had been no material failure to pay, discontinuance of service, and settlement of an outstanding bill

101. As a result of the Defendant's breach, the Plaintiffs and all potential Class members have been damaged.

102. For these reasons, the Plaintiffs individually, and as representatives of all similarly situated water customers, demand judgment for damages against the City, plus attorney fees and costs pursuant to contract and Florida law.

COUNT III
BREACH OF CONTRACT
FAILURE TO MAINTAIN ACCURATE WATER METERS

103. Plaintiffs incorporate paragraphs 1 through 76 above as if fully set forth herein.
104. The Plaintiffs, and all proposed class members, entered into express contracts with the City of Opa-Locka as more fully set forth above and in the attached Exhibit A.
105. The Plaintiffs and all proposed class members filled out applications with the City of Opa-Locka and placed deposits as required by their contracts and City code and established water utility accounts with the City of Opa-Locka.
106. All residential water contracts were identical for residential customers. All contracts with commercial water customers were identical for business customers.
107. Plaintiffs complied with all terms of the contract for water service with the City of Opa-Locka.
108. One of the terms of the express contract require the City of Opa-Locka to bill the Plaintiffs in all proposed class members a fixed amount for the amount of water consumed.
109. The City of Opa-Locka water utilities department measures the amount of water consumed by each of its customers including Plaintiffs and all proposed class members through the use of water meters.
110. To accomplish the accurate billing of customers, the City of Opa-Locka is required to maintain accurate water meters.
111. An independent study of the City's water meters found that the majority of the water meters in the City were inaccurate or nonfunctional. A copy of that report is attached hereto as Exhibit B.
112. The City of Opa-Locka breached the contracts with the Plaintiffs and all proposed

class members by failing to maintain accurate water meters.

113. As a direct result of the City of Opa-Locka's breach of its express contract with its water utilities customers, including Plaintiffs and all proposed class members, Plaintiffs and all proposed class members have been damaged.

114. For these reasons, Plaintiffs and all proposed class members, demand judgment against the City of Opa-Locka for damages together with all attorney's fees and costs awardable under contract or Florida law.

COUNT IV
BREACH OF CONTRACT
FAILURE TO ACCURATELY BILL FOR WATER CONSUMED

115. Plaintiffs incorporate paragraphs 1 through 76 above as if fully set forth herein.

116. The Plaintiffs and all proposed class members entered into express contracts with the City of Opa-Locka as more fully set forth above and in the attached Exhibit A.

117. The Plaintiffs and all proposed class members filled out applications with the City of Opa-Locka and placed deposits as required by their contracts and City code and established water utility accounts with the City of Opa-Locka.

118. All residential water contracts were identical for residential customers. All contracts with commercial water customers were identical for business customers.

119. Plaintiffs complied with all terms of the contract for water service with the City of Opa-Locka.

120. One of the terms of the express contract requires the City of Opa-Locka to accurately bill the Plaintiffs in all proposed class members for the amount of water consumed.

121. The City of Opa-Locka water utilities department measures the amount of water consumed by each of its customers including Plaintiffs and all proposed class members using water

meters.

122. To accomplish the accurate billing of customers, the City of Opa-Locka is required to maintain accurate water meters.

123. An independent study of the City's water meters found that the majority of the water meters in the City were inaccurate or nonfunctional. A copy of that report is attached hereto as Exhibit B.

124. The City of Opa-Locka breached the contracts with the Plaintiffs and all proposed class members by failing to read the water meters and instead intentionally falsifying water billing records of customers by destroying and not using actual meter readings and by falsifying water consumption records and meter readings to intentionally overbuild residential and business water customers.

125. As a direct result of the City of Opa-Locka's breach of its express contract with its water utilities customers, including Plaintiffs and all proposed class members, City of Opa-Locka failed to accurately bill for water utility services and Plaintiffs and all proposed class members have been damaged.

126. For these reasons, Plaintiffs and all proposed class members demand judgment against the City of Opa-Locka for damages together with all attorney's fees and costs awardable under contract or Florida law.

COUNT V
BREACH OF CONTRACT
FAILURE TO CHARGE LAWFUL RATES FOR WATER

127. Plaintiffs incorporate paragraphs 1 through 76 above as if fully set forth herein.

128. The Plaintiffs and all proposed class members entered into express contracts with the City of Opa-Locka as more fully set forth above and in the attached Exhibit A.

129. The Plaintiffs and all proposed class members filled out applications with the City of Opa-Locka and placed deposits as required by their contracts and City code and established water utility accounts with the City of Opa-Locka.

130. All residential water contracts were identical for residential customers. All contracts with commercial water customers were identical for business customers.

131. Plaintiffs complied with all terms of the contract for water service with the City of Opa-Locka.

132. One of the terms of the express contract requires the City of Opa-Locka to bill the Plaintiffs and all proposed class members a fixed amount for the amount of water consumed.

133. The City of Opa-Locka water utilities department measures the amount of water consumed by each of its customers including Plaintiffs and all proposed class members using water meters.

134. To accomplish the accurate billing of customers, the City of Opa-Locka is required to maintain accurate water meters.

135. To accomplish the accurate billing of customers, the City of Opa-Locka is required to read the meters and report the proper usage for each water utility customer.

136. An independent study of the City's water meters found that the majority of the water meters in the City were inaccurate or nonfunctional. A copy of that report is attached hereto as Exhibit B.

137. The City of Opa-Locka breached the contracts with the Plaintiffs and all proposed class members by failing to read the water meters and instead intentionally falsifying water billing records of customers by destroying and not using actual meter readings and by falsifying water consumption records and meter readings to intentionally overbuild residential and business water

customers.

138. The City of Opa-Locka's actions resulted in the City charging unlawful rates for water consumption in breach of its contract with Plaintiffs at all proposed class members.

139. As a direct result of the City of Opa-Locka's breach of its express contract with its water utilities customers, including Plaintiffs and all proposed class members, Plaintiffs and all proposed class members have been damaged.

140. For these reasons, Plaintiffs and all proposed class members demand judgment against the City of Opa-Locka for damages together with all attorney's fees and costs awardable under contract or Florida law.

COUNT VI
BREACH OF CONTRACT
FAILURE TO CORRECT UNLAWFUL BILLS

141. Plaintiffs incorporate paragraphs 1 through 76 above as if fully set forth herein.

142. The Plaintiffs and all proposed class members entered into express contracts with the City of Opa-Locka as more fully set forth above and in the attached Exhibit A.

143. The Plaintiffs and all proposed class members filled out applications with the City of Opa-Locka and placed deposits as required by their contracts and City code and established water utility accounts with the City of Opa-Locka.

144. All residential water contracts were identical for residential customers. All contracts with commercial water customers were identical for business customers.

145. Plaintiffs complied with all terms of the contract for water service with the City of Opa-Locka.

146. One of the terms of the express contract requires the City of Opa-Locka to bill the Plaintiffs and all proposed class members a fixed amount for the amount of water consumed.

147. The City of Opa-Locka water utilities department measures the amount of water consumed by each of its customers including Plaintiffs and all proposed class members using water meters.

148. To accomplish the accurate billing of customers, the City of Opa-Locka is required to maintain accurate water meters.

149. An independent study of the City's water meters found that the majority of the water meters in the City were inaccurate or nonfunctional. A copy of that report is attached hereto as Exhibit B.

150. The City of Opa-Locka breached the contracts with the Plaintiffs and all proposed class members by failing to correct the unlawful bills submitted to water utility customers including Plaintiffs all proposed class members.

151. As a direct result of the City of Opa-Locka's breach of its express contract with its water utilities customers, including Plaintiffs and all proposed class members, Plaintiffs and all proposed class members have been damaged.

152. For these reasons, Plaintiffs and all proposed class members demand judgment against the City of Opa-Locka for damages together with all attorney's fees and costs awardable under contract or Florida law.

COUNT VII
BREACH OF CONTRACT
FAILURE TO ABATE UNLAWFUL LIENS

153. Plaintiffs incorporate paragraphs 1 through 76 above as if fully set forth herein.

154. The Plaintiffs and all proposed class members entered into express contracts with the City of Opa-Locka as more fully set forth above and in the attached Exhibit A.

155. The Plaintiffs and all proposed class members filled out applications with the City

of Opa-Locka and placed deposits as required by their contracts and City code and established water utility accounts with the City of Opa-Locka.

156. All residential water contracts were identical for residential customers. All contracts with commercial water customers were identical for business customers.

157. Plaintiffs complied with all terms of the contract for water service with the City of Opa-Locka.

158. One of the terms of the express contract requires the City of Opa-Locka to accurately bill the Plaintiffs in all proposed class members for the amount of water consumed.

159. Pursuant to the contract between the Plaintiffs and all proposed class members, the failure of the Plaintiffs and all proposed class members to pay the illegal and unlawful and inaccurate water utility bills results in an automatic lien on the serviced property for the illegal, unlawful, and inaccurate amount.

11. For more than ten (10) years, the City of Opa-Locka has intentionally falsified the water billing records of customers by destroying and not using actual meter readings but charging residential and business water customers higher water rates based on fabricated usage numbers.

12. Specifically, on a daily basis for more than ten (10) years, for those meters that plaintiff was able to read, plaintiff presented his actual meter readings to the City's billing staff working under the direction and supervision of the City Manager.

13. Opa-Locka staff intentionally altered and falsified the water consumption records and meter readings to intentionally overbill residential and business water customers in order to make more revenue available for the City.

See Ambrose Obasi Verified Complaint attached hereto as Exhibit G.

160. Exhibit H is a compilation of illegal liens imposed against water customers that the City has refused to abate, requiring the filing of requested judicial relief in the form of a motion for temporary restraining order:

- DJ Opportunities Inc, Apts - \$28,665.19
- Lakeview Apts LLC - \$96,044.88
- Peleg Group USA LLC - \$132,122.01
- Daniel Fernandez - \$40,493.32

161. The City knows or is reasonably aware that the liens are illegal, unlawful, and inaccurate, yet it continues to demand payment from customers in order to release the liens.

162. An emergency motion for immediate injunction enjoining the City from filing liens and enjoining the City from shutting off water to the Plaintiffs is pending before the Court.

163. To accomplish the accurate billing of customers, the City of Opa-Locka is required to maintain accurate water meters.

164. An independent study of the City's water meters found that the majority of the water meters in the City were inaccurate or nonfunctional. A copy of that report is attached hereto as Exhibit B.

165. The laws in effect in the state of Florida, including the Florida Constitution, on the date of the making of the contract are incorporated into the contract as though fully set forth as a matter of law.

166. The failure of the City of Opa-Locka to abate automatic liens where the accuracy and validity are suspect, constitutes a breach of contract terms - imposing a remedy that is not available under the water utility services contract (the collection of amounts claimed due based on fraudulent liens) where the City's actions are governed by the Florida Constitution and the rights guaranteed to Florida citizens thereunder.

167. The City of Opa-Locka breached the contracts with the Plaintiffs and all proposed class members arising from its failure to maintain accurate water meters.

168. As a direct result of the City of Opa-Locka's breach of its express contract with its water utilities customers, including Plaintiffs and all proposed class members, Plaintiffs and all

proposed class members have been damaged.

169. For these reasons, Plaintiffs and all proposed class members demand judgment against the City of Opa-Locka for damages together with all attorney's fees and costs awardable under contract or Florida law.

COUNT VIII
REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION

170. Plaintiffs incorporate paragraphs 1 through 76, 78 through 87, 89 through 102, 104 through 114, 116 through 126, 128 through 140, 142 through 1523, and 154 through 169 above.

171. There is a real and distinct likelihood of irreparable harm to the Plaintiffs and all water customers without an adequate remedy at law.

172. The balance of harm favors the Plaintiffs and all water customers.

173. There is a strong likelihood of success on the merits.

174. The public interest favors the granting of injunctive relief that will not unfairly harm the City.

175. For these reasons, Plaintiffs individually and as representatives of all similarly situated water customers demand entry of a preliminary and permanent injunction requiring immediate restoration of unlawfully terminated services, return of customer deposits to a segregated account, abatement of unlawful liens and all applicable relief.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as of right.

Respectfully submitted,

MICHAEL A. PIZZI, JR., P.A.

MICHAEL A. PIZZI, JR.

Florida Bar No. 07945

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By: /s/ DAVID P. REINER II

DAVID P. REINER II; FBN 0416400

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CERTIFICATE OF SERVICE

I CERTIFY that on **December 14, 2020**, we electronically filed the foregoing document with the Clerk of the Court using Florida Courts eFiling Portal. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by Florida Court e-Filing Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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By: /s/ DAVID P. REINER, II

DAVID P. REINER II; FBN 0416400

EXHIBIT "A"

Chapter 21 - WATER, SEWER, AND STORMWATER UTILITIES^[11]

Footnotes:

--- (1) ---

Cross reference— Budgetary treatment of utility revenues and expenses, § 2-174; special assessments generally, § 2-378 et seq.; construction work affecting utility property, § 7-50 et seq.; subdivisions and platting, § 17-32 et seq.

County Code reference—Water and sewer regulations generally, including regulation of municipal systems, Ch. 32.

ARTICLE I. - IN GENERAL

Sec. 21-1. - Department established.

There is hereby created and established a department of the city to be known as the public utilities department.

(Code 1955, § 2-130; Ord. No. 83-7, §§ 1, 2, 5-11-83)

Sec. 21-2. - Director and personnel of department.

The city manager is hereby authorized and directed to appoint a director of the public utilities department to serve at the will and pleasure of the city manager. Provisions for salary of the director and such additional assistant or employees as may be necessary shall be provided in subsequent annual budgets and pay scales under the title "department of public utilities."

(Code 1955, § 2-131; Ord. No. 83-7, § 1, 5-11-83)

Sec. 21-3. - Departmental responsibilities.

The public utilities department shall be charged with the responsibility for all matters concerning the administration of water, sewer, and stormwater systems within the city, including the construction, improvement, repair, maintenance and operation of water, sewer and stormwater systems and facilities, and the enforcement of all obligations of privately owned and operated water, sewer and stormwater systems and facilities, if any, within the city.

(Code 1955, § 2-132; Ord. No. 83-7, § 1, 5-11-83; Ord. No. 93-6, § 2, 6-9-93)

Sec. 21-4. - Surcharge for customers outside city limits.

The city commission hereby authorizes the establishment of a twenty-five (25) per cent surcharge assessed to water and sewer utility consumers outside the boundaries of the city, as allowed by F.S. § 180.191.

(Ord. No. 08-02, § 2, 1-23-08)

Secs. 21-5—21-13. - Reserved.

ARTICLE II. - WATER^[2]

Footnotes:

--- (2) ---

County Code references—Potable water standards, § 24-12; water connections required, § 32-76 et seq.

DIVISION 1. - GENERALLY

Sec. 21-14. - Definitions.

As used in this article:

Consumer means party or person using in any premises water supplied by the city.

Department means the water and sewer department of the city, or its duly authorized personnel.

Consumer's installation means all pipes, shut-offs, valves, fixtures and appliances or apparatus of every kind and nature used in connection with or forming a part of an installation for utilizing water for any purpose, ordinarily located on the consumer's side of the delivery point, whether such installation is owned outright by the consumer or is used by the consumer under lease or otherwise.

Customer. Each residence accommodating one (1) family shall constitute a "customer" for water service. Any store, place of business, room or rooms, used for an office shall constitute a "customer." Each apartment in an apartment building shall constitute a "customer." Each apartment or residence in the rear of another apartment or residence shall constitute a "customer." In places where there are more than one unit and it is impracticable to separate existing water pipes from separate metering, the owner or owners shall be responsible for all charges for service, which charges shall be in accordance with the size of the meter used and the amount of water metered.

Extension means a two-inch or larger pipeline added to an existing water main of the department for the purpose of serving one or more consumers.

Fire lines means the pipes of the department which extend from the main to the fire line pipes of the consumer and which are used for supplying water exclusively for fire protection purposes.

Month means the interval between successive meter reading dates when service is rendered upon a monthly basis, which interval shall be approximately thirty (30) days.

Owner means the person having an interest, whether legal or equitable, sole or only partial, in any premise which is, or is about to be, supplied with water by the city, and the word "owners" means all interested persons, including occupants and tenants.

Point of delivery means the point where the department's pipes or meters are connected with the pipes of the consumer.

Quarter means the interval between successive meter reading dates when service is rendered upon a quarterly basis, which interval shall be approximately three (3) months.

Service includes, in addition to all water delivered to the consumer, the readiness and ability on the part of the water department to furnish water to the consumer. Thus, the maintenance of pressure at the point of delivery by the water department shall constitute the rendering of service, irrespective of whether the consumer makes any use thereof.

Service connection means the physical connection made between each water meter furnished by the department and the consumer's pipe.

Service lines means the pipes of the department which extend from the main to the meter.

Territory means the corporate limits of the city.

(Code 1955, § 23-7)

Sec. 21-15. - Connection to city system required.

Premises shall be required to be connected to the city water distribution system when and as required by the Code of Metropolitan Dade County, Florida.

County Code reference—Water connections required, § 32-76 et seq.

Sec. 21-16. - Extensions to be at expense of person requesting; title in city.

Extensions to the water distribution system upon the request of any person shall be constructed at the expense of such person and upon their completion, title thereto shall be vested in the city.

(Code 1955, § 23-2)

Sec. 21-17. - Deposit to cover extension costs.

Before any extension or extensions shall be undertaken or permitted by the city upon the request of any person, the person requesting such extension shall deposit with the city a sum of money equal to the cost of such extension as estimated by the city engineer.

(Code 1955, § 23-3)

Sec. 21-18. - Approval of privately constructed extensions.

In the event such person shall choose in the alternative to construct or cause to be constructed such extension or extensions for its own account, the plans and specifications for such construction must first be approved by the city engineer, and no connection with the city water distribution system shall be made unless and until such extension has first been inspected and approved by the city engineers.

(Code 1955, § 23-4)

Sec. 21-19. - Right to enter consumer's premises.

The duly authorized agents of the department shall have access at all reasonable hours to the premises of the consumer for the purpose of installing, maintaining and inspecting or removing the department's property, reading meters and other purposes incident to performance under or termination of the water department's contract with the consumer, and in such performance shall not be liable for trespass.

(Code 1955, § 23-15)

Sec. 21-20. - Consumer to reimburse department expenses.

The consumer shall reimburse the department for all extra expenses (such as for special trips, inspections, disconnecting and reconnecting service, additional clerical expenses, etc.), incurred by the department on account of any delinquent bill, or on account of the consumer's violations of the contract for service or the provisions of this article. The minimum charge to cover such extra expenses is two dollars (\$2.00).

(Code 1955, § 23-17)

Sec. 21-21. - City not liable for interruption of service.

In case of accidents, breakdown, shortage of water supply or any cause beyond its control or because of any act or omission on the part of the city, or its agents, or any of them, or in case of the making of repairs, renewals or replacements, the city reserves the right to shut off the water supply from any one or any number of premises, without notice, and shall in no manner be held responsible for any consequences of such shut-off. Such shut-offs shall not entitle the owner to any abatement or deduction in or from the water service charges nor to any refund of any charges paid in advance.

(Code 1955, § 23-17)

Sec. 21-22. - Quality and pressure not guaranteed.

The city shall not make any guarantee as to a certain quality or pressure, nor be responsible for any loss or damage to the owner for the efficiency or failure to the supply of water, whether the occasion be for shutting off water in the case of accident or alteration, extension, connections or for any cause whatsoever.

(Code 1955, § 23-17)

Sec. 21-23. - Application for service required; nature of contract.

Service is to be furnished only upon signed application accepted by the department, and the conditions of such application and the resulting contract for service are binding upon the consumer as well as upon the department. Applications are accepted by the department with the understanding that there is no obligation on the part of the department to render service other than that which is then available from its existing equipment.

(Code 1955, § 23-10)

Sec. 21-24. - Applications by agents.

Applications for service requested by firms, partnerships, associations, corporations, etc., shall be submitted to the department only by duly authorized agents. When service is rendered under a contract entered into between the department and an agent of the applicant for service, the use of such service by the applicant shall constitute full and complete ratification by him of such contract.

(Code 1955, § 23-10)

Sec. 21-25. - Right to deny service until debts paid.

The department may withhold or discontinue service rendered under an application made by any member or agent of a family, household, organization or business until all prior indebtedness to the department of such family, household, organization or business has been paid in full.

(Code 1955, § 23-10)

Sec. 21-26. - Expiration, renewal of contracts for service.

All contracts for water supply service shall expire at the end of the next succeeding calendar month from date of application, but shall be automatically renewed from month to month unless ten (10) days'

notice is given in writing from either party to the other of the desire to terminate the contract at the expiration of the then calendar month.

(Code 1955, § 23-10)

Sec. 21-27. - Responsibility for service to multiple premises.

When two (2) or more premises are served through the same meter, the owner of such premises must sign the contract or contracts for water service and be responsible for the payment for all service rendered.

(Code 1955, § 23-10)

Sec. 21-28. - Termination of multiple service when one premises sold.

In those cases where a number of premises are supplied through one meter and one service, and subsequently one or more of said houses or premises are sold, transferred, or otherwise pass under separate ownership, thereafter each such house or houses or premises must have a separate meter installed.

(Code 1955, § 23-10)

Sec. 21-29. - Charge for multiple meters for single building.

Where the owner of a building containing more than one store, dwelling or other premises, desires that separate meters be installed to each separate store, dwelling or other premises, such additional meters shall be installed upon the payment in advance of the regular tapping charge for a new service for each meter installed.

(Code 1955, § 23-10)

Sec. 21-30. - Cost and deposit for temporary service.

Applicants for temporary service, such as contractors, etc., shall pay to the department in advance the cost of installing and removing any facilities necessary to furnish the service, and shall deposit with the department a guarantee of not less than the estimated amount of the department's bill for such service.

(Code 1955, § 23-10)

Sec. 21-31. - Scope of short-term service.

Short-term service will be rendered only to the location and only within the period of time specified in the contract providing therefor, and shall be utilized only by the contracting party.

(Code 1955, § 23-10)

Sec. 21-32. - Resale or redistribution of water.

Water service purchased from the department shall be used by the consumer only for the purposes specified in the application for service, and the consumer shall not sell or otherwise dispose of such

service. Except for service furnished to other municipalities, water service furnished to the consumer will be rendered directly to the consumer through the department's meter and shall be for consumer's own use and shall not be re-metered by the consumer for the purpose of selling or otherwise disposing of water service to lessees, tenants or others, and under no circumstances shall the consumer or the consumer's agent or any other individual, association or corporation install a meter for the purpose of so re-metering said service. In no case shall a consumer, except with the written consent of the water department, extend his lines across a street, alley, lane, court, avenue or other highway in order to furnish service for adjacent property through one meter, even though such adjacent property is owned by him. In case of such unauthorized re-metering, sale or disposition of service, the consumer's service shall be subject to discontinuance until such unauthorized re-metering, sale or disposition has been discontinued and full payment has been made of all bills for service, calculated under proper classifications and rate schedules, and until reimbursement in full has been made to the department for all extra expenses incurred for clerical work, testing and inspections.

(Code 1955, § 23-11)

Sec. 21-33. - Service to abnormally large users.

- (a) Customers requiring water service in excess of seven thousand five hundred (7,500) gallons per day per acre, or in excess of .003% of the total average daily production capacity of the city water system, shall file with the city manager an application specifying the following:
 - (1) Total amount of water gallonage anticipated per day per acre;
 - (2) Purpose of said water usage;
 - (3) Special requirements, if any;
 - (4) Maximum and minimum anticipated water usage for each month during the period October first through September thirtieth for a period of three (3) years.
- (b) In the event the total maximum gallonage demanded for the proposed usage exceeds seven thousand five hundred (7,500) gallons per day per acre or .003% of the total average daily production capacity of the city water system, water service to the applicant shall be refused and the application for water service shall be held in abeyance until such time as the city water production system shall have been expanded to provide the desired water service in excess of seven thousand five hundred (7,500) gallons per day per acre, or .003% of the total average daily production capacity of the city water system. Applications shall be considered in numerical order of filing with the city manager.
- (c) Customers whose applications for service are refused pending expansion of the city water facilities shall be permitted to conditionally connect to and use the city water services to the extent of seven thousand five hundred (7,500) gallons per day, per acre or .003% of the total average daily production capacity as may proportionately become available by the expansion of the production capacity of the city water system.
- (d) Applications deferred hereunder for water service shall remain valid for a period of three (3) years from the date received. In the event the city water production capacity has not been expanded during the said time period in order to accommodate the demands of the customer, the application shall be denied without prejudice to refile for additional water service.
- (e) In determining the availability of water service for each parcel of land or property the proper officers of the city shall serve all customers requiring less than seven thousand five hundred (7,500) gallons per day per acre or .003% of the total average daily production capacity. Water for customers whose parcels are less than one acre shall be apportioned in order to determine availability of water for said parcels.

(Code 1955, § 23-11)

Sec. 21-34. - Change of occupancy.

- (a) When change of occupancy takes place on any premises supplied by the department with water service, written notice thereof shall be given at the office of the department not less than two (2) days prior to the date of change by the outgoing party, who will be held responsible for all water service rendered to such premises until such written notice has been received and the department has had a reasonable time to discontinue service.
- (b) Provided, if such written notice has not been received by the department, the application of a succeeding occupant for water service will automatically terminate the prior account without, however, discharging the obligation of the former occupant.

(Code 1955, § 23-12)

Sec. 21-35. - Application for private fire protection service; charge.

To obtain private fire protection water service, an application shall be made to the department and a contract, in the form prescribed by the department, entered into. In addition, prepayment shall be made by such applicant of the estimated cost of the installation plus ten per cent (10%), including labor, materials, street repair, sidewalk repair and such other costs as may be incurred in rendering such service, plus the cost of the extension of the proper size main.

(Code 1955, § 23-13)

Sec. 21-36. - Right to refuse private fire protection service.

The department reserves the right to refuse to contract for private fire protection water service in any case where no adequate water mains for such purpose are adjacent to applicant's property.

(Code 1955, § 23-13)

Sec. 21-37. - Fire protection to be unmetered.

There will be no meter on any portion of the consumer's installation utilized for fire protection purposes.

(Code 1955, § 23-15)

Sec. 21-38. - Grounds for discontinuing service.

Contracts for water service shall be subject to cancellation, and service thereunder discontinued by the city, for any of the following reasons, to wit:

- (a) For misrepresentations or concealment in the application.
- (b) For waste or excessive use of water through improper or imperfect pipes and fixtures, or appliances, or in any other manner.
- (c) For refusal or neglect to make any advance payment required by the department, or for refusal or neglect to comply with any requirements of the department as to meter or service connection maintenance, alteration or renewal.
- (d) For the use of water supply service for or in connection with or for the benefit of any other premises or purposes other than that specified in the application.

- (e) For an interference or tampering, whether by act of commission or omission, with the meter measuring the water supply or with seals of any meter, or with any meter box or vault, or service pipes, or valves or any seals thereon, or with the curb stop cock, or with any appliances of the department or with any appliance of the owner which was or is required by the department to control or regulate the water supply service. For the purpose of this section, an interference or tampering with any appliance used in connection with or for the control or regulation of the water supply service to any premise, shall be construed and taken to be the act of the owner and consumers using the water service at the said premises.
- (f) In case of continued vacancy of the premises.
- (g) For violation of any of the provisions of this article.
- (h) Where there has been a change in ownership of the premises, but no application from the new owner or owners has been made for approval by the department.
- (i) Where there has been discontinuance of the use of water or the service of the department.
- (j) Where the contract has been in any way terminated by the owner.
- (k) Where any owner or consumer refuses or neglects payment of any bill, account or charge, or where the department is being defrauded in any way.

(Code 1955, § 23-14)

Sec. 21-39. - Restrictions on sprinkling.

- (a) All sprinkling during a fire in the vicinity of any owner's premises of which said owner, his agent or tenant, has or may reasonably be presumed to have knowledge or notice of, is prohibited, unless such sprinkling is for protection against such fire.
- (b) Sprinkling may be further restricted or prohibited by a resolution of the city commission during any period when a shortage of water exists.

(Code 1955, § 23-18)

Secs. 21-40—21-49. - Reserved.

DIVISION 2. - SERVICE LINES AND CONNECTIONS

Sec. 21-50. - City to determine service size.

The city in every instance, reserves the right to designate and prescribe the size of service connection.

(Code 1955, § 23-15)

Sec. 21-51. - Department to install service line.

Where water mains exist, the department will provide one or more service lines to each lot of a recorded subdivision plat upon proper application.

(Code 1955, § 23-15)

Sec. 21-52. - Enlargement of service.

In the event that a service line supplying a house or building is found not to be large enough due to additions to building or an increase or change in the number of fixtures, the department will install any adequate service line upon application of the consumer and advance payment by him of the total cost of such larger service line.

(Code 1955, § 23-15)

Sec. 21-53. - City to make connections.

Connections to the department's system for any purpose whatsoever are to be made only by its employees.

(Code 1955, § 23-15)

Sec. 21-54. - Tapping charge required.

On application of the owner or prospective consumer of water service on premises within the territory, requiring the installation of meters, valves or other facilities, and where water mains exist adjacent to said premises, the following charges, to all properties, shall be made and collected to cover the cost of the tap and installation of the service to the point of delivery, to wit:

- (a) Single family residential single meter connection, two hundred fifty dollars (\$250.00).
- (b) Commercial/industrial single meter connection costs of meter, valve, pipe, and installation, but no less than a minimum charge of four hundred fifty dollars (\$450.00).

(Code 1955, § 23-9; Ord. No. 82-13, § 1, 11-22-82)

Sec. 21-55. - Extension of plumbing to service point.

Each consumer's installation shall be extended by the consumer at his expense to a point outside the structure designated by the department, provided that such designated point is on the boundary of the premises adjacent to a public street, avenue, court, lane, etc. The consumer's installation shall be extended to the department's meter and curb cock, ordinarily located at the curb or curbline. A gate or shutoff valve of a type approved by the department shall be installed by the consumer at his expense on the consumer's installation at the point designated by the water department. Neglect or refusal of the consumer to comply with these requirements shall render the consumer liable for any damage to the meter, other fixtures or equipment on the department's side of the point of delivery.

(Code 1955, § 23-15)

Sec. 21-56. - Plumbing to comply with applicable regulations.

The consumer's water pipes, apparatus and equipment shall be selected, installed, used and maintained in accordance with standard practice, conformable to the requirements of the department, and in full compliance with all laws and governmental regulations applicable thereto. The consumer expressly agrees to abstain from utilizing any appliance or device which is not properly constructed, controlled and protected, or which may adversely affect the service; and the department reserves the right to withhold or to discontinue service whenever any such apparatus or device is used.

(Code 1955, § 23-15)

Cross reference— Applicability of building code, § 7-1.

Sec. 21-57. - Changes in consumer's plumbing.

No changes or increases in the consumer's installation, which will materially affect the proper operation of the pipes, mains or stations of the department, shall be made without the written consent of the department. The consumer will be liable for any damage resulting from a violation of this section.

(Code 1955, § 23-15)

Sec. 21-58. - Department's right to inspect.

The department reserves the right to inspect the consumer's installation prior to rendering service and from time to time thereafter, but assumes no responsibility whatsoever for any portion thereof.

(Code 1955, § 23-15)

Sec. 21-59. - Consumer to hold city harmless.

The consumer shall indemnify, hold harmless and defend the department and the city from and against any and all liability, proceedings, suits, costs or expenses for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or growing out of the transmission and use of water by the consumer at or on the consumer's side of the point of delivery.

(Code 1955, § 23-15)

Sec. 21-60. - Consumer to protect city property.

The consumer shall properly protect the department's property on the consumer's premises, and shall permit no one to have access thereto except the department's agents or persons authorized by law.

(Code 1955, § 23-15)

Sec. 21-61. - Responsibility for damages to city property.

In the event of any loss or damage to property of the department caused by or arising out of carelessness, neglect or misuse by the consumer, or by unauthorized parties with the consumer's sanction, the cost of making good such loss or repairing such damage shall be paid by the consumer.

(Code 1955, § 23-15)

Sec. 21-62. - Consumer to grant easements, rights, etc.

The consumer shall grant or cause to be granted to the department and without cost of the department all rights, easements, permits and privileges which in its opinion are necessary for the rendering of service.

(Code 1955, § 23-15)

Sec. 21-63. - Cross-connecting domestic and fire protection service prohibited.

No connection of any description, temporary or otherwise, is permitted on the consumer's installation between that portion of the consumer's installation for domestic water service and that portion of the consumer's installation for fire protection purposes.

(Code 1955, § 23-15)

Sec. 21-64. - Cross-connecting city water with another liquid.

Any and all physical connections or arrangement of pipes are prohibited between two (2) separate piping systems, one of which contains potable water from the city water mains, and the other containing a liquid from any other source.

(Code 1955, § 23-15)

Sec. 21-65. - By-passing meter.

That portion of the consumer's installation for domestic water service shall be so arranged that all domestic water service shall pass through the meter. No temporary pipes, nipples or spacers are permitted and under no circumstances are connections allowed which may permit water to bypass the meter or metering equipment.

(Code 1955, § 23-15)

Sec. 21-66. - Unauthorized connections.

Any unauthorized connections shall render the service subject to immediate discontinuance without notice and service will not be restored until such unauthorized connections have been removed and unless settlement is made in full for all water service estimated by the department to have been used by reason of such unauthorized connections.

(Code 1955, § 23-15)

Secs. 21-67—21-76. - Reserved.

DIVISION 3. - SERVICE RATES AND CHARGES^[3]

Footnotes:

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Editor's note— Ord. No. 96-11, adopted April 24, 1996, with regards to water rates, provided as follows:

Editor's note— "Section 1: The water rates for the remaining fiscal year 1995-96 and thereafter until amended by ordinance are hereby reestablished as to reflect a decrease to the residential consumers within and without the municipal boundaries by 15% (percent) of the current rate per 1,000 gallons of water consumed.

Editor's note— "Section 2: The sewer rates for the remaining fiscal year 1995-96 and thereafter until amended by ordinance are hereby reestablished as to reflect a decrease to the residential consumers

within and without the municipal boundaries by 15% (percent) of the current rate per 1,000 gallons of sewage.

Editor's note— "Section 3: The water rates for the remaining fiscal year 1995-96 and thereafter until amended by ordinance are hereby reestablished as to reflect an increase to the commercial consumers within and without the municipal boundaries by 25% (percent) of the current rate per 1,000 gallons of water consumed."

Editor's note— County Code reference—Jurisdiction of county over municipal water rates, § 32-66.

Sec. 21-77. - Schedule of rates generally.

Meter Size	1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
¾"	\$4.15	\$4.48	\$4.84	\$5.23	\$5.65
1"	23.78	25.68	27.73	29.95	32.35
1.5"	26.90	29.05	31.37	33.88	36.59
2"	55.06	59.46	64.22	69.36	74.91
3"	64.43	69.58	75.15	81.16	87.65
4"	81.95	88.51	95.59	103.24	111.50
6"	99.46	107.42	116.01	125.29	135.31
8"	116.86	126.21	136.31	147.21	158.99

Water usage rates per 1,000 gallons:

		1/1/15	10/1/15	10/1/16	10/1/17	10/1/18
Residential	Gallons					
Block 1	1—5,000	\$2.74	\$2.96	\$3.20	\$3.46	\$3.74
Block 2	5,001—10,000	3.43	3.70	4.00	4.32	4.67
Block 3	10,001—15,000	11.15	12.04	13.00	14.04	15.16

Block 4	All Use > 15,000	16.72	18.06	19.50	21.06	22.74
Commercial	Gallons					
Block 1	All Use	7.37	7.96	8.60	9.29	10.03

Sewer monthly service charge (residential and commercial):

Meter Size	1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
¾"	\$4.15	\$4.48	\$4.84	\$5.23	\$5.65
1"	23.78	25.68	27.73	29.95	32.35
1.5"	26.90	29.05	31.37	33.88	36.59
2"	55.06	59.46	64.22	69.36	74.91
3"	64.43	69.58	75.15	81.16	87.65
4"	81.95	88.51	95.59	103.24	111.50
6"	99.46	107.42	116.01	125.29	135.31
8"	116.86	126.21	136.31	147.21	158.99

Sewer usage rate per 1,000 gallons:

		1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
Residential	Gallons					
Block 1	1—5,000	\$4.47	\$4.83	\$5.22	\$5.64	\$6.09

Block 2	5,001-10,000	\$6.38	\$6.89	\$7.44	\$8.04	\$8.68
Block 3	All Use > 10,000	\$14.39	\$15.54	\$16.78	\$18.12	\$19.57
Commercial	Gallons					
Block 1	All Use	\$10.53	\$11.37	\$12.28	\$13.26	\$14.32

Storm water utility rate:

	1/1/2015	10/1/2015	10/1/2016	10/1/2017	10/1/2018
Rate	\$4.00	\$6.00	\$9.00	\$12.00	\$15.50

Fire hydrant service charges. A fire hydrant service charge as specified in the City of Opa-locka schedule of rates, fees and charges for water and sewer service, shall apply for all customers within the city's service area. This charge covers the cost of installation, replacement, repair and maintenance of fire hydrants, in addition to the cost of upgrading water mains to provide required fire flows. The charges are as follows:

Water Meter Size (inches)	Charge Per Month
¾"	\$1.00
1"	5.00
1.5"	7.00
2"	10.00
3"	12.00
4"	15.00
6"	20.00

8"	25.00
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(Code 1955, § 23-8; Ord. No. 80-2, § 1, 1-30-80; Ord. No. 83-12, § 1, 12-14-83; Ord. No. 84-12, § 1, 6-27-84; Ord. No. 85-1, § 1, 1-9-85; Ord. No. 85-15, § 1, 7-10-85; Ord. No. 85-24, § 1, 10-9-85; Ord. No. 87-8, § 1, 9-23-87; Ord. No. 90-11, § 1, 9-26-90; Ord. No. 91-18, § 1, 9-26-91; Ord. No. 92-14, § 1, 9-23-92; Ord. No. 01-1, § 1, 2-14-01; Ord. No. 02-5, § 1, 3-13-02; Ord. No. 08-03, §§ 2, 3, 4-9-08; ;Ord. No. 09-16, § 2, 9-9-09; Ord. No. 09-17, § 2, 9-21-09; Ord. No. 09-20, § 2, 10-28-09; Ord. No. 10-20, § 2, 7-28-10; Ord. No. 14-17, § 2, 10-9-14; Ord. No. 18-13, § 2, 9-26-18)

Sec. 21-78. - Scope of minimum.

Every water supply service shall have a monthly minimum service charge on each service installed. This minimum monthly service charge shall be in accordance with the schedule in section 21-77(a) above, and shall entitle the consumer, without additional charge, to have supplied through the water meter the number of gallons of water set forth in the table in section 21-77(a) above.

(Code 1955, § 23-8; Ord. No. 85-17, § 1, 7-10-85)

Sec. 21-79. - Excess not charged against minimum for other months.

No excess consumption of water during one month may be charged against the minimum allowance for any other month or months.

(Code 1955, § 23-8)

Sec. 21-80. - Deposits.

There shall be deposited with the city, by each consumer of:

(a) *Water and sewer service, water only service, or sewer only service:*

Water Meter Size (inches)	Residential Customers	Commercial Customers
¾	\$170.00	\$250.00
1	1,000.00	1,000.00
1½	1,500.00	1,500.00
2	2,000.00	2,000.00
3	3,000.00	3,000.00

4	4,000.00	4,000.00
6	6,000.00	6,000.00
8	8,000.00	8,000.00

(b) *Water and sewer service, water only service, or sewer only service for customers discovered using water and sewer services without a deposit.* The deposit and all unbilled water and sewer charges must be paid to re-connection of services.

Water Meter Size (inches)	Residential Customers	Commercial Customers
¾	\$340.00	\$500.00
1	2,000.00	2,000.00
1½	3,000.00	3,000.00
2	4,000.00	4,000.00
3	6,000.00	6,000.00
4	8,000.00	8,000.00
6	12,000.00	12,000.00
8	16,000.00	16,000.00

(c) *Other miscellaneous fees:*

Tampering fees	\$450.00
Disconnection fee	25.00
Lock meter fee	40.00
Meter removal fee	50.00

Thereafter, the minimum deposit shall be increased or decreased to reflect changes in water, and sewer charges as approved by the city commission, but in no event shall the minimum deposit be less than the deposits as established above. Upon the request of the owner or consumer making such deposit or their assigns, for discontinuation of service and upon payment of all charges arising out of any service on said premises, the deposit shall be refunded. Existing consumers who prior to the effective date of this section have deposited minimum deposits with the city in accordance with the provisions of the Code of Ordinances shall be permitted to maintain said minimum deposit unless the said account is in default, delinquent, or a lien is filed by the city against the property served.

(Code 1955, § 23-9; Ord. No. 82-12, § 1, 9-22-82; Ord. No. 86-15, § 1, 11-12-86; Ord. No. 12-01, § 2, 1-11-12)

Sec. 21-81. - Rates for private fire protection service.

The following schedule of monthly rates or charges for private fire service connections is hereby established and assessed, to wit:

Size of connection	Monthly rate or charge
2½" or 3"	\$3.00
4"	4.00
6"	6.00
8"	8.00

(Code 1955, § 23-13)

Sec. 21-82. - Temporary discontinuance of service.

Water service may be temporarily discontinued upon proper application to the department. There shall be no minimum or other charge for service to a premises to which the service has been discontinued for an entire billing period. A minimum turn-on charge of two dollars (\$2.00) will be made when service is restored.

(Code 1955, § 23-8)

Sec. 21-83. - Billing procedure; penalty for late payment; lien.

- (a) Utility charges levied at the rates established by ordinance shall be billed each month of the calendar year and payable upon billing. Bills shall be considered as having been received when delivered or mailed to the service address or to some other place mutually agreed upon. In case of failure to pay any bill for charges when due, a penalty of ten (10) per cent of such charge shall be added to such bill. In the event that service(s) is (are) discontinued for nonpayment of outstanding balances, a re-establishment fee of twenty-five dollars (\$25.00) per account will be paid along with all outstanding balances prior to re-establishing the supply of services.
- (b) Each charge levied pursuant to this article, including any additions for equipment or special services, is hereby made a lien on the premises served thereby and if same is not paid within sixty (60) days, after it shall be due and payable, it shall be certified to and filed with the clerk of the circuit court of Dade County, Florida. The charges with interest, reasonable attorney's fee and penalties shall be collected as other municipal taxes are collected and enforced.

(Code 1955, §§ 23-17, 23-19; Ord. No. 86-15, § 2, 11-12-86)

Sec. 21-84. - Nonreceipt of bill not to excuse payment.

Nonreceipt of bills by the consumer shall not release or diminish the obligation of the consumer with respect to the payment thereof.

(Code 1955, § 23-17)

Sec. 21-85. - When bills due and payable; discontinuing service for nonpayment.

Bills are due when rendered, and if not paid within twenty-one (21) days thereafter, they shall become delinquent, and service may be discontinued and the prepayment, deposit or guarantee applied toward settlement of the bill. Mailing of the next month's bill showing a previous balance shall constitute due notice. Discontinuance shall be in accordance with the Miami-Dade Water and Sewer Department, as well as provisions set forth in section 32-91 through section 32-101 of the Miami-Dade County Code of Ordinances. In such cases service will not be restored until the bill has been paid and the department has been reimbursed for extra expense incurred on account of the delinquent bill.

(Code 1955, § 23-17; Ord. No. 18-18, § 2, 12-12-18; Ord. No. 19-18, § 2, 12-11-19)

County Code reference—Metropolitan Dade County Water and Sewer Board generally, § 32-11 et seq.

Sec. 21-86. - Discontinuing service for bill at prior location.

A consumer's water service may be discontinued for nonpayment of a bill for water service rendered to him at a previous location served by the department, provided that said bill is not paid within thirty (30) days after presentation.

(Code 1955, § 23-17)

Sec. 21-87. - To whom payment made.

Payment of all water bills and accounts of the city must be made at the office of the water clerk in the city hall, or to an agent of the city duly designated and bonded for such purpose.

(Code 1955, § 23-17)

Sec. 21-88. - City to install, maintain meters.

Upon application and payment of the tapping charge, the department will install and properly maintain at its own expense a meter or meters and metering equipment as may be necessary to measure the water delivered to the consumer.

(Code 1955, § 23-16)

Sec. 21-89. - Title to meters, metering equipment.

Title to meters and metering equipment shall be and remain in the department except only such meters and other metering equipment sold to the consumer under special written agreement.

(Code 1955, § 23-16)

Sec. 21-90. - Meter reading *prima facie* correct.

When the service rendered by the department is measured by meters, the department's accounts thereof shall be accepted and received at all times, places and courts as *prima facie* evidence of the quantity of water delivered to the consumer.

(Code 1955, § 23-17)

Sec. 21-91. - Testing of meters; adjustment of bill.

Upon request and due notice from the consumer, the department will test the consumer's meter or meters. If a meter is found to be not more than two per cent (2%) fast or slow, the expense of the test shall be borne by the consumer, the minimum charge therefor to be one dollar (\$1.00). If the meter exceeds these limits, the expense of the test shall be borne by the water department and billing adjustment for a period of not to exceed three (3) months will be made.

(Code 1955, § 23-16)

Sec. 21-92. - Obscuring, damaging meters.

It shall be unlawful to cover, obscure, deface or destroy any water meter of the city, with any material, including shrubbery, debris, waste or other materials.

(Code 1955, § 23-16)

Sec. 21-93. - Estimate of bill when meter defective.

In the event any meter has been damaged, destroyed or required repair, or in the event any meter is found to be defective or has ceased to register, said meter will be adjusted, repaired or changed and the department will estimate the bill for the period, either by adopting and using the registration of a correct meter or by comparison with the amount charged during the corresponding period of the previous year, taking into account the capacity of the installation.

(Code 1955, § 23-16)

Sec. 21-94. - Repair of meter or service on consumer's premises.

In the case of damage or injury to the meter or service on the consumer's premises, the supply of water may be discontinued by the department until the necessary repairs have been made and the costs thereof reimbursed to the department by the consumer. The consumer may request that the cost of repair, adjustment or replacement be pro-rated and included in the monthly water bill, provided payment in full shall be completed within six (6) months from the date of first billing.

(Code 1955, § 23-16)

DIVISION 4. - CROSS-CONNECTION CONTROL PROGRAM^[4]

Footnotes:

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Editor's note— Ord. No. 85-7, §§ 1—11, adopted March 13, 1985, did not specifically amend the Code; therefore, codification as §§ 21-95—21-95.9 was at the discretion of the editor.

Sec. 21-95. - Definitions.

As used in this division:

- (1) *Public water supply* means any system of water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community, collection or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water supplies serving one single-family residence.
- (2) *Cross-connection* means any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage, reservoir, plumbing fixture, or other device which contains, or may contain, contaminated water, sewage, or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices, and other temporary or permanent devices through which, or because of which, backflow could occur are considered to be cross-connections.
- (3) *Air gap separation* means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood-level rim of the receptacle, and shall be at least double the diameter of the supply pipe measured vertically above the flood-level rim of the vessel. In no case shall the gap be less than one inch.
- (4) *Auxiliary supply* means any water source or system, other than the public water supply, that may be available in the building or premises.
- (5) *Backflow* means the flow other than the intended direction of flow, or any foreign liquids, gases or substances into the distribution system of a public water supply.
- (6) *Back pressure* means backflow caused by a pump, elevated tank, boiler or other means that could create pressure within the system greater than the supply pressure.
- (7) *Back siphonage* means a form of backflow due to a negative or subatmospheric pressure within a water system.
- (8) *Backflow prevention device* means a device to counteract back pressures or prevent back siphonage.

- (9) *Double check valve assembly* means an assembly composed of two (2) single, independently acting check valves, including tightly closing shutoff valves located at each end of the assembly and suitable connections for testing the watertightness of each check valve.
- (10) *Reduced pressure principle backflow prevention device* means a device incorporating two (2) or more check valves and an automatically operating differential relief valve located between the two (2) checks, two (2) shutoff valves, and equipped with necessary appurtenances for testing. The device shall operate to maintain the pressure on the public water supply side of the device. At cessation of normal flow, the pressure between the check valves shall be less than the supply pressure. In case of leakage of either check valve the differential relief valve shall operate to maintain this reduced pressure by discharging to the atmosphere. When the inlet pressure is two (2) pounds per square inch or less the relief valve shall open to the atmosphere thereby providing an air-gap in the device.

(Ord. No. 85-7, § 1, 3-13-85)

Sec. 21-95.1. - Cross-connections prohibited.

All cross-connections, whether or not such cross-connections are controlled by automatic devices, such as check valves or by hand-operated mechanisms such as gate valves or stop cocks, are hereby prohibited.

(Ord. No. 85-7, § 2, 3-13-85)

Sec. 21-95.2. - Installation of backflow prevention devices required.

Backflow prevention devices shall be installed at the service connection or within any premises where the nature and extent of the activities on the premises, or the materials used in connection with the activities or materials stored in the premises would present an immediate and dangerous hazard to health, should a cross-connection occur, even though such cross-connection does not exist at the time the backflow prevention device is required to be installed. This shall include, but not be limited to, the following situations:

- (1) Premises having an auxiliary water supply, unless the quality of the auxiliary supply is in compliance with applicable federal laws, safety of public water systems, and is acceptable to the department.
- (2) Premises having internal cross-connections that are not correctable, or intricate plumbing arrangements which make it impracticable to ascertain whether or not cross-connections exist.
- (3) Premises where entry is restricted so that inspections for cross-connections cannot be made with sufficient frequency or at sufficiently short notice to assure that cross-connections do not exist.
- (4) Premises having a repeated history of cross-connections being established or re-established.
- (5) Premises on which any substance is handled under pressure so as to permit entry into the public water supply, or where cross-connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters.
- (6) Premises where materials of a toxic or hazardous nature are handled such that if back siphonage should occur, a serious health hazard may result.
- (7) The following types of facilities will fall into one of the above categories where a backflow prevention device is required to protect the public water supply. A backflow prevention device shall be installed at these facilities unless the department determines no hazard exists:
 - Hospitals, mortuaries, clinics.

Laboratories.
Piers and docks.
Sewage treatment plants.
Food or beverage processing plants.
Chemical plants using a water process.
Metal plating industries.
Petroleum processing or storage plants.
Radioactive material processing plants or nuclear reactors.
Others specified by the department.

(Ord. No. 85-7, § 3, 3-13-85)

Sec. 21-95.3. - Protective device approval.

Any protective device required in this section shall be approved by the department of public utilities prior to installation.

(Ord. No. 85-7, § 4, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Sec. 21-95.4. - Types of backflow prevention devices to be installed.

- (a) An air gap separation or a reduced pressure principle backflow prevention device shall be installed where the water supply may be contaminated with sewage, industrial waste of a toxic nature or other contaminant which would cause a health or system hazard.
- (b) In the case of a substance which may be objectionable but not hazardous to health, a double check valve assembly, air gap separation or a reduced pressure principle backflow prevention device shall be installed and may be approved if the device has successfully passed performance tests of the University of Southern California Engineering Center or other testing laboratory satisfactory to the department of public utilities.

(Ord. No. 85-7, §§ 5, 6, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Sec. 21-95.5. - Location to be accessible.

Backflow prevention devices shall be installed at the outlet side of the meter, or at another location designated by the department of public utilities. The device shall be located so as to be readily accessible for maintenance, testing and inspection and where no part of the device will be submerged.

(Ord. No. 85-7, § 7, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Sec. 21-95.6. - Installation at customer's expense.

Backflow prevention devices shall be installed by the customer at the customer's expense or by the department at the customer's request and expense, should this arrangement be made by the customer and the department.

(Ord. No. 85-7, § 8, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Sec. 21-95.7. - User responsible for inspections.

The user of a backflow prevention device shall be responsible to have said device annually inspected and tested by the department of public utilities. The device shall be tested more often where successive inspection indicates repeated failure. The charge for each inspection shall be fifty dollars (\$50.00). If required, the device shall be repaired, overhauled, or replaced by the department of public utilities or ordered to be repaired at the customer's expense whenever it is found that the device is defective. Inspections, tests and repairs, and records thereof performed by the department shall be charged to the customer at rates established by the department.

(Ord. No. 85-7, § 9, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Sec. 21-95.8. - Enforcement.

- (a) It shall be the duty of the director of the department of public utilities of the city or his authorized designee to enforce the provisions of this division.
- (b) In case any consumer uses a water system in violation of this division, any proper official of the department of utilities or their duly authorized representatives, in addition to other remedies, may request the city manager to institute an appropriate action or proceedings necessary to prevent such unlawful use, or other violations, to restrain, correct or abate such violation, to prevent the occupancy of the building wherein the water system is being utilized or to prevent any illegal act, conduct, business or use in or about the premises. Each day such violation continues shall constitute a separate violation. The director of utilities may call upon the chief of police to furnish him with the necessary police personnel to carry out his orders with regards to the enforcement of any of the provisions of this division.
- (c) The owner or occupant of a building or premises where a violation of this ordinance has been committed or exists, or the lessee or tenant of a premises where such violation has been committed or exists, or any other person who commits, takes part in, or assists in any such violation, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) per day or imprisonment for not more than sixty (60) days, or both, for each and every day that such violation continues.
- (d) The provisions of this section shall apply to all existing installations. For those owners, occupants or persons not in compliance, compliance shall be required within thirty (30) days of notification from the department of public utilities, unless the time is extended in writing by the department.

(Ord. No. 85-7, § 10, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Sec. 21-95.9. - Discontinuance of public water service.

Failure on the part of persons, firms or corporations to comply with the requirements of this division or discontinue the use of any and all cross-connections shall be grounds for the discontinuance of public water service to the premises on which the cross-connection exists. Discontinuance shall not occur unless the person has been given notice of the violation by the department. The department shall, upon discovery of a "cross-connection" discontinue water service to the property served forthwith. Upon giving notice, no water service shall be restored until the cross-connection is removed and the city is reimbursed for all costs and expenses. The property owner may appeal the discontinuance of water service in the manner provided by section 2-66.

(Ord. No. 85-7, § 11, 3-13-85; Ord. No. 98-7, § 1, 7-22-98)

Footnotes:

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Editor's note— Ord. No. 07-11, § 2, adopted May 23, 2007, amended div. 5 in its entirety and enacted the provisions set out herein. The former div. 5, titled Water Shortage Plan, derived from Ord. No. 85-10, §§ 1—8, adopted May 8, 1985.

Sec. 21-96. - Water shortage emergency restrictions.

- (a) **Definitions.** For the purpose of this section, the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.
 - (1) *District* means the South Florida Water Management District.
 - (2) *Person* means any person, firm, partnership, association, corporation, company, or organization of any kind.
 - (3) *Water resource* means any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water, and water percolating, standing, or flowing beneath the surface of the ground.
 - (4) *Water shortage condition* means that situation when sufficient water is not available to meet the present or anticipated needs of persons using the water resource, or when conditions are such as to require temporary reduction in total water usage within a particular area to protect the water resource from serious harm. A water shortage usually occurs due to drought.
 - (5) *Water shortage emergency* means that situation when the powers which can be exercised under part II of chapter 40E-21, Florida Administrative Code, are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish or aquatic life, or a public water supply, or commercial, industrial, agricultural, recreational, or other reasonable uses.
- (b) **Application of section.** The provisions of this section shall apply to all persons using the water resource within the geographical areas subject to the water shortage condition or water shortage emergency, as determined by the district, whether from publicly or privately owned water utility systems, private wells, or private connections with surface water bodies. This section shall not apply to persons using treated effluent or saltwater.
- (c) **Adoption of water shortage plan.** Chapter 40E-21, Florida Administrative Code, as same may be amended from time to time, is incorporated herein by reference as part of the City of Opa-Locka Code of Ordinances.
- (d) **Declaration of water shortage condition; water shortage emergency.** The declaration of a water shortage condition or water shortage emergency within of (sic) Miami-Dade County by the governing board of the district or the executive director of the district shall invoke the provisions of this section. During such water shortage emergency or water shortage condition, all water use restrictions or other measures adopted by the district applicable to Miami-Dade County, or any portion thereof, shall be subject to enforcement action pursuant to this section. Any violation of chapter 40E-21, Florida Administrative Code, or any order issued pursuant thereto, shall be a violation of this section.

Notwithstanding any provision of this Code, the following shall be prohibited in the city upon declaration of a water shortage condition or water shortage emergency by the governing board of the district or the executive director of the district:

- (1) Serving of water from any public or private well, water supply or distribution system to any customer of a restaurant unless specifically requested by the customer.

- (2) Operation of outdoor fountains or outside aesthetic facilities whose purpose is strictly ornamental or decorative.
- (3) Pressure cleaning of impervious surfaces [surfaces], except for the preparation of surfaces for painting, sealing or waterproofing, or for safety, sanitation, health or medical purposes.

These restrictions shall remain in effect for the duration of the declared water shortage condition or water shortage emergency.

- (e) *Enforcement.* Every police officer or code officer in the city shall, in connection with all other duties imposed by law, diligently enforce the provisions of this section.
- (f) *Penalties.* Violation of any provision of this section shall be subject to the following penalties:
First violation: Fifty-dollar fine.

Second and subsequent violations: Fine not to exceed two hundred fifty dollars (\$250.00) and/or imprisonment in the county jail not to exceed sixty (60) days.

Each day in violation of this section shall constitute a separate offense. In the initial stages of a water shortage condition or water shortage emergency, law enforcement officials may provide violators with no more than one (1) written warning. The county, in addition to the criminal sanctions contained herein, may take any other appropriate legal action, including, but not limited to, emergency prohibitory and mandatory injunctive action, to enforce the provisions of this section.

- (g) *Water users to accept provisions of section.* No water service shall be furnished to any customers serviced by the city unless such customers agree to accept all the provisions of this section. The acceptance of water service shall be in itself the acceptance of the provisions thereof.

(Ord. No. 07-11, § 2, 5-23-07)

Sec. 21-97. - Regulations governing Miami-Dade Billing for the City of Opa-locka.

- (a) *Billing procedure; penalty for late payment; lien.*
 - (1) Water and sewer charges for service rendered by the City of Opa-locka ("city") shall be billed to customers as set forth in Section 32-91 through section 32-101 of the Miami-Dade County Code of Ordinances. If such charges are not fully paid by said customers on or before the past due dates set forth on customers' bills, a ten (10) percent late charge may be added to the water and sewer bill and imposed upon the customer in accordance with regulations prescribed by Miami-Dade County on behalf of the City of Opa-Locka. Unpaid balances of said customers for such charges and late charges shall be subject to an interest charge at the rate of eight (8) percent per annum. Imposition of said interest charge shall commence sixty (60) days after the final bill date for water and sewer charges.
 - (2) Water and sewer charges and late charges, together with any interest charges, shall be debts due and owing the city and all of same shall be recoverable by the city in any court of competent jurisdiction.
 - (3) The City shall utilize Miami-Dade County's Rules and Regulations for notification of property owners and/or managers of delinquent accounts.
 - (4) Subscribers to this service shall pay in advance an annual fee of three dollars (\$3.00) per monthly account and two dollars and fifty cents (\$2.50) per quarterly account.
 - (5) Tenants who reside in multi-unit property served by one (1) meter may establish a bridge account with the city for water and sewer service for a period not to exceed one (1) year where the property owner's account is terminated for nonpayment. The city shall utilize Miami-Dade County's Rules and Regulations for the administration of bridge accounts with tenants that meet specified conditions.

(6) Except as otherwise provided by this article, all charges, late charges and interest accruing thereupon, for water and sewer service rendered by the city to any real property which remain unpaid sixty (60) days after the final bill date for water and sewer charges shall become a lien against and upon the real property to which such water and sewer service has been furnished to the same extent and character as a lien for a special assessment. Until fully paid and discharged, said charges, late charges, and interest accrued thereupon shall be, remain, and constitute a special assessment lien equal in rank and dignity with the liens of city ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved for the period of twenty (20) years from the date said charges become a lien as set forth in this section. Said liens may be enforced and satisfied by the city, pursuant to F.S. ch. 173, as it may be amended from time to time, or by any other method permitted by law. The lien provided for herein shall not be deemed to be in lieu of any other legal remedies for payment available to the city, including but not limited to suspension and termination of water service.

(7) Liens may be discharged and satisfied by payment to the city of the aggregate amounts specified in the notice of lien, together with interest accrued thereon, and all filing and recording fees. When any such lien has been fully paid and/or discharged, the city shall cause evidence of the satisfaction and discharge of such lien to be filed with the office of the Clerk of the Circuit Court of Miami-Dade County, Florida. Any person, firm, or corporation or legal entity, other than the present owner of the property involved, who fully pays any such lien shall be entitled to receive an assignment of the lien and shall be subrogated to the rights of the City in respect of the enforcement of such lien.

(b) *When bills are due and payable; discontinuing service for nonpayment.* Bills are due when rendered, and if not paid within twenty-one (21) days thereafter, they shall become delinquent, and service may be discontinued and the prepayment, deposit or guarantee applied toward settlement of the bill. Mailing of the next month's bill showing a previous balance shall constitute due notice. Discontinuance shall be in accordance with the regulations of the Miami-Dade County Code of Ordinances, chapter 32, water and sewer regulations. In such cases service will not be restored until the bill has been paid and the department has been reimbursed for extra expense incurred on account of the delinquent bill.

(c) *Deposits.* There shall be deposited with the city, by each consumer of:

(1) Water and sewer service, water only service, or sewer only service:

Water Meter Size (inches)	Residential Customers	Commercial Customers
$\frac{3}{4}$	\$ 170.00	\$ 250.00
1	1,000.00	1,000.00
$1\frac{1}{2}$	1,500.00	1,500.00
2	2,000.00	2,000.00
3	3,000.00	3,000.00
4	4,000.00	4,000.00

6	6,000.00	6,000.00
8	8,000.00	8,000.00

(2) Water and sewer service, water only service, or sewer only service for customers discovered using water and sewer services without a deposit. The deposit and all unbilled water and sewer charges must be paid to re-connection of services.

Water Meter Size (inches)	Residential Customers	Commercial Customers
¾	\$ 340.00	\$ 500.00
1	2,000.00	2,000.00
1½	3,000.00	3,000.00
2	4,000.00	4,000.00
3	6,000.00	6,000.00
4	8,000.00	8,000.00
6	12,000.00	12,000.00
8	16,000.00	16,000.00

(3) Other miscellaneous fees:

Tampering fees	\$450.00
Disconnection fee	25.00
Meter removal fee	50.00

(Ord. No. 18-18, § 2, 12-12-18; Ord. No. 19-18, § 2, 12-11-19)

Secs. 21-98—21-104. - Reserved.

ARTICLE III. - SEWERS AND SEWAGE DISPOSAL [\[6\]](#)

Footnotes:

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Cross reference— Portable toilets for construction workmen, § 7-12; obstructing drainage, § 15-10. County Code references—Pollution control generally, Ch. 24; prohibitions against water pollution, § 24-11.

DIVISION 1. - GENERALLY

Sec. 21-105. - Definitions.

As used in this article:

Air conditioning means the cooling or dehumidification, or both, of space.

Department means the water and sewer department of the city, or its duly authorized personnel.

Drain means any conductor of liquids.

Industrial wastes means the wastes from industrial processes as distinguished from sanitary sewage.

Licensed sewer contractor means a bonded and licensed person approved by the city as qualified and competent to do work incidental to the construction, installation or repair of side sewers under a permit issued under this article.

Natural outlet means any outlet into a watercourse, pool, ditch, lake or other body of fresh, salt, surface or ground water.

Permit card means a card issued in conjunction with any permit and such card shall be posted on the premises and shall be readily and safely accessible.

Public place or *public area* means any space dedicated to or acquired by the city for the use of the general public.

Refrigeration means the artificial production of cold for the purpose of preservation of food products, process work or maintenance of storage temperature.

Sewage means a combination of the water-carried wastes from residences, business buildings, institution, industrial establishments, et cetera, together with such ground, surface and storm waters as may be present.

Sewer lateral means a pipe running from the public sewer to a point near the right-of-way line or edge of its easement and terminating in a fitting suitable for connection to the sewer. The fitting shall be plugged, if for future use.

Sewer, public means a sewer in which all owners of abutting properties have equal access and which is controlled by public authority.

Sewer, sanitary means a sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

Sewer, side means the extension from the house drain to the public sewer or the branch from any private drainage installation to the public sewer.

Sidewalk means the walkway in the public area lying parallel or generally parallel to the roadway. If the walk is not yet paved, all measurements shall be based on location and elevation established by the city.

(Code 1955, § 18A-12)

Sec. 21-106. - Discharging to well or open stream.

It shall be unlawful for any person to empty any sewer, sewer system or sewage into any well, septic tank or open stream in the city.

(Code 1955, § 18B-13)

County Code reference—Prohibitions against water pollution, § 24-11.

Sec. 21-107. - Connection required.

Sewer connections shall be required in accordance with sections 32-76 through 32-81 of the Code of Metropolitan Dade County, Florida.

(Code 1955, § 18B-13)

Sec. 21-108. - Exemption from connection for existing septic tanks.

Notwithstanding the provisions of section 21-107, if there exists upon lands a septic tank or private disposal system heretofore licensed and constructed under a permit issued by the city and the septic tank or private disposal system has been constructed and maintained in accordance with the provisions of this article, the owner or occupant shall not be required to connect to the city sewage system until the septic tank or private disposal system requires emptying, repairs, expansion of capacity, relocation, constitutes a health hazard, becomes a public nuisance, or violates any provision of this Code of Ordinances, the ordinances of Metropolitan Dade County or the laws and administrative regulations of the State of Florida, pertaining thereto.

(Code 1955, § 18B-13)

Sec. 21-109. - Temporary use of septic tank.

If prior to the installation and completion of a sanitary sewer trunk line or lateral line sewer, any person desires to construct a new dwelling or building which requires a method of disposing of sewage, the owner of the premises, upon application and compliance with the provisions of division 4 of this article relating thereto, may obtain a permit for a temporary septic tank system.

(Code 1955, § 18B-13)

Sec. 21-110. - Exception for interim package treatment facilities.

If the city commission determines that conditions exist whereby connection to the city sewage disposal system should be prohibited, or where federal, state, county or other proper governmental authority prohibits the induction into the city sewage collection system of additional effluent, the proper officers and employees of the city may issue such necessary permits and authorities as may be required for the construction, operation, maintenance and discontinuance of interim sewage package treatment

facilities, subject to the conditions and requirements set forth herein or promulgated as a rule or regulation under the authority of this Code. All representations and agreements required to be entered into between the applicant for permit to construct an interim sewage package treatment plant and the city shall be subject to the approval of the city commission by ordinance and shall include such special exceptions, conditions and requirements as may be deemed necessary and proper for the specific location in which the interim sewage package treatment plant is to be constructed. The following conditions and requirements shall be met by the applicant and the issuance of any and all authorities, permissions and permits authorized herein are conditioned upon the faithful compliance and performance of said conditions and requirements as follows, to wit:

- (A) STATE AND COUNTY PERMITS. That a permit to construct an interim sewage treatment facility shall have been issued or authorized by the state department of environmental regulation, the Dade County director of environmental resources management, and such other governmental agencies as are required by law.
- (B) CONCEALMENT. That the sewage treatment facility shall be concealed from the public view with landscaping and such other methods as the building licensing and code enforcement department may require prior to approval of the final plans and drawings for such facility.
- (C) ASSURANCES. That the interim package sewage treatment plant, when completed and operating, shall be, and it is a condition of the granting of the authorities contained herein, odor-free and noise-free, and will provide tertiary treatment, i.e., at least ninety-five per cent (95%) removal of B.O.D. and suspended solids and such other standards of sewage treatment and removal as the highest state of the art will permit. Further, that the applicant shall agree and represent to the commission and by the acceptance of any permits issued as permitted herein, that the treatment plant operator shall provide continuous maintenance and operation of the interim package sewage treatment plant in such manner as to insure the said representations.
- (D) OPERATORS. That the applicant will provide competent, trained and licensed operators for such a plant, and in addition, will deposit the sum of ten thousand dollars (\$10,000.00) as a cash guarantee with the city, which sum shall be retained by the city until the dismantling and removal thereof and which sum may be utilized by the city to provide or to contract for the supplying of necessary services for the operation and maintenance of the said plant in the event any of the said conditions and requirements are not met in the sole and discretionary judgment of the city manager. The posting and deposit of such sum shall not relieve the applicant or successors or assigns of the full compliance with the requirements of this Code and the conditions and requirements of the rules and regulations relating thereto.
- (E) COMPLIANCE WITH LAW; INSPECTIONS; LOG BOOK. That the operation of the interim plant shall be in accordance with applicable law. The applicant or its successors shall permit any agent or employee of the city to enter upon the premises at any time to inspect, examine or to complete the operation and maintenance of the facility. The operator shall maintain a daily log book or record of the construction and operation of the plant which may be inspected or copied at any time by the city and shall include:
 - (1) Date construction started and concluded.
 - (2) Date operation started.
 - (3) Report of the daily operation, including:
 - (a) Time and duration of operation of the rakes.
 - (b) Operator's name, class of license, number and expiration date of license, and hours on duty.
 - (c) Date the operators were hired and discharged.
 - (d) Operator's signature and daily remarks.
 - (e) Improvements made to the plant and date concluded.
 - (f) Daily tabulation of quantities of sewage handled, removed and destination of sludge.

The operators of the interim package sewage treatment plant shall install at their sole expense all meters and instruments required by the city manager for the purpose of obtaining necessary data to permit the city engineer to monitor the operation of the plant.

- (F) SERVICE OF NOTICES, PROCESS. That any person who has apparent authority or control, actual or constructive, of the premises, shall be constituted and construed to be the agent of the applicant or its successors and assigns for the purposes of any notices served by the city or for service or process of the enforcement of conditions, representations and agreements contained herein, and such notices shall be deemed also to have been properly served if delivered to the premises of the said applicant or his assigns, or if mailed to the owner of the property or directed to, left or delivered to his address as shown on the records of the city. All notices relating to the operation and maintenance of such facilities affecting or likely to affect more than one owner, user or tenant shall be deemed to have been properly given or served on all such parties if advertised at least once in a newspaper of general circulation within the city.
- (G) AGREEMENT TO DISMANTLE. That the application is conditioned upon the agreement that the sewage treatment plant permitted herein is an interim facility, and at such time as sewer service to the city sewer system becomes available for hookup as may be permitted by law, the applicant forthwith upon fifteen (15) days' notice shall dismantle and remove the interim package sewage treatment plant as may be permitted herein, and in addition, pave, surface and landscape the area upon which said plant is located and further will perform and pay for all required installation, engineering and other charges, including hookup service and connection charges, etc., necessary to connect to the public sewer main as soon as reasonably practical after compliance with the foregoing.
- (H) SUBSEQUENT CONSTRUCTION OF CITY FACILITY. That the applicant recognizes and agrees that the city may construct and build a collection and holding facility and/or treatment facility for the benefit of users of the sewage collection system. In the event the city shall build and complete said system the applicant agrees to discontinue the use and remove the said facilities as provided above and in addition thereto forthwith pay to the city a sum of money representing the proportional value that the applicant's interim sewage facility bears to the city's sewage, storage and/or treatment facility, it being the intent of the parties that the granting of the permit to the applicant to construct the interim sewage treatment and storage facility as provided herein is given solely for the purpose of enabling the applicant to begin construction of the facilities to be served by the interim sewage treatment plant without further delay. The applicant, in accepting the said permit, does so and represents to the city that it is accepting said permit in recognition and in agreement with the terms and conditions set forth herein.
- (I) PLANS, DRAWINGS, ESTIMATES. That in connection with the agreements contained herein, the applicant shall, before submitting the final plans and drawings necessary for the construction of the facility, submit to the city said plans and drawings as certified by a professional engineer indicating the necessary engineering data, drawings and specifications necessary to tie to the sewer main of the city together with an estimate of the cost thereof certified by the said engineer, including all fees for title examination, survey, etc., anticipated to provide for the removal of the said interim package plant and the substitution of the necessary connection of the facilities served by said plant to the city sewer collection system. In addition, the applicant shall have the said engineer estimate the cost and value of the applicant's interim plant which value shall be subject to the approval of the city manager.
- (J) BOND. That the applicant, as a condition to the issuance of the permits and authorities provided for in this Code, shall submit to the city its surety bond or letter of credit in the sum of one hundred ten per cent (110%) of the value of the applicant's interim sewage package plant and the cost of connecting the applicant's facilities to the city sewer collection system upon dismantlement, it being the condition of said bond that it shall be conditioned upon compensating the city in the event of the breach of any of the terms and conditions of the agreements of the applicant or the conditions of this Code or the rules and regulations propounded hereunder.

- (K) PARKING SPACES. That the applicant shall provide three (3) additional parking spaces for the use of employees operating said package plant, said parking spaces to be in addition to any and all other parking spaces required by the ordinances of the city.
- (L) OTHER REGULATIONS APPLICABLE. That the facility to be constructed in accordance with the terms of this resolution shall be governed by and subject to all applicable statutes, ordinances, rules and regulations of the city, Dade County and the State of Florida, and it is neither the intent of this section or the agreements contained herein to waive or eliminate by inference or otherwise any of the foregoing.
- (M) TO HOLD CITY HARMLESS, REIMBURSE CITY EXPENSES. That the applicant agrees to hold the city harmless from any and all liability as a result of the authorities granted hereunder. In the event that the city is required to assume the maintenance and operation of said facility, the applicant or its assigns shall pay to the city all costs and expenses incurred by the city in said operation, maintenance, dismantlement and connection of the facilities to the city sewer system, which costs and expenses shall be deemed to be a lien against the property of the applicant and shall be subject to collection and/or foreclosure in such manner as may be provided by law for said liens.

(Code 1955, § 18B-13)

Sec. 21-111. - Responsibility for costs of connection and maintenance.

All costs of connection and expense incidental to the installation, connection and maintenance of a side sewer shall be borne by the owner or occupant of the premises served by the side sewer.

(Code 1955, § 18B-17)

Sec. 21-112. - Connection charge outside city.

The owner, lessee or occupant of a dwelling or building outside of the city limits desiring to connect for sewer service from his premises to any sewer constructed by or belonging to the city by direct connection at a city sewer main, trunk or lateral, shall in addition to obtaining the permit required by section 21-137, pay to the city the sum of two hundred fifty dollars (\$250.00) as a charge for connection and shall comply with all the requirements of the code of ordinances applicable thereto. No person shall permit any portion of his sewer, trunk or lateral to be used to connect any other person so as to avoid the connection charge for properties lying outside of the city limits. However, upon approval by the department the city manager may contract with any developer, contractor or cooperative association in order to establish reasonable connection charges where more than one property lying outside the city limits desires to be connected for sewer service from the premises through any sewer connected to a city sewer main, trunk or lateral.

(Code 1955, § 18B-17)

Sec. 21-113. - Connection by city contractor.

- (a) Any person desiring to connect for sewer service from his premises through any sewer constructed by or belonging to the city, by direct connection at a city sewer main, trunk or lateral, may make application to the department to be connected by a contractor employed by the city, under such terms, conditions and costs as shall be established in accordance with plans and specifications prepared by the city.
- (b) The costs of connection and installation applicable to the dwelling or building served shall be payable, at the option of the owner of the premises, over a period of ten (10) years at six per cent (6%) interest, in equal annual installments. All connection costs incurred under this section, payable

in installments shall constitute a lien on the premises connected and said lien shall be recorded in the office of the clerk of the circuit court in and for Dade County, Florida. In the event of default in the payment of any installment said cost of connection shall be collected in the manner provided by law.

(Code 1955, § 18B-18)

Sec. 21-114. - Creation of sewer modification districts to increase capacity.

- (a) Where it is determined by the city manager that a segment of the city sewer system is over-utilized or utilized in excess of its original design capacity, rendering such segment of the city's sewer system inadequate and a menace or a potential menace to health or potential pollution hazard to the public or property, or that the city has been required to increase the capacity over the designed capacity for any portion of the sewer system, the city manager shall give written notice to the owners, agents or occupants of all properties in the area in which such condition exists, specifying the inadequate, hazardous or detrimental conditions. Said notice shall establish and set forth a time certain for a public hearing before the city commission to consider the establishment of a sanitary sewer modification district encompassing lots, parcels and portions of the city's sewer system involved as delineated by the city manager.
- (b) At such public hearing, the city commission may, by majority vote, establish a sanitary sewer modification district within the sanitary sewer system of the city and establish an assessment or surcharge for sewer services to be imposed upon users in such district and be supplemental to the sewer service charge provided in this article to defray the total costs and expenses incurred by the city to increase the capacity.
- (c) Where a sewer modification district is established because of use in excess of peak flow of the design capacity at time of issuance of permit and/or certificate of occupancy, the surcharge or assessment to be imposed upon such users shall apply only to such amounts of sewer use in excess of said peak flow design capacity.

(Code 1955, § 18B-32)

Sec. 21-115. - Financing of sewer modification districts.

- (a) Upon the establishment of a sanitary sewer modification district the city manager shall establish a special fund and account for the purpose of maintaining deposits and making disbursements pertinent solely to said sewer modification district. Said account shall be designated (number) sewer modification district fund. The city manager shall determine the total project cost which shall include, but not be limited to, the engineering, construction, surveying, legal, audit, accounting, administrative and debt service expenses incurred prior to the establishment of the sewer district modification and related solely thereto, and such costs as may be reasonably anticipated in relation to the district. After such determination, the city manager shall petition the city commission for authority to fund said project requirements by the transfer of funds from the general fund or other legally available funds of the water and sewer account or from other city accounts, or, in the alternative, to issue certificates of indebtedness or to cause to be issued as may otherwise legally be authorized revenue bonds or general obligation bonds of the city sufficient to fund all project requirements.
- (b) All funds so transferred or realized including funds from certificates of indebtedness, bond issues and like sources shall be deposited into the sewer modification district fund account and utilized for construction and all cost and fees solely related to such project. All monies received from the sewer modification district surcharge imposed upon users within the sewer modification district, shall be deposited to the sewer modification district fund account. All monies necessary to construct, administer, pay debt service, and those expenses related solely to the sewer modification district project shall be disbursed from the sewer modification district fund account only. The city manager shall prepare or cause to be prepared annual and such other period accountings as may be necessary and render same to the city commission.

- (c) Upon completion of the construction and the availability of the sewer modification district project the city manager shall issue notice to all users in the sewer modification district to reconnect to the facility as constructed. As provided in this Code, the city manager shall cause each individual user in the sewer modification district to be billed for the surcharge for the sewer modification district project as rendered on the water bill.
- (d) At such time as the total of all costs and debt services and administrative services related to the sewer modification district project have been realized from the surcharge imposed upon users of such sewer modification district, the city manager shall prepare and forward a final accounting as well as a notice of termination of the sewer modification district.
- (e) As provided in section 21-123, the city manager shall promulgate the rules, regulations and requirements pertinent to respective sewer modification improvement districts within the city's sanitary sewer system and such rules and requirements shall govern the materials, workmanship and facilities used in such projects.

(Code 1955, § 18B-42)

Sec. 21-116. - Notice, correction of defective side sewers or drainage.

When any side sewer is constructed, laid, connected or repaired, and does not comply with the provisions of this article, or where it is determined by the city manager or the department that a side sewer, drain, ditch or natural watercourse is obstructed, broken or inadequate and is a menace to health, or is liable to cause damage to public or private property, the city manager shall give notice to the owner, agent or occupant of the property in which such condition exists, and if he shall refuse to reconstruct, replace, reconnect, repair or remove the obstruction of said side sewer, drain, ditch or natural watercourse within the time specified in such notice, the city manager shall so notify the department and the department may perform such work as may be necessary to comply with this article, and cost of such work so done shall be charged to the property owner or occupant and shall become immediately payable to the city upon written notice of such amount being given to the property owner or occupant or posted upon said premises.

(Code 1955, § 18B-32)

Sec. 21-117. - Use of existing side sewer.

The use of an existing side sewer may be permitted when approved by the department as conforming to all the requirements of this article where a new or converted building or new installation replaces an old one.

(Code 1955, § 18B-33)

Sec. 21-118. - Correction of inadequate gravity flow.

- (a) In any building, structure or premises in which the house drain or other drainage is too low to permit gravity flow to the public sewer, the same shall be lifted by artificial means and discharged into the public sewer.
- (b) Whenever a situation exists involving an unusual danger of back-ups, the department may prescribe a minimum elevation at which the house drain may be discharged to the public sewer. Drains or sewers below such minimum elevation shall be lifted by artificial means; or if approved by the department, a backwater sewage valve shall be installed. The effective operation of the backwater sewage valve, or artificial lifting means, shall be the responsibility of the owner of the sewer or drain, who shall hold the city harmless from liability or damage as a result of the operation or failure of such device.

(c) Where under subsection (b) a situation exists involving danger of back-ups or other hazards and the department has prescribed minimum elevations, pumping stations or other artificial means of lifting effluent, or like devices, the cost of acquisition and installation of such devices shall be charged ratably to the users benefited thereby.

(Code 1955, §§ 18B-32, 18B-34)

Sec. 21-119. - Discharge of noncity water prohibited.

It shall be unlawful for any person to discharge or cause to be discharged into the sanitary sewers of the city any water from any other source than the water system of the city.

(Code 1955, § 18B-43)

Sec. 21-120. - Obstructing, breaking, injuring sewer facilities.

It shall be unlawful for any person to obstruct, break or injure in any manner any public sewer, or to obstruct, break or injure in any manner any manhole, or to place any earth, trash or any other material of any kind in any manhole.

(Code 1955, § 18B-44)

Sec. 21-121. - Damaging system or public area.

It is unlawful to break, damage, destroy, deface, alter or tamper with any structure, appurtenance or equipment which is a part of the sewer system of the city, or without proper permit from the city to break, damage, destroy or deface any public walk, curb or pavement, or to make openings or excavations in, a public or private area for the purpose of connecting to any public or private sewer.

(Code 1955, § 18B-45)

Sec. 21-122. - Trees and shrubs interfering with sewers.

(a) *Department's authority.* The department is authorized to remove any trees or shrubs from any public street or the roots of any trees or shrubs which extend into any public street when such trees or shrubs or the roots thereof are obstructing or are liable to obstruct any public or private sewer or drain.

(b) *Notice to owner.* Before making any such removal, the department shall give ten (10) days' notice in writing to the owner or occupant of the abutting property or the property on which such trees or shrubs are growing, requiring such owner or occupant to remove the same. If the written notice cannot be given such owner or occupant, the notice may be posted on the premises or in the street at the location of the trees or shrubs requiring removal.

(c) *Costs.* If such owner or occupant fails or refuses to remove such trees or shrubs or roots within the time specified, the department is authorized to do so and the cost thereof shall be charged to the owner or occupant and upon giving such written notice of the amount thereof to the owner or occupant or by posting such notice at the location of the trees or shrubs, the cost thereof shall be immediately payable to the city by such owner or occupant.

(Code 1955, § 18B-48)

Sec. 21-123. - Additional regulations governing side sewers and connections.

- (a) The city manager shall establish and cause to be published a comprehensive set of rules, regulations and requirements relating to the use of the sewer system and the installation, materials, size, grade and mechanical requirements of all connections and side sewers permitted to be connected to the city sewer system. Upon approval by the city commission, and upon like approval of amendments thereto, said rules, regulations and requirements shall govern all use, materials and workmanship used in connection with the installation of any side sewer and connection with a public sewer.
- (b) Those rules and regulations set out in section 18B-49(b) of the former Code of Ordinances are hereby ratified and confirmed as administrative regulations of the city pursuant to this section, rather than ordinances of the city, and shall be subject to amendment, repeal or modification in accordance with the provisions of this section.

Sec. 21-124. - County standards adopted; enforcement, violation.

- (a) Adopted:
 - (1) *Section 24-11.* Discharges to the city's sanitary sewer system shall comply with the standards set forth in Section 24-11 of the Code of Metropolitan Dade County, as amended from time to time, by Metropolitan Dade County.
 - (2) *Section 24-13.* Private sewage disposal systems shall comply with the requirements set forth in Section 24-13 of the Code of Metropolitan Dade County, as amended from time to time by Metropolitan Dade County.
- (b) *Enforcement.* The powers and authority of city inspectors in enforcing the requirements of Section 24-11 and 24-13 shall include but not be limited to the following:
 - (1) Duly authorized employees of the city bearing proper credentials and identification shall be admitted, with permission from authorities, to all properties for the purposes of inspection, observation, measurement, sampling and testing, pertinent to discharge to the city's sanitary sewer system in accordance with the provisions of this section.
 - (2) While performing the necessary work on private properties referred to herein, the authorized employees of the city shall observe all safety rules applicable to the premises established by the company and/or the occupational safety and health administration, and the company shall be held harmless for injury or death to the employees, and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company, except as such may be caused by negligence or failure of the company to maintain safe conditions as required by this section or otherwise required by law.
 - (3) Duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds an easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sanitary sewer system within said easement. All entry and subsequent work, if any, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.
- (c) *Violations.* Violations of this section shall be subject to the following:
 - (1) Violation of this section shall be a misdemeanor punishable under the laws of the State of Florida.
 - (2) The city may suspend a user's sanitary sewer service when such suspension is necessary, in the opinion of the city, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes interference to the operation and maintenance of the city's sanitary sewer system.

- (3) Any person notified of a suspension of service shall immediately stop or eliminate discharges to the sewer system. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary, including initiation of legal action by the city attorney and immediate severance of the sewer connection, to prevent or minimize damage to the sanitary sewer system or endangerment to any individuals. The city shall reinstate the sanitary sewer service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city within fifteen (15) calendar days of the date of occurrence.
- (4) Any user who violates the following conditions of this section or applicable county, state or federal regulations, is subject to having his service suspended in accordance with the procedures set forth in this section:
 - a. Failure of a user to report factually the wastewater constituents and characteristics of his discharge.
 - b. Failure of the user to report significant changes in operations, or wastewater constituents and characteristics.
 - c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.
- (5) Whenever the city finds that any user has violated or is violating this section, or any prohibition, limitation or requirements contained herein, the city may serve upon such person a written notice stating the nature of the violation. Within thirty (30) days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the city by the user.
- (6) In the event of violation of this section, the city or authorized employees, may verbally instruct the owner as to the necessary corrective action. If the owner fails to carry out verbal instructions in a timely manner or if a serious violation or hazard to public health exists, the city may issue to the user a written notice or order stating the nature of the violation, the corrective action and the time limit for completing the corrective action. This time limit will be not less than twenty-four (24) hours not more than six (6) months depending upon the type and severity of the violation. The offender shall within the period of time stated in such notice or order, permanently cease all violations. The record of the mailing of said notice or order shall be *prima facie* evidence thereof and failure of said user to receive same shall in no way affect the validity of any proceedings conducted pursuant to this section.
- (7) If any person discharges sewage, industrial wastes or other wastes into the city's sanitary sewer system contrary to the provisions of this section or other city ordinances, or federal, state, or county pretreatment requirements, or any order of the city, the city's attorney may commence an action for appropriate legal and/or equitable relief in the appropriate court.
- (8) Any user who is found to have violated an order of the city or who willfully or negligently fails to comply with any provision of this section, and the orders, rules and regulations set forth hereunder, shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense. Each day on which a violation shall occur or continue, shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this section or the orders, rules and regulations set forth hereunder.
- (9) Any person who knowingly makes any false statements, representations, or certification in any application, record, plan or other document filed or required to be maintained pursuant to this section, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method under this section, shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than six (6) months or by both.
- (10) A person violating any provision of this section thus authorizing the aforementioned action by the city shall be charged the normal and usual charges for discontinuance and disconnection of

said water and sewer services and the usual charges for re-commencing said water and sewer services.

(Ord. No. 88-6, §§ 1—4, 7-13-88)

Editor's note— Ord. No. 88-6, §§ 1—4, adopted July 13, 1988, did not specifically amend the Code; therefore, inclusion as § 21-124 was at the discretion of the editor.

Secs. 21-125—21-133. - Reserved.

DIVISION 2. - WORK ON OR AFFECTING SEWERS⁷

Footnotes:

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Cross reference— Construction work affecting utility property, § 7-50 et seq.

Sec. 21-134. - License required to do work affecting sewer.

It shall be unlawful to make any connection to any public sewer or to lay, repair, alter or connect any private drain, septic tank or sewer, in any public or private area, except by the holder of a license to do such work issued under the Code of Metropolitan Dade County.

(Code 1955, § 18B-19)

Sec. 21-135. - Contractor not to tamper with public sewer.

No contractor licensed to install sewer connections shall break, alter or tamper with any public sewer, except that he may connect to a wye which exists for the purpose of installing and connecting the side sewer.

(Code 1955, § 18B-19)

Sec. 21-136. - Manner of making connection generally.

It shall be unlawful to make any connection with any public or private sewer, drain or natural outlet without complying with all of the provisions of this article, the rules, regulations and requirements of the water and sewer department in relation thereto and having a valid permit issued by the department.

(Code 1955, § 18B-20)

Sec. 21-137. - Connection permit required.

It shall be unlawful for any person to make any sewer service connection to the public sewer system, either directly, or indirectly through any other sewer, without first having obtained a permit from the department and paid to the city the amount required.

(Code 1955, § 18B-16)

Sec. 21-138. - Permits for work done inside property lines.

It is unlawful to construct, extend, replace, repair or to make any connection to any sewer or drain inside the property line without obtaining a permit from the department as provided in this division. The department may issue such permit to the owner or occupant of any property to construct, extend, replace, repair or make connection to any private sewer, septic tank or drain inside the property lines; provided such owner or occupant shall comply with the applicable provisions of this article, except that he need not employ a licensed contractor to do the work. Should the owner or occupant employ a licensed contractor to do the work, such contractor shall take the permit in his own name and the owner, occupant or any other person shall lay no pipe on the contractor's permit.

(Code 1955, § 18B-23)

Sec. 21-139. - Application for permit.

- (a) *Contents.* Application for a permit required by this division shall be filed with the department, stating the name of the owner, the correct address and the legal description of the property to be served, the number, purpose, dimensions and location of all buildings on the property and the whole course of the drain from the public sewer or other outlet to its connection with the building or property to be served.
- (b) *Approval by department.* The application shall be submitted to the department for approval, who may change or modify the same and designate the manner and place in which such sewers shall be connected with the public sewer, may also specify the material, size and grade of such sewer, and shall endorse his approval upon the application of the same if acceptable to him. The department may require the permittee to furnish him plans pertaining to the application and issuance of the permit.

(Code 1955, §§ 18B-17, 18B-21)

Sec. 21-140. - Easement prerequisite to permit.

Before the department shall issue a permit authorizing and laying of a side sewer on any building site other than the one served by it, the owner of the sewer shall secure from the building site owner and record with the city clerk a sewer easement and shall exhibit same to the department.

(Code 1955, § 18B-47)

Sec. 21-141. - Permit fee.

The fee for a permit required by this division shall be as presently established or as hereafter adopted by resolution of the city commission.

(Code 1955, § 18B-17)

Sec. 21-142. - Permit records.

Upon approval of said application, the department shall place in its records a drawing, showing the size and location of the public sewer, the point of connection, the location of any buildings on the lot, and such other information as may be available and required. The department shall prepare and keep on file in its office all cards and records of sewer connections, showing the information obtained in the course of inspection of completed work done under the permit.

(Code 1955, § 18B-21)

Sec. 21-143. - Additional work not covered by permit.

When a permit has been issued for a side sewer or drain as herein provided no work not covered by the permit shall be done without approval of the department; and it may, if it deems the additional work of sufficient consequence, require a new permit to cover same.

(Code 1955, §§ 18B-21, 18B-24)

Sec. 21-144. - Permit for temporary connection.

The department may upon application containing such information as is required by it issue a permit for a temporary connection to a public sewer, side sewer, drain or natural outlet. Said permit may be revoked by the department at any time upon sixty (60) days notice posted upon the premises and directed to the owner or occupant of the premises; and in the event the said side sewer or drains are not disconnected at the expiration of said sixty (60) days the department may disconnect the same and charge the cost thereof to the owner or occupant and such costs shall be immediately payable to the city following a written notice of the amount thereof given to such owner or occupant or posted on said premises. Such temporary permit shall be issued only upon the applicant recording with the city an acceptable instrument agreeing to save the city harmless from all damage resulting to the city by reason of such temporary connection or disconnection.

(Code 1955, § 18B-25)

Sec. 21-145. - Expiration of permit.

No permit issued under this division shall be valid for a longer period than ninety (90) days unless extended or renewed by the department upon application therefor prior to the expiration.

(Code 1955, § 18B-26)

Sec. 21-146. - Posting and display of permit.

The permit required by this division must at all times during the performance of the work, and until the completion thereof and approval by the department, be posted in some conspicuous place at or near the work and must be readily and safely accessible to the department.

(Code 1955, § 18B-27)

Sec. 21-147. - Police, manager to enforce permit requirement.

It shall be the duty of any police officer and of the city manager, finding any person breaking ground for the purpose of making connection with a public or private sewer, septic tank or drain, to ascertain if such person has a permit therefor and, if not, to immediately report the fact to the department.

(Code 1955, § 18B-22)

Sec. 21-148. - Call for inspection.

Any person performing work under permit pursuant to the provisions of this division shall notify the department when the work will be ready for inspection, and shall specify in such notification the location of the premises by address and the file number of the permit. On any call for inspection forty-eight (48) hours' notice plus Saturday, Sunday and holidays may be required by the department.

(Code 1955, § 18B-28)

Sec. 21-149. - Representative to be present for inspection.

In the case of a licensed contractor, either the contractor or a competent representative shall be on the premises, whenever so directed, to meet the inspector.

(Code 1955, § 18B-28)

Sec. 21-150. - Work to be left uncovered until inspected and approved.

No trench shall be filled nor any sewer covered until the work shall have been inspected and approved by the department.

(Code 1955, § 18B-29)

Sec. 21-151. - Notice of disapproval of work.

If the department finds the work or material used is not in accordance with this article, it shall notify the person doing the work, and also the owner of the premises, by posting a written notice on the permit card, and such posted notice shall be all the notice that is required to be given of the defects in the work or material found in such inspection.

(Code 1955, § 18B-28)

Sec. 21-152. - Contractor's duty to guard excavations.

Any excavation made by any licensed sewer contractor in any public place or immediately adjacent thereto shall be protected and guarded by fencing or covering and by proper lights. The protection of the public from danger of such excavation shall be the responsibility of the sewer contractor; and said contractor shall be liable on his bond for any damage caused by his failure to properly protect and guard such excavation as herein required. If the contractor fails to properly protect and guard such excavation as herein required, the city may properly protect and guard such excavation and charge the cost thereof to the sewer contractor, who shall, upon receiving written notice of the amount of such charge or by the posting of a notice of the amount of such charge at the location of the excavation, immediately pay the same to the city.

(Code 1955, § 18B-46)

Sec. 21-153. - Unguarded excavations on private property.

It shall be unlawful to leave unguarded any excavation made in connection with the construction or repair of any side sewer or private drain within four (4) feet of any public place or to fail to maintain the lateral support of any public place in connection with the construction, alteration or repair of any side sewer or drain.

(Code 1955, § 18B-23)

Sec. 21-154. - Improper work; completion by city, costs.

If any work done under a permit granted is not done in accordance with the provisions of this article and the plans and specifications as approved by the department, and if the contractor or person doing the work shall refuse to properly construct and complete such work, notice of such failure or refusal shall be given to the owner or occupant of the property for whom said work is being done, and the department may cause said work to be completed and said sewer connected in the proper manner, and the cost of such work and any materials necessary therefor shall be charged to the owner or contractor and be payable by the owner or contractor immediately upon the department giving written notice of the amount thereof or posting a notice thereof on the premises.

(Code 1955, § 18B-31)

Sec. 21-155. - Restoration of public areas.

All work within the limits of any public area shall be prosecuted to completion with due diligence, and if any excavation is left open beyond a time reasonably necessary to fill the same, the department may cause the same to be backfilled and the public area restored forthwith, and any cost incurred in such work shall be charged to the contractor in charge of such work and shall be immediately payable to the city by the contractor upon written notification of the amount thereof given to the contractor or posted at the location.

(Code 1955, § 18B-30)

Cross reference— Excavations in streets generally, § 19-7.

Secs. 21-156—21-165. - Reserved.

DIVISION 3. - SERVICE CHARGES^[8]

Footnotes:

--- (8) ---

Editor's note— Ord. No. 96-11, adopted April 24, 1996, with regards to sewer rates, provided as follows:

"Section 2: The sewer rates for the remaining fiscal year 1995-96 and thereafter until amended by ordinance are hereby reestablished as to reflect a decrease to the residential consumers within and without the municipal boundaries by 15% (percent) of the current rate per 1,000 gallons of sewage.

"Section 4: The sewer rates for the remaining fiscal year 1995-96 and thereafter until amended by ordinance are hereby reestablished as to reflect an increase to the commercial consumers within and without the municipal boundaries by 25% (percent) of the current rate per 1,000 gallons of sewage."

County Code references—Jurisdiction of county over municipal sewer rates, § 32-66.

Sec. 21-166. - Establishment; basis.

(a) It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare, and convenience of the city, to collect charges from all users who contribute

wastewater to the city's sanitary sewer system. The proceeds of such charges so derived will be used for the purpose of operating and maintaining the public sanitary sewer system.

(b) Each user shall pay for the sanitary sewage disposal services provided by the city based on his use of the public sanitary sewer system as determined by gauging or metering the amounts of water received from the city water system.

(Code 1955, § 18B-35; Ord. No. 88-7, §§ 1, 2, 7-13-88)

Sec. 21-167. - Computation.

(a) The sewer charges to be paid by the owner, tenant or occupant of each such lot or parcel to whom a bill shall be rendered for water furnished by the water works system of the city and used on or about such lot or parcel shall consist of a minimum monthly charge of three dollars and ninety-four cents (\$3.94) per equivalent residential connection and a volume charge of one dollar and one cent (\$1.01) per one thousand (1,000) gallons or prorated portions, thereof, furnished monthly within or without the city, whether such water bill shall be rendered on a monthly or on a quarterly basis.

Each user shall pay a user charge rate for operation and maintenance, including a replacement fee, in accordance with the following:

Calculation of Rates for Sewer Service

For a rate system based on fixed cost and volume charge use:

$$R = R_{min} \times \# \text{ of ERC} + R_{vol} \times V_u$$

and

$$R_{min} = \frac{C_f}{U \times 12}$$

$$R_{vol} = \frac{C_v}{V_t} + C_r$$

Where:

R	=	Monthly rate charged for use of city's sanitary sewer system (\$).
R _{min}	=	Minimum monthly charge for use of city's sanitary sewer system per ERC (\$).

Rvol	=	Rate charged for volume of wastewater discharged to city's sanitary sewer system (\$/1,000 gal.).
Vu	=	Volume of wastewater discharged to city's sanitary sewer system by a user (1,000 gal. from meter reading).
Cf	=	Total estimated annual "fixed cost" of operation and maintenance, including replacement of city's sanitary sewer system (\$) and any revolving loan payments.
ERC	=	Equivalent residential connections, based on 1 ERC being equal to water usage of 350 gallons per day. Based on user's average yearly consumption, with a user receiving a minimum of one-half ($\frac{1}{2}$) ERC.
U	=	Total number of equivalent residential connections (ERC's) using the city's sanitary sewer system.
Cv	=	Total estimated annual "variable cost" of operation and maintenance, including replacement of city's sanitary sewer system (\$) and all capital improvements.
Vt	=	Total estimated annual volume of billable water sold to users of the city's sanitary sewer system (1,000 gal.).
Cr	=	Rate at which Dade County charges the city for disposal of metered wastewater (\$/1,000 gal.).

- (b) Any user which discharges any toxic pollutants or wastewaters having a greater strength than normal domestic sewage, which cause an increase in the cost of managing the wastewater collected by the city's sanitary sewer system or which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance or replacement of the system shall pay such increased costs. The charge each such user shall pay shall be as determined by the appropriate financial personnel and approved by the city commission.
- (c) The city will review the use charges at least annually and revise the rates as necessary to ensure that adequate revenues are generated to pay the cost of operation and maintenance including simple replacement, and that the system continues to provide for the proportional distribution of operation and maintenance including replacement costs among users of the city's sanitary sewer system.
- (d) The city will notify each user at least annually of the rate being charged for operation, and maintenance including replacement of the city's sanitary sewer system.

Editor's note— Water furnished by the waterworks system of the city as of July 13, 1988, was \$1.14 per one thousand gallons which amount is subject to change.

(Code 1955, § 18B-36; Ord. No. 79-27, § 1, 10-17-79; Ord. No. 80-2, § 1, 1-30-80; Ord. No. 83-12, § 2, 12-14-83; Ord. No. 84-12, § 2, 6-27-84; Ord. No. 85-1, § 2, 1-9-85; Ord. No. 85-15, § 2, 7-10-85; Ord. No. 85-24, § 2, 10-9-85; Ord. No. 87-8, § 2, 9-23-87; Ord. No. 88-7, §§ 3—6, 7-13-88; Ord. No. 90-11, § 1, 9-26-90; Ord. No. 91-18, § 1, 9-26-91; Ord. No. 92-10, § 1, 9-9-92; Ord. No. 92-14, § 1, 9-23-92)

Sec. 21-168. - Credit for water not entering sewer system.

In the event that water shall be used regularly on any lot or parcel of land for sprinkling lawns or gardens or for any use for which the water does not enter the existing sewer system, the owner, tenant or occupant of such lot or parcel may secure a reduction in the amount of the sewer service charges to be paid by him as follows:

He may install, at his own expense and subject to such regulations as may be prescribed by the department, a separate connection with the water main or the lateral serving such lot or parcel and a meter for measuring the water so used, and thereafter the sewer service charges to be paid by the owner, tenant or occupant of such lot or parcel shall be computed on the basis of what the monthly or the quarterly water bill would be, after excluding the quantity of water so used.

(Code 1955, § 18B-37; Ord. No. 79-27, § 2, 10-17-79)

Sec. 21-169. - Interceptors and preliminary treatment required.

- (a) *Interceptors.* No harmful ingredients shall be discharged into any public sewer without the installation of interceptors which shall be of a type and capacity approved by the department and shall be so located as to be readily accessible for cleaning and inspection.
- (b) *Preliminary treatment.* All harmful ingredients shall be subject to such preliminary treatment as shall be necessary to reduce the objectionable characteristics or constituents within the maximum limits prescribed by the rules, regulations and requirements established from time to time by the department under the provisions of section 21-123. Preliminary treatment shall be at the sole expense of the owner of the premises and shall be installed when the department determines that same is necessary to comply with the standards so prescribed. All plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for approval of the department; and no construction of such facilities shall be commenced until such approval is noted on the plan. Where such facilities are installed and used, they shall be maintained continuously in satisfactory and efficient operation by the owner at his own expense.

(Code 1955, § 18B-39)

Sec. 21-170. - Charges for special treatment or disposal.

Over and above the rates and charges established by section 21-167, there may be established in special instances and by special agreement between the city and the owner of any premises served by the system, such additional charges for commercial or industrial wastes of unusual strength or composition that are accepted by the city for treatment or disposal as may be determined to be fair and equitable. Each such special agreement and the charges established therefor shall not become effective until ratified by ordinance duly passed by the city commission.

(Code 1955, § 18B-39)

Sec. 21-171. - Billing and payment.

- (a) The sewer charges levied, at the rates established by section 21-167, shall thereafter be billed each month of the calendar year and be due and payable with the bills for water service of the month of the billing. Any premises making connection with the system on or after the tenth day of the month shall be charged a per diem pro rata amount based on the charge from the time such connection is made until the commencement of the next following billing period applicable to said premises.
- (b) Each such bill shall separate the amount of the sewer service charges, sewer modification district surcharges and water charges, and any partial payment on any such bill be applied first to the charges for water, unless otherwise designated by the user as payment of the surcharge.
- (c) In case of failure to pay any bill for sewer charges when due, a penalty of ten per cent (10%) of such charge shall be added to such bill. Payment of bills shall be subject to the provision of sections 21-83 through 21-87 where applicable.

(Code 1955, §§ 18B-38, 18B-40)

Sec. 21-172. - Discontinuing water service for nonpayment.

If the amount of such sewer service charges or sewer modification district charges or surcharges shall not be paid within thirty (30) days from the rendition of such bill, the department shall discontinue furnishing water to such premises and shall disconnect the same from the waterworks system of the city, and shall proceed forthwith to recover the amount of such sewer service and sewer modification charges in such lawful manner as it may deem advisable.

(Code 1955, § 18B-38)

Sec. 21-173. - Lien for sewer charge.

Each sewer charge levied pursuant to this article, including any sewer modification district surcharge, is hereby made a lien on the premises charged therewith, and if the same is not paid within sixty (60) days after it shall be due and payable, it shall be certified to and filed with the clerk of the circuit court of Dade County, Florida. The sewer charge and/or sewer modification district surcharge, with the interest and penalties allowed by law, shall be collected as other municipal taxes are collected and enforced.

(Code 1955, § 18B-41)

Sec. 21-174. - Deposit, use of revenues generally.

Except as otherwise provided for sewer modification districts, the funds received from the collection of the charges herein provided shall be deposited as received with the city, which shall keep the same in a separate fund designated "sewer revenue fund." Monies in said fund shall be used for the payment of the cost and expenses of the operation, maintenance, repair and management of the system, and any surplus in said fund over and above the requirements hereinbefore mentioned may be used for enlargements of and replacements to the system and part thereof or such other related or nonrelated general governmental use as may be determined by the city commission.

(Code 1955, § 18B-42)

Secs. 21-175—21-184. - Reserved.

DIVISION 4. - SEPTIC TANKS^[9]

Footnotes:

--- (9) ---

Editor's note— County Code reference—Regulation of septic tanks, § 24-13.

Sec. 21-185. - Permit required.

It shall be unlawful for any person to install or repair any septic tank system in the city, except upon a permit as provided in this division.

(Code 1955, § 18B-14)

Sec. 21-186. - Application for permit.

It shall be unlawful for any person to install or repair, have installed or repaired, allow to be installed or repaired, or contract to install or repair a septic tank system for another person without first making application to the city manager for a septic tank permit on application forms furnished by the city. The application form shall contain clearly a description, location and dimensions of the land or lot on which the septic tank, distribution box and sewer piping are to be installed, the dimensions of the subsurface disposal field, the type of land, such as loam, sandy loam, clay, gravel, et cetera, the direction in which the land drains in relation to reservoirs, springs and wells, and be accompanied by a plat of the land when required, showing the location of dwelling houses and all other buildings, and the plans and specifications of the whole septic tank system intended to be installed or repaired.

(Code 1955, § 18B-14)

Sec. 21-187. - Permit issuance.

In the event no connection to a public sewer is required by section 21-107, the city manager may issue a permit to the applicant for the installation of such septic tank system in accordance with the plans and specifications furnished. If the plans are not approved, but the size and location of the lot and type of soil are suitable for a septic tank system, properly planned, the city manager shall clearly outline proper plans for the same and grant the permit only according to the plans as outlined by him.

(Code 1955, § 18B-14)

Sec. 21-188. - Discontinuance.

Notwithstanding approval and issuance of a permit, all septic tanks permitted to be installed hereunder shall be disconnected and the dwelling house or building served thereby shall be connected to a public sewer if the septic tank system becomes subject to any of the conditions requiring connection as is set forth, subject to the exception contained in section 21-107.

(Code 1955, § 18B-14)

Sec. 21-189. - Disposal of septic tank contents.

- (a) In the event it becomes necessary to empty any septic tank which is permitted under this article, application for a permit shall first be made to the department.
- (b) No person shall be permitted to dispose of the contents of septic tanks or deliver the contents thereof for disposal in the city's sewer facilities. No disposal of septic tank contents shall be

permitted until authorized by the department, in accordance with such rules and regulations designated or promulgated by the city manager and approved by the city commission.

(Code 1955, § 18B-15)

ARTICLE IV. - STORMWATER UTILITY

Sec. 21-190. - Short title.

This article shall be known as the "City of Opa-locka Stormwater Utility Ordinance."

(Ord. No. 93-6, § 3, 6-9-93)

Sec. 21-191. - Legislative intent; construction.

- (a) The purpose of this article is to implement the provisions of section 403.0893(1), Florida Statutes, and article IV, chapter 24 of the Code of Metropolitan Dade County, by creating a city-wide stormwater utility and adopting stormwater utility fees sufficient to plan, construct, operate and maintain stormwater management systems set forth in the local program required pursuant to section 403.0891(3), Florida Statutes.
- (b) This article shall be liberally construed to protect the public health, safety, and welfare and to effectuate the purposes set forth herein.

(Ord. No. 93-6, § 3, 6-9-93)

Sec. 21-192. - Applicability.

The provisions of this article shall be effective throughout the incorporated area of the City of Opa-locka.

(Ord. No. 93-6, § 3, 6-9-93)

Sec. 21-193. - Definitions.

[As used in this article:]

Developed property shall mean any parcel of land which contains an impervious area.

Dwelling shall mean any building which is wholly or partly used or intended to be used for living, sleeping, cooking and eating.

Dwelling unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities used or intended to be used for living, sleeping, cooking and eating. This term shall include, for the purposes of this article, rooming units.

Equivalent residential unit (sometimes hereinafter referred to as "ERU") shall mean the statistically estimated average horizontal impervious area of residential developed property per dwelling unit. One (1) ERU, used for commercial purposes, will be equal to one thousand five hundred forty-eight (1,548) square foot [feet] of impervious area. For the purposes of this article, each dwelling unit, to wit, single-family residence, mobile home, multifamily, or condominium, is assigned one (1) ERU.

Impervious area shall mean a division of the horizontal ground surface which is incapable of being penetrated by rainwater. This shall include, but not be limited to, all structures, roof extensions, slabs, patios, porches, driveways, sidewalks, parking areas, swimming pools, athletic courts and decks.

Mobile home shall mean the same term as defined by section 320.01(2), Florida Statutes, as same may be amended from time to time.

Nonresidential developed property shall mean any parcel of land which contains an impervious area and which is classified by the Dade County Property Appraiser as land use types 10 through and including 99 as set forth in the Florida Administrative Code Rule 12D-8.008(2)(c), as same may be amended from time to time.

Residential developed property shall mean any parcel of land which contains an impervious area and which is classified by the Dade County Property Appraiser as land use Types 00 through and including 09 as set forth in Florida Administrative Code Rule 12D-8.008(2)(c), as same may be amended from time to time.

Rooming unit shall mean any room or group of rooms, forming a single habitable unit, used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Stormwater infrastructure shall mean the structural, non-structural or natural features of a parcel of land or watershed which collect, convey, store, absorb, inhibit, treat, use, reuse, or otherwise affect the quantity or quality of stormwater.

Stormwater shall mean the water which results from rainfall.

Stormwater management system shall mean the same term as defined by section 403.031(15), Florida Statutes, as same may be amended from time to time.

Stormwater utility shall mean the same term as defined by section 403.031(16), Florida Statutes, as same may be amended from time to time.

Stormwater management program shall mean the same term as defined by section 403.031(14), Florida Statutes, as same may be amended from time to time.

Watershed shall mean the same term as defined by section 403.031(17), Florida Statutes, as same may be amended from time to time.

(Ord. No. 93-6, § 3, 6-9-93)

Sec. 21-194. - Creation of City of Opa-locka Stormwater Utility Governing Body; organization.

- (a) There is hereby created and established by the authority of section 403.0893(1), Florida Statutes, and the City Charter of the City of Opa-locka, Florida, under the laws of the State of Florida, a city-wide stormwater utility implementing the provisions of section 403.0893(1), Florida Statutes, which shall be named and known as the "City of Opa-locka Stormwater Utility" (hereinafter also referred to as the "utility"). The utility shall be a public body corporate and politic which, through its governing body, the City Commission of the City of Opa-locka, Florida, may exercise all those powers specifically granted herein, those powers granted by law and those powers necessary in the exercise of those powers herein enumerated.
- (b) The governing body of the utility shall be the City Commission of the City of Opa-locka, Florida.
- (c) The utility, acting through its governing body, shall be responsible for the operation, maintenance, and governance of a city-wide stormwater utility to plan, construct, operate and maintain stormwater management systems set forth in the local program required pursuant to section 403.0891(3), Florida Statutes. The governing body may create by ordinance one (1) or more districts and subdistricts within the service area of the utility.
- (d) The Director of the City of Opa-locka Public Works Department shall be the director of the utility, subject to the supervision of the city manager.
- (e) The organization and operating procedures of the utility shall be prescribed by administrative orders and regulations of the city manager. The city manager shall appoint such employees as may be necessary to operate the utility. The salaries and compensation of all personnel of the utility shall be

determined by the City Commission of the City of Opa-locka upon recommendation of the city manager.

(Ord. No. 93-6, § 3, 6-9-93)

Sec. 21-195. - Fees.

- (a) The City of Opa-locka Stormwater Utility is hereby authorized and directed to establish, assess, and collect stormwater utility fees upon all residential developed property and all nonresidential developed property in the City of Opa-locka, Florida, sufficient to plan, construct, operate, and maintain stormwater management systems set forth in the local program required pursuant to section 403.0891(3), Florida Statutes. Such fees shall be in an amount set forth by Resolution of the City Commission of the City of Opa-locka, Florida.
- (b) Each residential developed property shall be assessed a stormwater utility fee calculated by multiplying the rate for one (1) ERU by the number of dwelling units on the parcel and paid on a monthly basis.
- (c) Each nonresidential developed property shall be assessed a stormwater utility fee calculated by multiplying the rate for one (1) ERU by a factor derived by dividing the actual impervious area of the particular nonresidential developed property by the statistically estimated average horizontal impervious area of residential developed property per dwelling unit, to wit, the square footage base equivalent established for one (1) ERU.
- (d) The fees payable hereunder shall be deposited in a separate city fund and shall be used exclusively by the City of Opa-locka Stormwater Utility to pay for the costs of planning, constructing, operating and maintaining stormwater management systems set forth in the local program required pursuant to section 403.0891(3), Florida Statutes. No part of said fund shall be used for purposes other than the aforesaid.

(Ord. No. 93-6, § 3, 6-9-93)

Sec. 21-196. - Billing; liens.

- (a) Fees shall be billed to the owner of each developed property each month of the calendar year and be payable with the bills of water, sewer, and sanitation service of the month of the billing.
- (b) Each such bill shall separate the amount of the stormwater utility charges, sewer service charges, sewer modification district surcharges, water charges and sanitation charges, and any partial payment on any such bill shall be applied first to the charges for water.
- (c) In case of failure to pay any bill for stormwater utility charges when due, a penalty of ten per cent (10%) of such charges shall be added to such bill. Payment of bills shall be subject to the provisions of sections 21-83 through 21-87 where applicable.

(Ord. No. 93-6, § 3, 6-9-93)

EXHIBIT "B"



Celebrating 40 years 1977-2017



Avanti/UMSI Itron MV-RS AMR System Survey
For: City of Opa-Locka, Florida.



By: Eric Corey, Dave Ratter, Jason Wilczek
Submitted to: Miami-Dade/Opa-Locka AMR Team



March 14, 2017

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	3
1. AVANTI ROUTE SUMMARY REPORT	5
<i>AMR System Read Rate</i>	5
<i>Summary of Meters Not Surveyed</i>	6
METER BRAND QUANTITIES FOUND.....	7
MISSING METER BOX LIDS.....	8
DAMAGED METER BOX LID	8
METER BOX IN POOR CONDITION	8
METER BOX IN FAIR CONDITION.....	8
METER BOX MISSING OR BROKEN	8
METER BOX LID SIZES	9
FOGGED REGISTER LENS AND REGISTER IS LOSE.....	10
2. AVANTI DIGITAL WATER METER DISCREPENCY REPORT	12
DIGITAL DIRECT READING VERSES 60WP RADIO READING.....	12
<i>Itron ERT Tampers</i>	12
<i>Route Optimization</i>	14
3. AVANTI READ COMPARISON VERSES ENDPOINT COMPARISON REPORT.....	15
<i>Zero Consumption on Active Meter.....</i>	15
<i>Duplicate Addresses</i>	16
<i>Incorrect Addresses</i>	16
4. AVANTI ENDPOINT EVALUATION REPORT	16
<i>Endpoint Performance Rate for Dead ERTs</i>	16
<i>Evaluation of Endpoints Currently Deployed.....</i>	17
INCORRECT ERT NUMBER	17
DISCONNECTED ERT	19
MISSING ERT.....	20
LEAK.....	21
GLOSSARY INTRODUCTION	22
AMR/AMI INDUSTRY ABBREVIATIONS	23
AVANTI AMR SURVEY REPORTS	24
MASTER AMR SURVEY SPREADSHEET (CYCLES 1,2,3 AND COMMERCIAL) NOTES.....	24
AMR/AMI INDUSTRY DEFINITIONS	24
APPENDIX	29
OPA-LOCKA/AVANTI HISTORICAL BUSINESS RELATIONSHIP WITH TIMELINE	29-34

EXECUTIVE SUMMARY

In September 2016, the City of Opa-locka (City) and Miami-Dade County (County) contacted the Avanti Company (Avanti), an authorized vendor of Itron, to discuss the execution of an Automatic Meter Reading (AMR) System Analysis to assess the condition and operability of the City's AMR system.

In November 2016, a purchase order was issued to Avanti to commence the AMR System Survey assessment and identification. This AMR System Survey is used to determine the effort and the estimated cost of bringing the City's water and sewer AMR System to the industry standard 98.5% read rate.

Based on the results of our findings to date, the City's AMR system is operating at an approximately Overall AMR System Read Rate of 57% with a Accuracy AMR System Read Rate of 34% which is well below the recommended minimum 98.5% read rate industry standard for a healthy AMR System. The City provided Avanti with a listing of 5,853 meters for its service area. Avanti attempted visiting 5,637 meter locations; however, yielding less than 100% inventory/assessment of the City's AMR system. The above difference of 216 represents (approximately 4%) meter locations where no attempts were made to perform an AMR Survey because we did not want to further postpone an already lagging project timeline.

Moreover, Avanti also encountered some challenges with for example, overgrown landscapes, inaccessible properties, and meters that could not be located (683 meters or approximately 11%). Respectively, the County reached out to the areas outside of the City's boundaries (Miami Gardens and Miami-Dade County RER) that are serviced by the City's water and sewer system to assist with gaining access and/or addressing the overgrowth on the properties identified. This report and the Master production spreadsheet provides data related to these inaccessible and challenging locations.

In that, Avanti recognized trying to achieve 100% data collection in this report would have postponed the issuance of the AMR Survey Report; therefore, to minimize the impact of delaying the upcoming anticipated interlocal agreement with the City, for the County to administer the City's Water System, based on the AMR Survey findings, if all else remains the same, we believe the uncollected data; namely, 899 meter locations (or approximately 15%), will not significantly influence the AMR Survey findings and AMR Survey patterns indicated by the AMR meter data currently compiled. To that end, we believe the City and County can rely on this AMR System Survey Report for assessing and identifying the effort and cost of bringing the City's water and sewer AMR System Health up to the industry standard read rate of 98.5%.

Succinctly:

1. Total meters counted – 5,637 (or 96%).
2. Meters counted as needing further action (i.e. replacement/repair, etc.) – 3,049 (or 52%).
3. Meters counted as transmitting in accordance to the industry standard Read Rate for an AMR System – 1,905 (or 33%).
4. Meters counted as inaccessible (i.e. locked gate, dog, cannot locate, overgrown landscape, etc., etc.) – 683 meters (or 11%).
5. Locations not visited – 216 meters (or 4%).

Based on the analysis, we believe the cost of replacing and installing new encoder AMR meters, where applicable, should range from approximately \$1.5 million to \$2.1 million. This estimate includes a conservative projection for the inaccessible meters and those locations that were not visited. The anticipated time frame for this work to be completed should be approximately three to four months.

This AMR Survey Report is a technical findings report, and it is not intended to be an engineering report. Avanti has provided technical recommendations in the report that are highlighted in green.

1. AVANTI ROUTE SUMMARY REPORT

Overall AMR System Read Rate = 57%

(NOTE: For the Accuracy AMR System Read Rate = 34% – See TPTR Trouble Code in Glossary and Note in Master Production Spreadsheet)

AMR meter reading, installation, and maintenance must focus on monitoring the health of the Opa-locka AMR System according to a 98.5% minimum read rate being achieved for each route every month. As FIG 1, below, shows, the AMR read rate is a function of successfully following Itron guidelines for ERT and meter reading, installation, and maintenance.

FIG 1:



98.5% Successful Read Rate:

NOTE: As it relates to the system performance at **98.5%**, it is not just total number of missed reads divided by total number of expected reads, per month as a Municipality reads monthly. **The Successful Read Rate of an AMR System is a direct function of** proper technician ERT handling, storage and transportation to the site, proper installation and testing to recommended specifications, responsible meter reading and AMR troubleshooting practices, as well as proper customer setup and maintenance in the Utility Billing System.

Example #1:

400 missed reads
55,000 expected reads

Equation for Successful Read Rate:

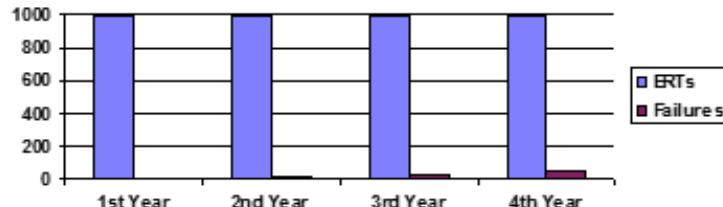
$$100 - \{ \text{Missed} / \text{Expected} (100) \} = \text{Successful Read Rate\%}$$

Using Example numbers:

$$\begin{aligned} 100 - \{ 400 / 55000 (100) \} \\ 100 - .727 \\ = 99.27\% \text{ successful read rate.} \end{aligned}$$

Example #2:

$$\begin{aligned} 1500 \text{ missed reads} \\ 55000 \text{ expected reads} \\ 100 - \{ 1500 / 55000 (100) \} \\ 100 - 2.72 \\ = 97.28\% \text{ successful read rate (we would have to investigate at this point)} \end{aligned}$$



0.5% Electronic Failure Rate:

ERTs have an average expected failure rate of less than 1% per year of installations per year. Itron ERT return test results indicate an average failure rate to be well within 0.5% per year of installations per year. **IMPORTANT: This Electronic Failure Rate is directly proportional to proper technician ERT storage, handling and transportation to the site, as well proper installation and testing to recommended specifications.**

Examples:

1. ERTs installed in the field: 1000 ERTs
Estimated ERT failures using 0.5% failure rate: 5 ERTs per year = $\{ \# \text{ERTs} / 100 \} / 2$
2. The above blue bar-chart illustrates the average failure rate over 4 years while installing 1000 ERTs per year. The estimated failures after the 4th year period should total 50 ERTs. (20 ERTs over 4 years from the first 1000, 15 ERTs over 3 years from the second 1000, 10 ERTs over 2 years from the third 1000, and 5 ERTs over 1 year from the last 1000 using 0.5% failure rate).



RECOMMENDED:

Provide Opa-locka MV-RS Operators (office staff) and Opa-locka Itron Meter Readers (field staff) live Itron AMR System training that encompasses an agreed to Municipal business policy process to follow for each ERT/meter installation that focuses on monitoring the health of their AMR System focusing on a minimum 98.5% read rate

Training example:

Customized to the office and field user friendly step-by-step SmartCards for performing their individual responsibilities, and co-developing with office and field staff a beginning-to-end Flow Chart of AMR System Responsibilities for Maintaining AMR System Health.

Summary of Meters Not Surveyed

Meters Not Surveyed = 683*

***Based on Opa-locka SunGard database Excel export route files for:
Cycle 1, 2, 3, and Commercial totaling 5,637 meters and total listing of 5,853**

As a result of unavoidable Opa-locka Public Works personnel meter reading duties, circumstances, and customer service priorities during this Holiday season, and also due to related contractor workload priorities that arose, the goal of 100% Opa-locka meters surveyed was not achieved within the allotted project timeframe.

Moreover, Opa-locka Public Works workload during this Holiday season did not allow them the full opportunity for fulfilling their project scope of work assisting UMSI Auditors within the AMR Survey project timeframe, and as a result, Opa-locka Public Works takes ownership and responsibility for completing the remaining meters not surveyed.

UMSI Auditor typical reasons found for not performing the AMR Survey are:

Cannot Locate, No Access, and Overgrown.

Following are additional **Miscellaneous** reasons found for UMSI not performing an AMR Survey that total 183 customers (See FIG 2, next page):

Vacant Lot, Empty Meter Box, No Meter-Meter Removed, No Water Supply-No Service, Cannot Verify Address, Dwelling Not Occupied, Bypass in Pit, No Such Address, Debris, Meter Under Water, Meter Box Filled with Concrete or Asphalt, Vehicle or Dumpster over Meter Box, Dog, Bees, Unsafe Area, Duplicate Address, Incorrect Address, Different Meter Size.

FIG 2:



RECOMMENDED:

As discussed on 1/31/2017, to further assist Opa-locka Public Works in completing their Scope of Work and achieving the goal of 100% Opa-locka meters surveyed, Avanti recommends spending another full day in the field with Johnny (See above FIG 2) live certifying him to perform an Itron AMR ERT/Meter Survey, and afterwards, Airia Austin assign Johnny to AMR Survey above mentioned remaining Opa-locka meters.

In so doing, Johnny would receive an Avanti Itron AMR System Technician certificate upon completion of his AMR ERT/Meter Survey work.

To that end, every day, Johnny's previous day's AMR ERT/Meter Survey work on paper would be scanned by Felicia and then emailed to Avanti for inputting into the Opa-locka AMR Survey database, etc., for ultimate achieving the goal of 100% of Opa-locka meters surveyed.

NOTE:

Above work with Johnny was offered to Opa-locka Public Works at no additional charge during the timeframe of the AMR Survey project; however, it was understandably not an option at the time for Public Works due to current workload, etc. If Opa-locka Public Works opts to hire Avanti to assist Johnny now that the AMR Survey project is ended, this is billable time.

Meters Brands Quantities Found = 4,906

AMCO	= 3,089
Badger	= 778
Elster	= 993
Hersey	= 40
Sensus	= 3
Trident	= 1
<u>Neptune</u>	= 2

Total = 4,906

<i>Missing Meter Box Lids</i>	= 61
<i>Damaged Meter Box Lid</i>	= 245
<i>Meter Boxes in Poor Condition</i>	= 315
<i>Meter Boxes in Fair Condition</i>	= 26
<i>Meter Box Missing or Broken</i>	= 62

Minimizing missing meter box lids and maintaining meter boxes falls under the category of receiving Itron training performing an **Annual Meter Audit** performed via the **MV-RS Operator loading the FC300 hand-holds with Opa-locka routes, Audit Survey Questions, and Audit Trouble Codes.**

Then, unloading the collected ERT/Meter Audit data, printing, and compiling the reports to then issue work-orders to mitigate and maintain the meter boxes.

Example:

Guardian Meter Box Lid option for consideration as a possible solution for some Missing Lids?:



RECOMMENDED:

Provide Itron training with the MV-RS Operators (office staff) and Itron Meter Readers (field staff) for live Itron AMR System Annual Meter Audit training that encompasses an agreed to Municipal business policy process to follow for each **ERT/Meter Audit focuses on monitoring the health of their AMR System** focusing on a minimum 98.5% read rate.

ENDORSED:

Itron training such that: simultaneous to Opa-locka meter readers performing an Annual ERT/Meter Audit, as a “one-time” event, the Itron FC300 hand-held could also be setup to 1-tap collect the **GPS Coordinate location of every customer’s meter box (also collect location of valves, etc.)** for use later with the same FC300 hand-held (or MC3 SME) when you need it to GPS navigate you to it (leak, etc., etc)!

This is using your Itron AMR technology options to make life easier and smoother for Opa-locka Public Works!

Ittron training example: Customized to the office and field user friendly step-by-step Smartcards for performing their individual Annual ERT/Meter Audit responsibilities, and include this task when co-developing with office and field staff a beginning-to-end Flow Chart of AMR System Responsibilities for Maintaining AMR System Health).

Meter Box Lid Sizes

12 x 12 =	1
12 x 18 =	3,721
12 x 24 =	22
12 x 36 =	3
18 x 18 =	606
18 x 24 =	101
18 x 36 =	9
24 x 24 =	1
24 x 36 =	15
24 x 36 =	15
24 x 38 =	2
Vault =	1
Total	4,497

Pit Lid Examples:





RECOMMENDED:

To assist will visually locating the water meter, as shown above, Opa-locka Public Works spray **paint a blue mark, arrow, etc.** during the Annual ERT/Meter audit performed.

*Fogged Lens = 1009
Register is Lose = 23*

Fogged Lens means the glass lens on the water meter register no longer has a water tight seal (see FIG 3) resulting in the lens being clouded with moisture.

When the lens is Fogged, it can be impossible to visually see the water meter reading, etc.

If Fogged Lens, at a minimum, the register needs to be because the register lens glass lens seal is defective due to either manufacturer defect (this is typically rare) or vandalism.

Register is loose means the water meter register is no longer securely attached to the top of the water meter body.

If the Register is loose, possibly due to vandalism, on a PD meter, the register magnet will not fully interface/connect with meter body chamber magnet resulting in inaccurate measurement of water flow, and of course, also an inaccurate visual and AMR meter reading.

FIG 3:

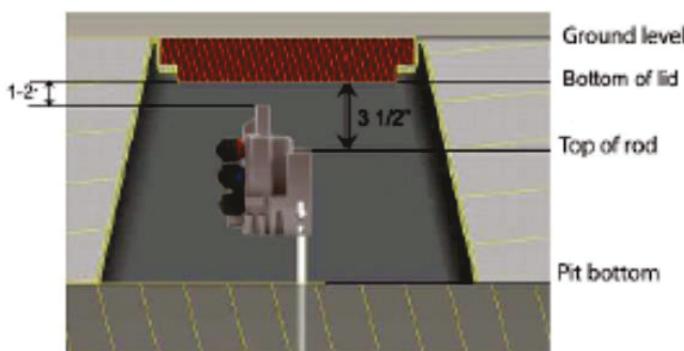


RECOMMENDED:

Itron training for annually scheduled meter pit box audit inspection of every water meter to visually confirm if register lens is Fogged and Register is securely attached to the water meter body (among several other things to visually confirm). See FIG 4 for picture of Itron recommended Pit ERT Installation.

FIG 4:

Itron recommended Pit ERT Installation:



Example of Annually scheduled Meter Box survey from the MV-RS PC using FC300 hand-held that is loaded with 2 Survey Questions prompting the user to answer 2 Y/N questions for each customer:

- 1) Pit Lid Damaged Y/N?,
- 2) Meter Box Damaged Y/N?

The meter reader using the FC300 hand-held loaded with routes, out collecting this above information, along with collecting specific Survey Trouble Codes of other information found, completes the ERT/Meter field audit.

Then, after the ERT/Meter Audit data is collected by the meter reader using the FC300 hand-held, MV-RS Survey Question/Trouble Code Reports are printed, Opa-locka work-orders for these customers are then issued to mitigate accordingly; thusly serving an important function in maintain the health of the Opa-locka AMR System.

2. AVANTI DIGITAL WATER METER DISCREPENCY REPORT

DIGITAL DIRECT (aka visual) METER READING VERSES 60WP RADIO READING

DIGITAL METERS WITH:

<u>60WP ERTS SURVEYED</u>	<u>= 2,866</u>
<u>DEAD 60WP ERTS FOUND</u>	<u>= 1,543</u>
<u>MATCHING DIRECT (aka visual) READ AND 60WP ERT RADIO READ</u>	<u>= 1,314</u>
<u>NONMATCHING DIRECT (aka visual) READ AND 60WP ERT RADIO READ=</u>	<u>9</u>

ERT Tampers = 1,027

These are the total quantity of **ERT Tampers are not being addressed at Opa-locka** (e.g. Read Tampers, Meter Tampers, Troubleshooting Tampers). See FIG 5.

Monthly monitoring and deliberate mitigation of ALL ERT Tampers is essential to a healthy AMR System that is operating at a minimum 98.5% read rate.

FIG 5:

RECOMMENDED:

ITron training to co-create with the office and field staff a **Flow-Chart** of responsibilities to follow for the smoothly managing ERT/Meter Tamper and co-create **SmartCards** with the staff to follow when performing their work.

Route optimization.

Opa-locka has 48 individual routes being read each month initially with the Itron MCLite w/ FC300 hand-held loaded with the Cycle to read by Ramon Piller, Opa-locka Public Works.

Ramon is an expert MCLite Operator, knowing the most efficient way to drive the city for optimal readability each month. Ramon is a PRO!

Briefly, operating the MCLite w/ FC300 hand-held involves the user (Ramon) navigating each of the many routes that are loaded for meter reading during his Drive-by meter reading in Opa Locka, and him also managing the customers that are line-item listed on the screen of the FC300 hand-held, and are scrolling on the screen of the FC300 hand-held as they are read, or not read.

That said, by **upgrading to the new Itron Tablet version of the current MCLite** (see FIG 6 not called the MC3 SME instead of MCLite), Ramon would decrease time spent during his Drive-by meter reading since now there are **DOTS for every customer**.

Now, Ramon is **driving around like PAC MAN** seeing dots disappearing as he drives and on parallel streets, etc.! – not having to manage the FC300 hand-held screen anymore as briefly described above.

NOTE: There are two method for obtaining DOTS for each meter customer:

1. Opa-locka use the readily available (i.e. FREE of charge) **standard 911 addresses** in the MV-RS routes for the resident or commercial accounts. Briefly, these coordinates were collected by the US Government for use by the Fire Department, First Responders, Police, so they can drive to a particular location.
 - Typically, this **GPS Coordinate is where the mail box is**. *Since Ramon and his meter reader's know where the meter location is, the mail box DOT is not a hindrance during Drive-by meter reading.*
2. Opa-locka hire a reputable company to go out and locate the meter location and acquire the GPS Coordinate of that meter for use in the MV-RS routes, and a DOT is placed at the meter location.

In addition, upgrading to the new Itron Tablet version of the MCLite (i.e., the MC3 SME, FIG6 – next page) **allows Ramon to delegate Drive-by meter reading to others, and Ramon focus on other work.**

FIG 6:
(Tablet is pedestal mounted in the Drive-by Vehicle for safe operation)



3. AVANTI READ COMPARE VERSES ENDPOINT COMPARE REPORT

Zero Consumption on Active Meter = 434

This number (See FIG 7) represents the active Opa-locka customers whose meter reading has not changed since last month's meter reading, and is due to either:

- a) Customer has not used any water since last month (e.g. customer is away on vacation),
- b) Water meter is stuck (i.e., the internals are jammed up from debris in the water line cause the meter not to move and measure water), or
- c) ERT is disconnected-defective and is transmitting the "memory" meter reading from the last time it was able to obtain one from the water meter register.

FIG 7:

MV-RS Read Audit Report
FEB 8, 2017 8:49 AM
MV-RS READ AUDIT INFORMATION

FAILED HI 1.....00991
FAILED LO 1.....03998
FAILED HI 2.....00000
FAILED LO 2.....00000
ZERO CONSUMP ON ACT MTR.00434
TOTAL AUDITS.....05423

RECOMMENDED:

Provide Itron training for the Opa-locka MV-RS Operator and Meter Reader to use MV-RS Read Audit Report to identify and mitigate these reads such that one-by-one these Opa-locka customers be addressed by Opa-locka MV-RS office and field staff with respect to why this is occurring (**e.g. vacation, stuck-defective meter, disconnected-defective ERT**).

This, in accordance with these folks following a customized to them user-friendly step-by-step **Smartcard** process included when co-developing with office and field staff a beginning-to-end **Flow Chart** of AMR System Responsibilities for Maintaining AMR System Health.

*Duplicate Addresses = 39 (aka 78)
Incorrect Addresses = 52*

Avanti PM working with Ann (Opa-locka MV-RS Operator) discussed in detail what is entailed with mitigating these Duplicate and Incorrect Address issues.

RECOMMENDED:

One by one these customers be addressed with respect to customer setup in Opa-locka SunGard Itron Interface, and a customized to the MV-RS Operator user friendly step-by-step **Smartcard** (with SunGard screen shots) is co-developed with the Opa-locka MV-RS Operator and this process included when co-developing with office and field staff a beginning-to-end **Flow Chart** of AMR System Responsibilities for Maintaining AMR System Health.

4. AVANTI ENDPOINT EVALUATION REPORT

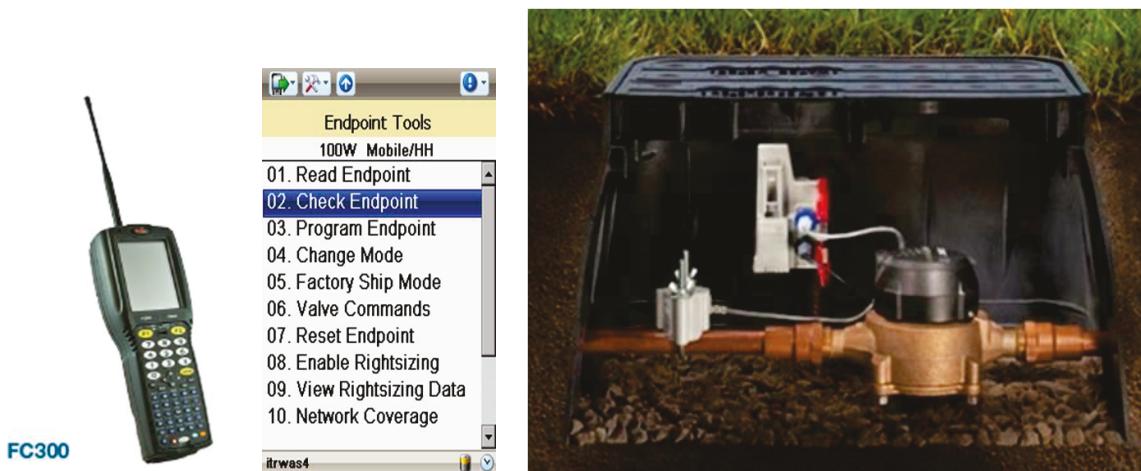
Endpoint Performance Rate for Dead ERTs = 1,875

Reference the Glossary now to understand Endpoint Performance Rate and its relationship to AMR System Read Rate (which combined represent the monthly barometer measuring AMR System Health).

Typically, this is a result of an ERT not installed and maintained according to Itron Guidelines. **Electronic devices (e.g. ERT) must be installed and maintained according to the manufacturer recommended guidelines.**

Itron has a super user-friendly **Check Endpoint** installation process to follow every time a ERT is installed that confirms the ERT is working to specifications and that the ERT will quickly be read by the FC300 during the monthly Opa-locka meter reading process (See FIG 8).

FIG 8:
Field Deployment Manager
Endpoint Tools Mobile Application Guide



ERT installation in the field must be performed according to Itron guidelines for the ERT to work and perform to expectations over its 20 year life – to stay working and not prematurely die (i.e. Dead ERT) due to improper handling, testing, and installation (see FIG 1 above again).

To maintain the minimum **98.5% route read rate**, MV-RS office and field staff must perform troubleshooting of Dead ERTs each month according to Itron guidelines.

RECOMMENDED:

Provide the Opa-locka MV-RS Operators (office staff) and Opa-locka Itron Meter Readers (field staff) live Itron training for **AMR System meter reading, installation, and maintenance** training that encompasses an agreed to Municipal business policy **ERT/Meter work-order process** to follow for each ERT/Meter installed and read for billing by focusing on monitoring the health of their AMR System with respect to maintaining the minimum 98.5% read rate.

Evaluation of Endpoints Currently Deployed

Incorrect ERT Number = 68

This means the ERT number found on the ERT device at the customer site is not the same as the ERT number in SunGard MV-RS route that is loaded on the Opa-locka Itron meter reading device (e.g. FC300 hand-held) for the customer.

This is due to an old ERT# in SunGard because the new ERT work-order was not fully processed. Also, there could be a ERT# typo in SunGard for the customer Itron setup section in the billing system.

When the ERT# does not match, what happens is:

- a) Meter reader in the field will not obtain a AMR meter reading in the route loaded on the Itron meter reading device for the customer, and/or worse,
- b) ERT number is erroneously-unknowingly assigned in SunGard to someone else, and/or worse,
- c) ERT is installed on someone else's meter resulting in a giving that customer a meter reading that is not there meter reading. Sound confusing?

Therefore, as a critical part of successful ERT installation in the field at the customer site, the unique ERT number is used in FC300 hand-held FDM testing during installation, and then ERT number is accurately recorded on the Utility installation work-order for later accurate input into the Opa-locka SunGard Utility Billing System customer account.

VERY IMPORTANT TO NOTE:

- An Incorrect ERT# can cause a **No AMR Read** of the customer.
- And a **No AMR Read** of a customer can be caused by erroneous **ERT AMR customer setup** in the Utility Billing System (i.e., SunGard) not being performed according to Opa-locka SunGard Itron Billing Interface for ERT communication requirements (e.g. #Dials, Read Type Code, Read Method).
- And, the result of Incorrect Billing Clerk setup of **ERT AMR customer setup** in Opa-locka SunGard Itron Billing Interface can cause **incorrect billable reads** being posted – which creates a lot of extra work, wasted time and frustration in the office and the field.

RECOMMENDED:

Itron training to co-create with the office and field staff a **Flow-Chart** of responsibilities to follow for the ERT AMR customer setup (work-order) process, and co-create **SmartCards** with the staff to follow when performing their work.

ENDORSED

Also, included in the above Itron training process is the “quick and easy” use of Opa-locka MV-RS for collecting 100W Datalog information for display in a **handy MV-RS bar-graph for explaining customer billing disputes** (i.e., the 100W ERT is automatically, 24/7/365, always saving the last 40 days of every top-of-the-hour meter reads).

Disconnected ERT = 136

This means the ERT cable connected to the water meter register is no longer connected. See FIG 9. This is usually a result of vandalism and results in:

- a) Moisture overtime will wick (i.e., travel) up the exposed bare wire **to the ERT unit** and damage the electronics of the ERT unit (i.e., water and electronics do not mix).
- b) Moisture overtime will wick (i.e., travel) up the exposed bare wire **to the Register** causing the glass lens to be fogged and damage the electronics of the Register (i.e., water and electronics do not mix).
- c) AMR meter reading collected from the disconnected ERT is a “**memory meter read**” from the last time the ERT cable was connected to the water meter register which is typically seen as low consumption or even no consumption meter reading from last month’s meter reading; thusly, erroneously reporting of the actual meter reading that should be collected and billed for the customer.

FIG 9:

(Note: this is intentionally the same pic as Fogged Lens to illustrate an example of a **multiple issue** and the importance of an Annual Meter Audit – ERT is missing!):



RECOMMENDED:

MV-RS identifies the disconnected ERT in a MV-RS Report via the **Cut Cable Tamper** indicator built into the ERT device.

The Cut Cable Tamper indicator is transmitted with the radio meter reading collected when the ERT cable is disconnected from the water meter register.

Monthly, the MV-RS Operator prints out this Report that lists all the customers having a Cut Cable. See FIG 10 on next page.

FIG 10:

MV-RS Mobile Read Detail Report FEB 2, 2017 11:33 AM Page: 1

Company Name: MVRS

ROUTE ID: 01000001 CYCLE: 01

Customer Address	ERT ID#	ERT/CAT	Reading	Time	HMI	Tamper
901 SUPERIOR STREET	69050616	11 W	1264	14:02	H	Leak Low battery Cut Cable Cable Cut
670 JANN AVENUE	35111604	11 W	2564	15:11	H	Last Good Read Extended Tamper

In order for MV-RS to identify the disconnected ERTs, the Utility Billing System (i.e., Opa-locka SunGard) Itron Interface must be setup to process the Cut Cable Tamper Code for each customer in the upload.dat meter reading file. **Currently, Opa-locka SunGard does not process the Cut Cable Tamper Code.**

To resolve this, **Nelson** would work with SunGard to setup the Itron Interface to process the Cut Cable Tamper Code (see FIG 11) accordingly: download.dat RFF Record 11 Tamper BYTES 65-66, and upload.dat RFF Record 12 BYTES 57-58.

FIG 11:

MV-RS Host Interface Requirements				
Proprietary and Confidential				
11	Tamper	N*2 Required	65-66	Tamper on page 89
12	Tamper Status	N*2	57-58	Tamper on page 89

Once this is done, the Cut Cable Tamper Code will be **automatically handled** by the Opa-locka SunGard Itron Interface and allow MV-RS to accurately identify disconnected ERTs for monthly reporting and mitigation

Missing ERT = 385

Missing ERTs are typically a result of **vandalism**. A Missing ERT is usually discovered during the meter reading process and should be duly noted by the meter with a “Missing ERT” Skip Code (for later follow up on a work-order to install a new ERT) while key punch collecting the visual direct meter reading for billing purposes. **Opa-locka is currently does not deal with this Trouble item.**

RECOMMENDED:

Opa-locka MV-RS Operator receive Itron training and SunGard training for developing a smooth process to deal with replacing a Missing ERT.

Leak (detected by 100W ERT quantity) = 449

For the purposes of collecting Leak notifications transmitted during meter reading of ERTs, there are customer side leaks and there are city (aka distribution) side leaks.

The 100W ERT reports on the customer side leak (e.g. dripping faucet, running toilet, garden hose, etc.).

If there is continuous flow (e.g. dripping faucet), the ERT considers this a Leak and will transmit the Leak notification until such time water stops flowing in a 24 hour period. The logic here is within 24 hours someone living in a house will stop using their water (i.e., sleeping). This Leak threshold of 24 hours may not apply to all customers, and there is a way to handle that as well.

This information along with the hourly DataLog information from the 100W ERT over the past 40 days reconciles billing disputes with Opa-locka customers (via a nice MV-RS bar graph showing top of the hour meter reads, etc.).

RECOMMENDED:

Opa-locka MV-RS Operator and Meter Reader receive Itron training process for handling the 100W ERT Leak Tampers and resolving customer billing disputes using MV-RS user-friendly Datalog bar-graphs showing the customer their top of the hour meter reading and hourly consumption of when they used water excessively within the past 40 days, etc. (e.g. leaving the garden hose running, etc., etc.).

Glossary Introduction

This section introduces the glossary for the Opa-locka AMR Survey to the reader.

Glossary Objectives

This glossary has the following objectives:

- To formally define all industry abbreviations used on the Opa-locka AMR Survey.
- To formally define all industry technical terms used on the Opa-locka AMR Survey.
- To thereby improve communication among the Opa-locka AMR Survey stakeholders and members of the Miami-Dade/Opa-locka development staff.

Intended Audiences

This glossary has the following intended audience:

- Stakeholders:
 - Miami-Dade City Council, etc., who are either:
 - a) Hands-on familiar with live AMR System monthly meter reading, maintenance, and troubleshooting operations, or
 - b) have spent the day with the Miami-Dade/Opa-locka Development Staff (aka Itron AMR System Team) discussing and understanding the AMR System intricacies within this Avanti Itron AMR Survey Report.
- Miami-Dade/Opa-locka Development Staff:
 - Miami-Dade/Opa-locka Oversight/Coordinator
 - Opa-locka Project Manager
 - WASD Water Distribution Chief
 - WASD Director of Customer Service
 - WASD Assistant Director
 - Business Process Specialist (Works with Ann Barnett)
 - Opa-locka Utility Director
 - Opa-locka Special Project Manager
 - Opa-locka Field Supervisor
 - Opa-locka Customer Service Manager
 - Opa-locka Billing Coordinator
 - Opa-locka Finance Director Architect

AMR/AMI Abbreviations

This section defines common industry abbreviations and proprietary system development abbreviations.

Avanti AMR Survey Reports:

The following industry standard, project-specific, and general technical abbreviations are used on the Opa-locka AMR Survey project:

AMI	Automated Metering Infrastructure (e.g. Fixed Network Collectors/Repeaters radio meter reading)
AMR	Automated Meter Reading (e.g. Walk-by or Drive-by radio meter reading)
ERT	Encoder Receiver Transmitter – also referred to as an Endpoint
ERT#	Encoder Receiver Transmitter Number (a unique 8 digit number assigned to each ERT)
FCS	Field Collection System (Windows software application for meter reading – virtually identical to MV-RS, just much more user friendly, automatable, and powerful, etc.)
FC300	Field Collector 300 (hand-held hardware for meter reading)
FDM	Field Deployment Manager (hand-held hardware for AMR system installation, maintenance, troubleshooting)
MC3	Mobile Collector 3 (laptop or tablet hardware for meter reading)
MV-RS	Multi Vendor Reading System (Windows software application for meter reading – FCS is the upgrade for MV-RS – ask for PowerPoint on upgrading your MV-RS to FCS – no charge for FCS software if under annual SW/HW maintenance)

Master Spreadsheet (Cycle/Routes 1, 2, 3 and Commercial) Notes:

<u>Inaccessible:</u>	<u>Repair Items</u>	<u>Utility Billing Database</u>
CL = CANNOT LOCATE	BB = BROKEN BOX	CANNOT VERIFY ADDRESS
CL3A = CL THIRD ATTEMPT	BIM = BOX IS MISSING	CANNOT VERIFY SERIAL NUMBER
MUW = METER UNDER WATER	BL = BOX LOOSE	DUPLICATE
NA = NO ACCESS	DE = DEAD ERT	ENCODER ERT ON PULSER METER
NAG = NO ACCESS GATE	EIS = ERT IS DISCONNECTED	ERDM = ERT NUMBER DOES NOT MATCH
NA3A = NA THIRD ATTEMPT	L = LEAK	METER/ERT INFO ACTUALLY FOR ANOTHER ACCOUNT
	LD = LID DAMAGED	MDNM = METER NUMBER DOES NOT MATCH
	LIM = LID IS MISSING	MSD = METER SIZE DIFFERENT
	ME = MISSING ERT	NON ITRON ENDPOINT
	NMI = NO METER INSTALLED	NO SERVICE
	RD = REGISTER DAMAGED	PAM = PRE AMR METER
	RIF = REGISTER IS FOGGY	VACANT LOT
	RIM = REGISTER IS MISSING	
	NO METER BOX	<u>AMR Meter:</u>
		BLANK NOTE = NO ISSUES
		TPTR = TRANSMITTING BUT REGISTER PULSE TEST
		REQUIRED DUE TO RADIO READ NOT MATCHING
		DIRECT VISUAL READ

AMR/AMI Definitions

This section defines common industry definitions and proprietary system development definitions.

A

AMR Survey – Analysis of current AMR System Health to identify the starting points for development of a comprehensive program/project to restore AMR Read Rate.

AMR System Health – Monitoring various monthly AMR system operational elements (see page for listing) such that MV-RS Report for each route read has a minimum AMR System Monthly Read Rate of 98.5%

AMR System Read Rate – Monthly goal for meter reading rate per route of 98.5%. MV-RS Report provides the % for each route read each month. A main contributor to this is achieving the Industry Standard Annual Electronic Failure Rate of 0.5%.

B

Battery Low Tamper – The 100W ERT is transmitting notification the ERT battery is nearing its end of life and is informing you the ERT needs to be replaced asap.

C

Check Endpoint (p.) – FDM program for a) confirming new meter/ERT installed is work to specifications, and b) monthly troubleshooting for maintaining 98.5% Read Rate and 0.5% Industry Electronic Acceptable Failure Rate.

City (aka Distribution) Side Leak – Water is leaking before it goes into the water meter.

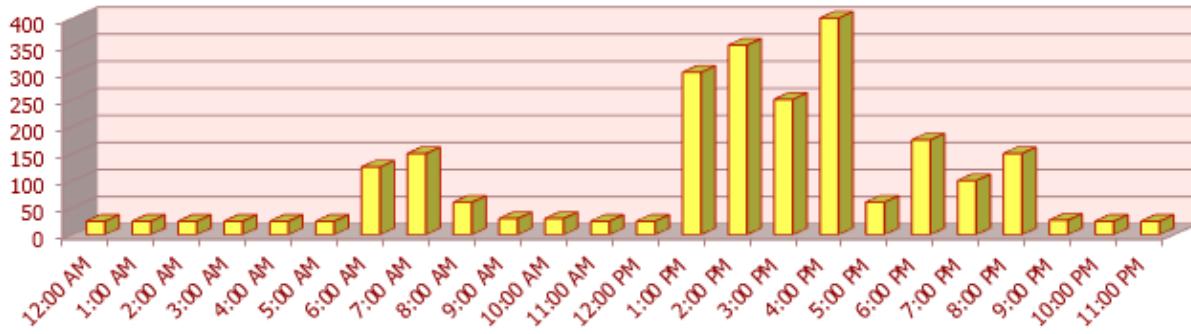
Collect GPS coordinates for water meter location – Typically obtained with a hand-held (e.g. Itron FC300) by standing over/near the water meter and pressing button to lock-in the GPS coordinate of where you are standing (i.e., over/near the meter). Then, ultimately using that GPS coordinate as a DOT on the screen on the hand-held, tablet, or laptop during meter reading that beeps and disappears when read (kind of like PAC MAN).

Customer Side Leak – The water meter and ERT are detecting a leak occurring some place from the meter coupling as water flows from the meter or somewhere down line (e.g., underground, spigot, faucet, toilet, etc.).

Cut Cable Tamper – ERT has detected a cut in the cable and is transmitting this Cut Cable Tamper code out with the last meter reading the ERT obtained from the water meter register.

D

Datalogging – The 100W ERT is continually saving every top of the hour meter reading for the past 40 days (that is 960 meter readings). This meter data is collected and easily bar-graphed for visually explaining to a customer why their bill is high during a customer billing dispute event. See bar-graph example below:



Dead ERT – The ERT has been diagnosed to no longer be transmitting meter data (e.g. meter reading, tampers) and needs to be replaced. Each Dead ERT should be labelled (i.e. using sticker, tag)

Digital Register – In a water meter, a rotating magnet is placed close to a reed switch. The rotation of this magnet is proportional to the amount of water that flows through the meter. Every time a pole goes by the switch it closes and provides a contact signal (continuity). Sometimes an in-line resistor is provided for protection. A remote counter (aka ERT) is connected to both connectors and simply counts the number of times the switch closes. This counter (aka ERT) is programmed with the particular meter's value for each closure (i.e. 1 USG per closure, 5 USG per closure, 10 USG per closure, etc.).

Duplicate Address – A customer in SunGard utility billing has been erroneously setup twice in the database. This occurrence is avoided by regularly scheduled db query maintenance for such occurrences. These waste considerable time for the utility billing clerk chasing non-existent meter readings.

Disconnected ERT – The ERT has been physically disconnect from the water meter register. The Cut Cable Tamper notification (i.e., MV-RS Report) lists customers with Disconnected ERTs. A Disconnect ERT transmits the meter reading of the last time the ERT was connected to the water meter register. This wastes a lot of time for the utility billing clerk who is not monitoring the Cut Cable Tamper MV-RS Report because they are erroneously thinking there is zero consumption, etc.

Digital Direct Reading verses 60WP Radio Reading – The direct visual read of the Digital (i.e. pulse) water meter register and the radio meter reading from the 60WP ERT must match. If they do not match, the FC300 hand-held Check Endpoint function should be used to confirm the 60WP ERT is programmed properly. As a comparison, programming the meter reading is not necessary with a “plug-n-play” 100W Encoder ERT (as opposed to a 60WP Digital ERT).

E

Endpoint Performance Rate – Is synonymous to Industry Standard Electronic Failure Rate.

Endpoint Evaluation Report – Endpoints are monitored monthly by the utility office and field staff regarding factors affecting their ability to provide a monthly billable meter reading. Evaluating Endpoints and this ability becomes problematic when: the ERTs unique 8 digit number for each customer is not handled accurately, or when the ERT is not installed according to Itron guidelines, or when the ERT is disconnected from the water meter register and not promptly identified as such, or when the ERT is not read either because it is a Dead ERT, or there is RF interference (vehicle parked over meter pit, etc.), or a No Read is a result of incorrect ERT AMR Customer Setup.

ERT AMR Customer Setup – In order for radio meter readings to be collected and/or be accurate (i.e., billable) and for radio readings to be collected at all, certain parameters and settings must be made and specifically maintained in the Utility Billing System (i.e., SunGard) and in the Meter Reading System

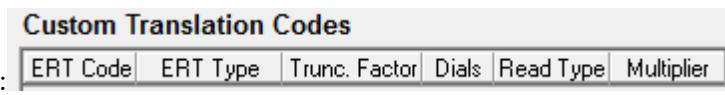
(i.e., MV-RS). Following a monthly process for doing so is referred to as the ERT AMR Customer Setup. Such MV-RS meter reading parameters and settings to maintain monthly are:

- #Dials, Read Method, Read Type Code,



Code	Description	RF Mode

- Radio Parameters, RF Translation.



ERT Code	ERT Type	Trunc. Factor	Dials	Read Type	Multiplier

ERT Memory Meter Reading – When the ERT becomes disconnect-defective, it will transmit the meter reading of the last time it was able to read the water meter register. This meter reading is saved in the ERT memory. If the Cut Cable Report is not used during monthly meter reading, the ERT Memory Meter Reading erroneously looks like zero consumption to the utility billing clerk.

ERT Tampers – The ERT monitors and transmits with the meter reading certain important occurrences with itself and the water meter, and categorizes them as ERT Tampers, they are for example: if the ERT is disconnected, this is categorized as a Cut Cable Tamper, if the water meter is installed backwards, this is categorized as Reverse Flow Tamper, if the 100W ERT battery is getting low in power, this is categorized as a Low Battery Tamper. ERT Tampers must be identified monthly and mitigated accordingly.

Evaluation of Endpoints Currently Deployed – Utility office and field staff always knowing the current status of their Endpoints deployed is a matter of flowing Itron recommended go-to guidelines, (SmartCards, and Flow-Charts) for quickly and smoothly monthly mitigating occurrences of: Dead ERTs, Missing ERTs, Incorrect ERT#, ERT AMT Customer Setup, Incorrect billable read, Disconnected ERT, Missing ERT, Leak.

F

Fogged Register Lens – Moisture has entered the register as a result of water tight integrity being compromised. Electronics and moisture do not mix and therefore this meter reading may not be accurate. Page 12.

Flow Chart – An AMR System can be broken up into its operational parts and detail Flow Charted according to agreed to business process and who is responsible for each step in the process. Example the business process of issuing and implementing a AMR Work-Order for a Missed Read. The entire step-by-step process for issuing and implementing (including AMR Troubleshooting why it is a Missed Read) is Flow Charted. Done deal!

FAILED HI 1 – This customer either has used a lot of water beyond their typical monthly usage (e.g. family is visiting, washing cars, filling a pool), or has a large leak, or the HI/LO billing parameters are not properly set for this customer. If this is MV-RS notification is not needed, it can be “turned off” in MV-RS, and just let Utility Billing Reporting handle this solely.

FAILED LO 1 – This customer either is using less water than they usual do, or the water meter is being periodically “by-passed” during the month, or there is a “stuck” meter not allowing the water to be measured accurately. This occurrence should be mitigated monthly.

Incorrect Address – The customer address in the SunGard Utility Billing System database is not the same address the meter is installed. Not knowing how to prevent this from occurring and/or mitigate this results in a lot of frustration and wasted man hours.

Incorrect Billable Read – Factors causing this are ERT to transmit an Incorrect Billable Read are: Incorrect ERT/meter installation, or Incorrect ERT AMR Customer Setup, or not monthly monitoring and mitigating the Cut Cable Tamper Report. Not knowing how to prevent this from occurring and/or mitigate this results in a lot of frustration and wasted man hours.

Incorrect ERT Number – Factors resulting in an Incorrect ERT number are: Incorrect ERT/meter installation or Incorrect ERT AMR Customer Setup. Not knowing how to prevent this from occurring and/or mitigate this results in a lot of frustration and wasted man hours.

Industry Standard Electronic Failure Rate – All electronic devices experience what is referred to as “infant mortality”. As an example, if you have a Best Buy semi-trailer full of thousands of televisions, there are likely some of those TVs that will not operate to specifications, etc. even though they pass all the rigorous testing in the factory. This is understandable. The same holds true for the ERT, and the way to weed out those not operating to specifications is by using the FDM Check Endpoint function when installing a new ERT. That done, the total number of ERTs installed, typically within a month, should still be operational (excluding vandalism, incorrect installation, etc., etc.) one year from now less 0.5% of them. If >0.5%, Itron Technical Support should be asked to assist in determining why this is happening.

L

Leak Tamper – The ERT transmits this notification when water flow has been constant for 24 hours (p.20).

M

Meter Box In Fair Condition – Meter box and/or lid has a structural crack.

Meter Box In Poor Condition – Meter box and/or lid has more than one structural crack.

Meter Box Is Broken – Meter box is falling apart.

Meter Box Is Missing – Meter box is no longer installed and cannot be located.

Meter Box Lid Is Missing – Meter box lid is not installed and cannot be located.

Meter Brand Quantities Found – The meters identified during the AMR Survey and their respective Meter Brand Found recorded and Quantified.

Missing ERT – The ERT is not installed and cannot be located.

N

No AMR Read – The meter reading was not collected during meter reading as a result of either a Dead ERT, RF Obstruction (e.g. vehicle parked over meter box, severely overgrown foliage, vandalism), Incorrect ERT/meter installation, or Incorrect ERT AMR Customer Setup.

R

Register Is Lose – The UMSI company auditor discovered this during the AMR Survey. It is a result of either incorrect installation, vandalism, unintentional damage, or someone is periodically removing the register to lessen their water bill by the register not recording water usage. (Page 12).

Reverse Flow Tamper – When there is a Reverse Flow event the ERT transmits this Tamper with the meter reading. Reverse Flow and theft detection are achieved by the ERT comparing the current register reading against the previous reading and if the current is less than the previous, the Reverse Flow Tamper is transmitted. Reverse Flow can occur for a variety of reasons:

- Water main break
- Customers may invert the water meter to save on their water bill (i.e., install it backwards)
- During new construction the water meter may inadvertently be installed backwards
- Water pumps may malfunction and not distribute water through the system
- The meter register may be defective and erroneously report an inaccurate consumption value

Route Optimization – In a Drive-by AMR System, since the ERT meter readings are always in the air being transmitted 24/7/365 for the ERTs 20 year battery life, waiting for the Drive-by meter reader to drive through the reads – as they hit the mag mount receiver antenna on the Drive-by vehicle. The stereo radio in car that tuned to your favorite music radio station is effectively operating the same way – don't over think this analogy. Therefore, meter reading in a Drive-by AMR system is a function of how long it takes you to drive the route. See page 13 for specific Route Optimization for Opa-locka.

S

SmartCard – A puzzle piece in the Flow Chart. It is one of several templated documents explaining certain processes of an operational AMR System and is co-written with the user to produce a customized “Cheat Sheet”/SmartCard that steps the user through for example:

- AMR Work-Order process (why a/each particular Word-Order is issued, and how/why the AMR Technician precisely accomplishes the particular Work-Order, and when that Work-Order is closed out, and tracking its contribution to monthly MV-RS Reporting for the AMR System Health).

Standard 911 Address – This is an alternative to Collect GPS coordinates for water meter location (see page 13).

SunGard – Opa-locka, Fl. Utility Billing System.

Z

Zero Consumption on Active Meter – See page 14, and ERT Memory Meter Reading and Cut Cable Tamper. Not knowing/having the (SmartCard) process for handling this occurrence in an AMR System results in a lot of wasted man hours and frustrated people.

APPENDIX

Opa-Locka & Avanti Business Relationship

2006-2016 Historical Summary:

This is a brief summary of history for the City of Opa-Locka's Automated Meter Reading System. The concept for the Automated Meter Reading System began in May 2006 with a discussion on an Aclara Hexagram System.

Conrad Harris from the City of Opa-Locka indicated that it needed to be a straight streamlined process that required the least amount of involvement from Public Works and Customer Service.

The City moved forward with the project through Johnson Controls Inc. (Energy Saving Company), when the commission approved this project the product was switched from the Avanti Company to AMR International (an older technology at less cost).

After a short period of time the AMR International System began developing issues with the meter communicating with the radio endpoint. At that time JCI came in and tasked the Metering contractor with the remediation of the metering issues. US Bronco (Metering Contractor) then contacted the Avanti Company to supply a new meter.

Unfortunately, these radios were pulse accumulating radios and could only be married to a Pulse register. Shortly after that the Eagle Radio (AMR International product), also began to fail at an alarming rate.

JCI then again tasked US Bronco with the remediation. US Bronco again contacted the Avanti Company to provide the Itron meter reading system and the radio endpoints.

In 2010 the City again contacted the Avanti Company regarding poor read rate performances. The Avanti Company worked with the City and Itron to remediate these issues which were identified as system maintenance issues. Avanti and Itron provided operations and maintenance system training, which when implemented saw the read rate percentage greatly improve. There was an issue that appeared to be linked to the Digital registers not matching the legal read.

In July 2010 the Avanti Company brought Elster AMCO in for warranty discussions. Elster AMCO indicated they would provide advanced warranty replacements in batches of 200 at a time. This included switching the Digital registers under warranty to the InVision Encoder registers at no additional cost. This process was started however, the City did not take advantage of the warranty offer.

In April of 2011 Avanti brought Elster AMCO back in at the City's request. Elster AMCO agreed to the same terms as the previous agreement. Unfortunately, the City, once again did not take advantage of the warranty offer.

In January 2013 Elster AMCO ceased the manufacturing of mechanical meters and parts. Elster agreed to continue warranting broken registers but only the digital registers at this point. The Avanti Company met with the City and tried out a couple of different meters to see where to go from there. Badger Metering was chosen due to their track record with Itron Radio products. During this time the City also concurred with the Avanti Company to change their radio endpoints from the 60W to the 100W at no additional charge.

Between 2013 and 2015 the System was running very well under the project management of The IT Director. The IT Director also began the investigation and data collection for the feasibility of an AMI System in the City, which he believed would allow him to closely monitor the system and proactively deal with any issues that would arise.

With the support of the City Manager, the City began to replace some of their legacy products with new meters and radios. A three phase project was developed to move the City toward an AMI System and a standard operating procedure moving forward. This eventually fell through however the City still does possess all of this information should they look to inquire into the subject again.

In 2016 the City was pretty quiet regarding the AMR or AMI System. Mostly just procuring 10-20 meters every few months. The billing issues continued to get worse. Most of the technical inquires we had were from IT and worked with Itron to resolve them.

In September 2016 the Avanti Company was contacted by Miami-Dade Water and Sewer and The City of Opa-Locka to discuss the development of an AMR System Analysis.

**Below is the detailed project timeline.*

Many of these inputted notes were collected from the time period of 2006 – 2016. They do not represent the views of the Avanti Company. They are simply a collection of visits and events carried out over the above timeline. These timeline events are as accurate as possible but they were collected over time.

Opa-Locka & Avanti Overall AMR System Project Timeline:

9/1/16 - AMR Analysis Discussion began.

12/15 - 6/16 - Very little, if any communication with the Public Works Director. Mostly requests for 10-20 meters at a time very infrequently. Avanti proposed a free AMR system upgrade to begin using the data logging as the AMI discussion has died. Also did not receive any further reports regarding system health.

11/3/15 - Met with the IT Director and the Asst. City Manager to discuss the AMI Project as he indicated that this would be the only way to keep an eye on the system and develop a proper maintenance plan.

10/8/15 - Attempted schedule AMR project overview with Public Works Director who declined, and indicated everything was fine and they were going to work on cleaning out the meter boxes.

9/10/15 - Avanti met with the IT Director who indicated that the read rate has gone back down to the high 70 percentile again. He also indicated that there was a billing truncation issue that they are working with Itron to attempt to resolve.

3/15 - 9/15 - Very little, if any communication with the Public Works Director. Was receiving reports from IT that the read rate was being to fall off again.

2/4/15 - Avanti met with Opa-Locka to discuss locking lids due to high tamper rate in the City regarding the meters.

6/13 - 10/14 - Opa-Locka deployed a meter change out project and was ordering 100-200 meters every few months. Approximately 1200 meters were deployed through this project. Meter system health was very good (operating between 95% - 97.5%, which was the best system performance to date). The IT Director and Avanti were conducting quarterly system health reports. During this time period the IT Director and Avanti completed the informal AMI feasibility analysis. Collected all of the data for the Fixed Network propagation study and all address locations. Towards the end of this time period. The Public Works Director was assigned to become the AMR Project Manager. This was against the advice of The Avanti Company as IT was a crucial component and the IT Director had proven a very capable project manager.

5/17/13 - Avanti met with the Public Works Director to conduct QC inspections on the recent installation. Avanti noted that not all meter boxes were being cleaned out. The Public Works Director indicated he would get with the contractor.

4/16/13 - City Manager has assigned the IT Director as the AMR Project Manager. They ordered and received the 1100 Elster meters with the new Itron 100W's. Installation seems to be going well since the Radios are mounted directly to the meters and can't fall over.

3/7/13 - Avanti met with the IT Director and Public Works Director with UMSI (Meter installation contractor) to discuss Meter box maintenance program. The Public Works Director brought another contractor with him from North Miami who indicated that he would be conducting the work. The IT Director did not agree and cancelled the meeting and indicated that they were going to need to meet with the City Manager.

2/28/13 - Avanti technical services came into Opa-Locka. MV-RS was operating perfectly. The handhelds and other equipment seemed to be functioning well. Biggest issue that we could see was system required significant maintenance.

1/22/13 - Avanti met with the IT Director, The Public Works Director and the New City Manager who was not happy at all with the System. Indicated that he wanted us to come in a fix it. We indicated that the AMCO warranty agreement issue can be re-addressed but would could not guarantee that it is still available.

5/11 - 12/12 - The City Engineer has left the City and the Elster warranty program is not a priority. Business as usual. The Asst. Public Works Director is in charge of the AMR system. Avanti conducted yearly training re-training (10/7/12) with the IT Director and the Asst. Public Works Director and the meter reading department on system operation and maintenance.

4/12/11 - Second Elster AMCO warranty meet with Opa-Locka. Elster again agrees to the warranty deal they had previously offered.

3/1/11 - Avanti met with the City Engineer who wanted to get the Elster warranty project moving forward. Requested that Elster come back to see if the deal is still available.

12/14/10 - Avanti met with the Engineering Supervisor and the City Engineer. They indicated that the City is really having problems and they can't get anything done to action the Elster warranty agreement.

7/10 thru 12/14 - Radio silence on the AMCO meeting. Worked with the Public Works Director on odds and ends in the system.

7/14/10 - First Elster AMCO warranty meeting with Opa-Locka AMR team to go over QC results. Deal struck regarding seed stock request from the City to upgrade Digitals registers that are returned for InVision encoder registers.

4/20/10 - Met with the City Engineer to gain all information for the AMCO warranty discussion. She needs to QC all of the routes to get us an accurate number. She indicated it may take a couple of months.

4/13/10 - Had a meeting with the City of Opa-Locka. The meeting details are below. They stated that 3.2 Million dollars invested though the system only cost 2.2 Million. The Finance Director wanted a timeline to complete the project. All 3 cycles are reading at above 97% but they are still having issues between the radio reads and the manual reads. They have been paying for service since 2005 from JCI. They are having issues with 214 reads in cycle 3 (failed audits) parcel reads. They have 1400 Total services in cycle 3. Cycle 2 has 2400 total services

11/20/09 - The Engineering Supervisor and the City Engineer indicated that the AMR system is having issues and it's mostly due to endpoints falling off of the re-bar.

10/8/09 - Avanti met with Public Works Director, the Supervisor Engineer and the Asst. Public Works Director who indicated they were having some billing issues. Avanti went to the billing department and remediated them. Should not have any additional issues.

8/22/09 - Avanti met with the City Engineer to discuss open issues. The City Engineer stated that after they finished cleaning out the meters boxes in Cycle 3. The route went from 76% to 99% read rate. She also indicated that the 800 meters were not going to be ordered at once but over time. We did not receive any orders after that conversation.

8/1/09 - City of Opa-Locka began route maintenance plan on Cycle 3.

7/30/09 - Itron and Avanti conducted System operation and maintenance training all day. The new City Manager has placed the 800 meter order on hold. Bernie indicated that it would probably be approved at the next commission meeting. Interesting since it has already been approved. Not sure what's going on here.

7/22/09 - Avanti attended the City commission meeting for the item containing the 800 meters and it was pushed through with little resistance. Spoke with the public works director who said we should have the PO soon.

5/31/09 - Avanti met with Fernand Thony to discuss the last 800 meters that need to be installed to finish the project. These were the meters that US Bronco could not gain access and the City indicated that they would finish.

5/1/2009 - Avanti Project Management transitioned from the previous territory manager to the new one.

3/20/09 - Avanti met with US Bronco and JCI to prepare for the close out meeting and discuss all open issues. All issues on the AMR System and Software side had been closed out per the scope of work.

1/17/09 - Met with Asst. Public Works Director and the IT Director to conduct Meter reading software training.

1/16/09 - Itron Meter Reading Software integrated with billing software and fully operational.

9/3/08 - US Bronco procured and began 60WP deployment.

8/22/08 - Began working with the City on installing Itron Meter Reading Software.

7/17/08 - Avanti met with the IT Director, the Public Works Director, the City Engineer and the Customer Service Director to discuss the Itron 60WP replacement program for the failing Eagle radios.

1/11/08- Avanti met with US Bronco to discuss Eagle radio failures and to explore feasibility to changing all units out to Itron 60WP's.

1/11/08 - Avanti met with the Public Works Director and discussed AMR System not working. City believed it was the meters. After further investigation it was proven to be the Eagle radios were failing to communicate with the new digital registers.

11/30/07 - Avanti met with Utilities Customer Service regarding the AMR System not functioning properly. Confirmed by US Bronco, assumed to be Eagle Radios (per US Bronco).

2/14/07 - US Bronco orders AMCO meters from Avanti to replace Butler Meters.

1/9/07 - US Bronco/JCI approach the Avanti Company regarding replacing the existing Butler meters with the AMCO C700 Meters with Pulse registers (to marry to the existing Eagle Radio pulse endpoints).

11/6/06 - JCI tasks US Bronco (Installation contractor) to remediate issues.

9/15/06 - The City began to experience issues with the Butler meter not reading the Eagle radio.

8/6/06 - The City of Opa-Locka procured the AMR International System with Butler meters and Eagle Radios

7/7/06 - Avanti attended the City Commission meeting where JCI received approval for to proceed with the AMR System. However, JCI switched from using the Avanti Company to AMR International without notice to The Avanti Company.

5/27/06 - Avanti attended the City Commission meeting where they passed the financing resolution 3-2. Approval should be at the next meeting.

5/20/06 - The Avanti Company met with the Acting Public Works Director for 3 hours on all issues related to the upcoming AMR project. He agreed that the Hexagram technology was the right technology for the City who have significant meter reading issues.

EXHIBIT "C"

1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
2 IN AND FOR MIAMI-DADE COUNTY, FLORIDA
3 CIRCUIT CIVIL DIVISION
4 CASE NO.: 2017-008285-CA-01(43)

5 GEORGE SUAREZ, et al,
6 Plaintiffs/Counter-defendants,

7 VS.
8 CITY OF OPA-LOCKA, FLORIDA,
9 a municipal corporation,

10 Defendant/Counter-Plaintiff.

11 /

12 Miami-Dade Courthouse
13 73 West Flagler Street
14 Miami, Florida
15 Tuesday, 11:57 - 5:17 p.m.
16 February 26, 2019

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23 This cause came on for hearing before the
24 HONORABLE BEATRICE BUTCHKO, pursuant to notice.

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1 THEREUPON:

2 THE COURT: Good afternoon, everyone.

3 Please be seated. We're here for a special set
4 hearing.

5 Please be seated.

6 Here for a special set hearing on a motion
7 for class certification on George Suarez, et
8 al., plaintiffs versus the City of Opa-Locka.

9 Representing the plaintiffs, make your
10 appearances, please.

11 MR. KUEHNE: For the plaintiffs, Ben
12 Kuehne, Michael Pizzi, and David Reiner.

13 MS. SHAW-WILDER: Good afternoon, your
14 Honor. For the Defendant, City of Opa-Locka,
15 Detra Shaw-Wilder with the law firm of Kozyak
16 Tropin, and along with me, my colleagues:
17 Robert Neary and Dwayne Robinson.

18 THE COURT: And soon to be good afternoon
19 to all of you. Please excuse the Court's delay
20 in starting the hearing an hour late. I was, as
21 you can tell from being in the courtroom, busy
22 on other matters.

23 So yes.

24 MS. SHAW-WILDER: Before we get to the
25 motions at hand, may I address an issue that is

1 very concerning and troubling to me as a member
2 of the bar.

3 THE COURT: Okay.

4 MS. SHAW-WILDER: If I may approach?

7 MS. SHAW-WILDER: Oh, the podium. If I may
8 just approach?

9 | THE COURT: Yes.

10 MS. SHAW-WILDER: Yesterday, your Honor,
11 the plaintiff's attorney filed with this Court a
12 motion for an order to show cause in which they
13 state in writing and on the record that I and my
14 law firm intentionally filed a fraudulent
15 affidavit with the Court. They did so without
16 so much as a phone call to meet and confer or a
17 courtesy call to say there was concern, there
18 are concerns, and we would like to talk to you
19 before we file this motion.

20 I will tell your Honor that the motion
21 itself is completely baseless, meritless, and
22 filed with the intent to impute my character.
23 Your Honor, as you know as lawyers -- as people
24 in general, but as lawyers our reputation is
25 what we have. It is important. And for 20-plus

1 years, I have developed and worked very hard to
2 develop a reputation of integrity and character
3 in this community. I've served on the grievance
4 committee for the state. I've served on the
5 grievance committee for the federal bar, and I
6 take this very seriously, as I hope the Court
7 will also take this seriously.

8 I have gone to countless seminars and
9 things about judges talking about
10 professionalism and civility, and I am always
11 left with the impression that, wow, the judges
12 are the ones with the power to do something
13 about it.

14 I can tell you I was also very disappointed
15 that Mr. Kuehne and Mr. Pizzi would cosign on
16 this, filing something suggesting that I
17 committed fraud on this Court without any merit.

18 So what I would like to ask the Court to
19 do, your Honor, is to ask plaintiff's counsel, I
20 believe it was signed off by Mr. Reiner, that he
21 state which paragraphs in the affidavit that I
22 filed are fraudulent, and that he proffers to
23 this Court his evidentiary and factual basis for
24 saying they are fraudulent. And if he does not
25 have a factual basis, that your Honor

1 immediately strike this motion for the Court
2 record.

3 THE COURT: Okay. So this is a plaintiff's
4 motion for order to show cause. Why plaintiff,
5 through their undersigned counsel and the lead
6 attorney is Ms. Detra Shaw-Wilder. Plaintiff
7 filed this motion on February 25 at 12:13 p.m.
8 Today is the 26th. The motion is really three
9 pages, including the signature page, or four
10 pages, but it only has four substantive
11 paragraphs and apparently is double spaced.
12 Looks like very large font. So it does not have
13 any case law or any real substance to it.

14 The main paragraph I think that Ms.
15 Shaw-Wilder is referring to are paragraphs 4 and
16 5 of the motion referring to Marilyn,
17 M-a-r-i-l-y-n, Petit, P-e-t-i-t hyphen Frere,
18 F-r-e-r-e declaration that the defendants filed
19 in support of their opposition for class
20 certification.

21 So, Mr. Reiner, if you would be so kind as
22 to respond to Ms. Shaw-Wilder's objection to
23 your filing, and I have read the declaration,
24 and so I would ask that you please identify the
25 allegations that are false and fraudulent and

which completely mischaracterize the evidence as you state in your papers.

3 MR. PIZZI: Your Honor behalf of Mr. Kuehne
4 and I, Mr. Reiner, the opinion --

5 THE COURT: You're Mr. Pizzi; right?

6 | MR. PIZZI: Yes.

9 MR. REINER: Your Honor, the affidavit was
10 filed on Friday last week. Late filed affidavit
11 for this class action hearing. The issue is
12 that Ms. Frere, who is a cashier at the water
13 utilities department, has stated on the record
14 that all of the money that came into the water
15 utilities department, all the money for anything
16 that they collected money for, the cashiers, all
17 went into one account.

23 Now, your Honor, this isn't set for
24 today --

25 THE COURT: No, no. It's not set for

1 today, but you have made a very serious
2 allegation against a member of the bar who is
3 present who is a partner -- a long-standing
4 partner in a very prestigious law firm in town,
5 who is I believe the managing partner of that
6 law firm, and I read it, and I was prepared to
7 consider the issues, but you have this member of
8 the bar who is extremely troubled that her
9 reputation has been called into question.

10 MR. REINER: I understand completely.

11 THE COURT: So we are going to address it
12 now.

13 MR. REINER: So I am extremely troubled and
14 extremely upset that an affidavit, which has no
15 evidentiary basis, was served three days before
16 this hearing in an attempt to, if you will,
17 sidetrack this hearing by making a claim that
18 monies -- customer deposits were not segregated
19 within a specific fund, and they were in fact
20 done. And we've asked the former finance
21 director exactly how that operation works, and
22 she explained it to us, and that led to the
23 filing of this motion.

24 Now, the attorneys for the defendants here
25 have been here for eight months. They came in

1 and they said -- they came in the first hearing.
2 I was at that hearing. They said they needed
3 time for this class.

4 THE COURT: I read that in your papers, and
5 I've been lenient with them because they came in
6 late, much to your prejudice in terms of moving
7 the case forward. I agree with you. And you
8 all allowed, you know, me to extend them that
9 courtesy, and I should have, if I didn't,
10 express to the defense how this was really
11 putting you all in a bad position. I know that
12 there were concerns about your statute of
13 limitations, and I am extremely sympathetic with
14 your plight and with your side of the case.
15 Let's put that aside for now.

16 And what I want to know is what parts of
17 the defendant's late filed disclosure or
18 declaration are false and fraudulent? I mean, I
19 see in paragraph 7 of Ms. Petit Frere's
20 declaration where she says cashiers do not fill
21 out separate deposit forms or otherwise
22 segregate the deposits received from water
23 utility customers. You believe that your
24 evidence reveals the contrary is true?

25 MR. REINER: That is absolutely a false

1 statement. Paragraph 7 is absolutely false.

2 THE COURT: Okay.

3 MR. REINER: And so is paragraph 8 and so
4 is paragraph 9. We can put on testimony that
5 will prove that's the case.

6 Your Honor, what's most troubling to me is
7 that Ms. Petit Frere isn't the highest level
8 employee there at the city that they could have
9 gone to get this affidavit. They could have
10 gone to other people. They could have gone to a
11 finance director or a budget director. They
12 could have gone anywhere else to find answers to
13 find out that paragraphs 7, 8, 9 were incorrect,
14 were untrue. They didn't do that, and that's
15 what is troubling to me. That's what led to our
16 filing of the motion that we filed.

17 THE COURT: So apparently this woman is a
18 utility billing supervisor that oversees the,
19 quote, cashier area, end quote. And that she,
20 according to paragraph 9, at the request of
21 counsel, has reviewed the city water utility
22 code provisions, the deposit slip, and the
23 city's charter. She goes on to say that she has
24 not identified nor is she aware of any provision
25 in any of those sources that require the city to

1 place the customer deposits into an account
2 separate from the city's water utility operating
3 account.

4 MR. REINER: Correct, your Honor. And
5 that's the problem is that she did, in fact,
6 code in -- her people in the cashier's office,
7 everybody in the cashier's office codes in what
8 the exact money that's coming in is to go to.
9 And that gets -- that code is what segregates
10 the funds.

11 THE COURT: Well, apparently maybe that's
12 true, but what this says is that there's nothing
13 that requires the city to place the customer
14 deposits into a separate account. I think the
15 paragraph before that talks about the coding --
16 no. Paragraph 8 says she's never segregated, so
17 I don't know if it's just a technicality.

18 You're saying that the money is coded so
19 that it can be readily identified at a later
20 date.

21 MR. REINER: It's coded so it can be
22 segregated into the proper accounts.

23 THE COURT: So there is a separate bank
24 account for deposits.

25 MR. REINER: Absolutely.

1 MR. KUEHNE: We'll show that to you, Judge.
2 We have that bank account statement.

3 MS. SHAW-WILDER: Your Honor, there's a
4 difference between -- if I may because this is
5 serious.

6 If every time a lawyer files an affidavit
7 that says something factually different that
8 they're going to be subjected to a written motion
9 that says they fraudulently submitted something
10 in the court, that would be -- that is -- that's
11 not what happened.

12 This says -- he pointed to paragraph 9.
13 There is nothing fraudulent about paragraph 9.
14 He may disagree with it, but paragraph 9 simply
15 says she reviewed these, she did not identify,
16 and she is not aware. Does he have any basis to
17 think that she did identify and she is aware?
18 No.

19 Paragraph 8. It says, in the 24 years I
20 have been working the billing department, I have
21 never segregated and never been advised or seen
22 any form or process where individuals of
23 customer deposits were segregated from the
24 general water utility funds.

25 THE COURT: I think what's happening here

1 is that the plaintiffs are taken aback because
2 of two things: What they perceive as a late
3 filing of this affidavit, and they appear to
4 have evidence that would disprove what the
5 declarant is saying. So those things combined,
6 I think, caused a reaction that was perhaps an
7 exaggeration in what is an attack on somebody's
8 integrity.

9 MR. REINER: I appreciate that
10 characterization; however, it was the defense
11 counsel, the defendant, that picked the appellee
12 in this case. They purposefully picked somebody
13 that would sign this affidavit on behalf of the
14 city. If they had picked somebody else,
15 somebody with more knowledge of exactly how the
16 funds are segregated, then we would have had a
17 completely different affidavit. And in fact,
18 your Honor --

19 MR. PIZZI: Your Honor --

20 THE COURT: Mr. Pizza, you are out of
21 order.

22 MR. REINER: And in fact, your Honor, they
23 did another late filing affidavit of Geovanni
24 Stevenson yesterday afternoon, which contradicts
25 this affidavit, where they admit that funds are

1 segregated.

2 THE COURT: Is it the declaration of
3 Johanna Flores.

4 MR. REINER: That was the one that came in
5 just a few minutes ago.

6 THE COURT: I didn't see the other one.

7 MR. REINER: This is the declaration of
8 Geovanni Stevenson.

9 THE COURT: Let me see a copy of that.

10 So what we'll do here is today we have the
11 motion for class certification that's been
12 pending for, I think, a year or more.

13 MR. PIZZI: Little over a year.

14 THE COURT: And we have a response to that
15 in opposition, and unfortunately for the
16 defense, I have not received a concession from
17 the other side. They're standing by their
18 motion. So I -- they say they have information
19 that disproves the declarant Petit Frere's
20 allegation. So I'm going to set aside for today
21 plaintiff's motion for order to show cause, and
22 we're going to have to have a hearing on it.

23 MS. SHAW-WILDER: Okay. We will have a
24 hearing; however, for this record, having an
25 affidavit or believing that you disagree with

1 the facts of this one witness is not fraudulent.

2 It happens every day in this Court where lawyers
3 file an affidavit that says facts A, the other
4 says facts B, and the parties disagree.

5 What this says is I know that this is
6 false. I didn't believe this witness. I asked
7 this witness to do it, and then I intentionally
8 filed a fraudulent affidavit with the Court.
9 They have shown this Court no -- other than
10 argument, no factual basis, no evidentiary basis
11 for saying that an attorney, a member of this
12 bar, has filed a fraudulent affidavit.

13 I, your Honor, would ask that you not let
14 this stand in the public record, that you move
15 to strike this motion for order to show cause.

16 We can deal with the factual disputes.
17 I'll have my witnesses; they'll have theirs, and
18 we'll deal with it. But to allow it staying in
19 the record, I would ask that you strike it from
20 the record, and we deal the evidence that would
21 come before this Court because we'll be prepared
22 to address it today.

23 THE COURT: Fraud allegations in Florida
24 have to be specifically pled and specifically
25 stated, and, I mean, this two-page motion does

1 not set out your fraudulent -- your accusation
2 of fraud with much specificity. You would agree
3 with that?

4 MR. REINER: Your Honor, we were two days
5 before a hearing. There could have been more
6 specificity in there. If you would like me to
7 replead it and re-file it, we will do that, but
8 we've also filed a motion to strike.

9 And Mr. Kuehne reminds me again that this
10 is something that's addressed to the defendant,
11 City of Opa-Locka, and not necessarily the City
12 of Opa-Locka's outside counsel. So it's a
13 motion for the city to show cause, not --

14 MR. KUEHNE: Your Honor --

15 MS. SHAW-WILDER: It says I as lead counsel
16 intentionally filed a fraudulent affidavit to
17 mislead this Court, and what I propose is that
18 we move to strike it from the record at this
19 time. It has no factual basis. If they want to
20 file it again after we deal with this today,
21 your Honor, they can, but I would ask that you
22 not let this stand in the record.

23 And then we can deal with the other
24 questions about whether or not there's a, quote,
25 late filed affidavit. We were here today. We

1 were very much in our rights to bring the
2 affidavit for the first time today. We wanted
3 to give them notice.

4 THE COURT: Let's talk about the motion to
5 strike the evidence. Who wants to be heard on
6 that? We can't have two or three lawyers on the
7 same issue. You can split the issues however
8 you want.

9 MS. SHAW-WILDER: Are you striking it from
10 the record, your Honor, the order to show cause?

11 THE COURT: I want to hear the motion to
12 strike -- is there a motion to strike the
13 affidavit?

14 MR. KUEHNE: Yes, your Honor.

15 THE COURT: Let me consider that.

16 MR. KUEHNE: Filed on 2/25 at 12:13, motion
17 to strike declaration of Marilyn Petit Frere.
18 It asserts after the introduction that the
19 affidavit itself is inaccurate, and it is
20 apparently outside of her scope of knowledge
21 because the city in fact -- the city in fact has
22 a water customer deposit account. Every dollar
23 that is put into the water customer deposit is
24 identified as a water company deposit. Those
25 funds are automatically segregated. Those funds

1 are put into the City National Bank water
2 deposit customer account, and that's where those
3 funds go. This individual is either somebody
4 who has no knowledge of that process or --

5 THE COURT: Do you have an affidavit that
6 supports that?

7 MR. KUEHNE: Your Honor, we have the
8 documents themselves.

9 THE COURT: Okay. So I'm going to take all
10 these motions under advisement. I would really
11 like to deal with the motions that we have here
12 today, which is the motion for class
13 certification.

14 MS. SHAW-WILDER: Your Honor, for
15 clarification, on the issue of late, there was
16 no pretrial order. There was nothing that said
17 there was a deadline. It's -- people we have
18 hearings, so we can come and bring an affidavit.
19 They're going to bring witnesses that I don't
20 know they're calling, exhibits that I don't know
21 they're calling. I had asked if they would
22 agree to exchange exhibits or witnesses and we
23 got no response.

24 Do I need to call the witnesses because I
25 can call the witnesses?

1 THE COURT: Hold on a second. Just so we
2 can get back on track, the motion to strike the
3 declaration of Maryln Petit Frere is denied.

4 The motion to strike the order for show of
5 cause is granted without prejudices to re-file
6 with greater specificity.

7 Let's move forward with the class action
8 certification, please.

9 MR. PIZZI: May I, your Honor?

10 THE COURT: Yes.

11 MR. PIZZI: We have some witnesses who have
12 been waiting while we've been arguing, and
13 they're ready to go.

14 THE COURT: What are the witnesses going to
15 testify to, and what witnesses are we talking
16 about?

17 MR. KUEHNE: Your Honor, the witnesses will
18 offer the factual predicate. The lawyers will
19 argue the legal analysis for the certification
20 factors. One is numerosity; two is common
21 questions of fact law; three, claims of the
22 representatives are typical of the sought class;
23 and four, the representatives will adequately
24 represent the parties.

25 Additionally, sort of 4-A is the

1 representatives have engaged counsel
2 sufficiently competent to handle these matters.
3 And 4-B, that the same issues predominate over
4 individual considerations.

5 Rule 1.220-A says those are the factors for
6 class certification. Although we believe --

7 THE COURT: How many witnesses are you
8 going to call?

9 MR. KUEHNE: Your Honor, we think we're
10 going to call four witnesses. We have more
11 available if we feel we need to fill in, and to
12 give you a summary -- and by the way, your
13 Honor, we did, in fact, some time ago notice the
14 defendants with our list of witnesses. So we
15 have done that.

16 THE COURT: So the issues for the class
17 certification are the deposits and how they were
18 kept, and then the other issue is the billing;
19 right?

20 MR. KUEHNE: Yes, your Honor. We've asked
21 for two --

22 THE COURT: So in terms of numerosity,
23 common question, typicality, and adequacy of the
24 representative class member to represent the
25 group as a whole, just keep your direct

1 examination questions on point, please.

2 MR. KUEHNE: Yes, your Honor. And so that
3 the Court understands the roadmap, we've asked,
4 sought Class 1 and Class 2 certifications. So
5 just to remind the Court, because you are
6 correct that our motion for class cert was filed
7 February 20, 2018, so it's about a year ago.

8 THE COURT: I read it everything for today.
9 So Class 1 deals with the deposit, and Class 2
10 is improper billing. No?

11 MR. KUEHNE: Essentially, yes, Judge.

12 MS. SHAW-WILDER: Would you like us to also
13 hold our legal argument so we can get the
14 witnesses on?

15 THE COURT: It's up to you all. If you
16 want to make opening statements, you can, but
17 I've read all the papers.

18 MR. KUEHNE: We think we can go ahead with
19 witnesses so that the Court can move this along.

20 THE COURT: Do you agree with that?

21 MS. SHAW-WILDER: I will go along with the
22 plaintiff. You have read it. The law is very
23 clear. It's their burden to establish by
24 evidence.

25 THE COURT: Okay. Let's call your first

1 witness, please.

2 MR. PIZZI: The plaintiffs call Charmaine
3 Parchment.

4 THE COURT: Ma'am, come forward.

5 THEREUPON:

CHARMAINE PARCHMENT

7 Was called as a witness and, having been first duly
8 sworn and responding "I do," was examined and
9 testified as follows:

10 THE COURT: Could you spell your first
11 name?

12 THE WITNESS: C-h-a-r-m-a-i-n-e.

13 THE COURT: And your last name?

14 THE WITNESS: P-a-r-c-h-m-e-n-t.

19 You're going have to try to use this
20 ridiculous court voice. That's a little better.

21 | Okay. All right. Let's go.

22 MR. PIZZI: Please the Court. Could you
23 please -- has the witness been sworn?

1 spelled it. Ask your first question, please.

2 DIRECT EXAMINATION.

3 BY MR. PIZZI:

4 Q. Ms. Parchment, tell us what you do for a
5 living?

6 A. Currently I'm the controller in the City of
7 Clearwater Public Utilities Department.

8 Q. And what are your duties?

9 A. My duties include maintaining and managing
10 the budget for regular operation and also for
11 construction, capital improvement projects.

12 Q. Just briefly tell the judge your
13 educational background.

14 A. I have a bachelor's in accounting for
15 Tuskegee University.

16 THE COURT: From what university?

17 THE WITNESS: Tuskegee. I also have a
18 master's of economics from Tuskegee, and I have
19 an MBA from University of Phoenix.

20 BY MR. PIZZI:

21 Q. Did you ever work in the City of Opa-Locka?

22 A. I did.

23 Q. Please briefly tell the judge what your job
24 was there.

25 A. I began with the City of Opa-Locka in 2009,

1 and I started out as the branch writer coordinator.

2 THE COURT: The branch what?

3 THE WITNESS: Writer coordinator. I was
4 then promoted four years later to accountant. I
5 was promoted afterwards to assistant finance
6 director and 2015 to finance director.

7 BY MR. PIZZI:

8 Q. How long were you the finance director,
9 Ms. Parchment?

10 A. About two years.

11 Q. Does the City of Opa-Locka have a public
12 water utility?

13 A. Yes, they do.

14 Q. And in what department is the City of
15 Opa-Locka Water Utility?

16 A. The utility billing portion of the water
17 utilities is under the finance department.

18 Q. Okay. Was water utility billing in the
19 City of Opa-Locka under your supervision as finance
20 director?

21 A. Yes, it was.

22 Q. You were in charge of that department?

23 A. I was.

24 Q. During what period of time were you in
25 charge of water utility billing at Opa-Locka?

1 A. From the end of August 2015 to August 2017.

2 Q. Okay. Do you know somebody named Maryln
3 Petit Frere?

4 A. I do.

5 Q. Who is that?

6 A. She was the utility billing supervisor from
7 2015. Before that, she worked as a customer service
8 in utility billing.

9 Q. Did she work for you?

10 A. Yes, she did.

11 Q. Did everybody in utility billing, including
12 Ms. Petit Frere, work for you?

13 A. Yes, they did.

14 Q. Now, did the City of Opa-Locka require
15 water -- well, did people in Opa-Locka have a choice
16 to get their water from anyplace other than the City
17 of Opa-Locka?

18 A. No.

19 Q. So did everybody, every water customer in
20 Opa-Locka, have to deal -- have to have an agreement
21 with that one water utility?

22 A. Yes.

23 Q. The same one for everybody?

24 A. Same one for everybody, yes.

25 Q. Were the procedures in terms of utility

1 billing, were they applied across the board to
2 everybody?

3 A. Yes.

4 Q. Were there any water billing utility
5 procedures designed differently for one person or
6 another?

7 A. No.

8 Q. The procedures on customer deposits, were
9 they the same for everybody in the city, or were
10 there different procedures for one person or another?

11 A. The procedures were the same.

12 Q. So all procedures were uniform to the
13 entire class of residences; correct?

14 A. Yes.

15 Q. And businesses?

16 A. And businesses.

17 Q. Were residents required and were businesses
18 required to place deposits with the City of
19 Opa-Locka?

20 A. Yes.

21 Q. Could they contract for water services
22 without placing a water deposit?

23 A. No.

24 Q. Were water deposits -- is it true, is it a
25 true statement that water deposits in the City of

1 Opa-Locka were never segregated from other water
2 utility funds?

3 A. That's not true. Prior to me, it was
4 segregated and afterwards they were being done.

5 Q. Were water -- to your personal knowledge,
6 were customer deposits in the City of Opa-Locka
7 always placed in a segregated unique customer deposit
8 bank account?

9 A. Always in a separate bank account.

10 Q. Always?

11 A. Always.

12 Q. So any statement -- a statement that water
13 utility deposits, customer deposits, were never
14 placed in a separate segregated account, that's not
15 true?

16 A. No. It's not true.

17 Q. Okay. Was it well known in the City of
18 Opa-Locka that customer water deposits were placed in
19 a segregated account?

20 A. Yes, it was.

21 Q. Was it fairly common knowledge?

22 A. Very common knowledge.

23 Q. It wasn't a secret; right?

24 A. No.

25 Q. People should know that; right?

1 A. They would know that.

2 Q. Everybody in water utility billing should
3 know that; correct?

4 A. Yes.

5 THE COURT: How would everybody know about
6 that?

7 THE WITNESS: Everyone have access.

8 THE COURT: And who is everyone?

9 THE WITNESS: Those of us who work in the
10 finance department would have some knowledge of
11 the bank statements, and there is numerous bank
12 statements. For water and sewer there were
13 three bank statements: one was for general
14 operation, one was for a reserve as required.

15 THE COURT: General operation.

16 THE WITNESS: Right.

17 THE COURT: Reserve.

18 THE WITNESS: Reserve. And city customer
19 deposit.

20 THE COURT: Thank you.

21 THE WITNESS: You're welcome.

22 BY MR. PIZZI:

23 Q. Now, Ms. Parchment, how did the money get
24 from the cashiers into the segregated account?
25 Explain that process to Judge Butchko.

1 A. Okay. The process begins when the cashier
2 receive a payment. At which point, a code is
3 assigned for customer service, and that makes the
4 cashier aware of payments for the deposit. Now for
5 regular payment, there's a different code. Once it's
6 put in the system, the financial system, the
7 following -- and they close at the end of the day, a
8 report is run, and at that point, an accountant sits
9 with the supervisor, and they do the deposit.

10 The following morning, an accountant in finance
11 will interface for the community, which is the
12 utility module or financial system into the
13 e-financial system, which is the accounting financial
14 system.

15 THE COURT: Okay. Say that again. So at
16 the end of the day, the codes are run. And then
17 what happens?

18 THE WITNESS: They get a report from
19 e-community.

20 THE COURT: From e-community?

21 THE WITNESS: Yes. It's a financial
22 system, which shows the dollar amount that goes
23 to utility billing, and which shows the dollar
24 amount that goes to general fund, or for all the
25 government operations.

1 THE COURT: It breaks down the money by
2 code.

3 THE WITNESS: By code.

4 THE COURT: And then what happens?

5 THE WITNESS: At which point, the funds are
6 separated, and two deposit slips are filled out:
7 one for water and one for general government,
8 and that goes to the bank. Everything -- the
9 money goes into the water and sewer operating
10 fund.

11 The following morning, the account is
12 interfaced from e-community into e-finalization,
13 which is government financial system. The codes
14 of two different accounts number assigned to
15 them. It tells you which bank account it goes
16 into and which account it should go to, which is
17 where you determine -- it shows that this amount
18 of funds is for customer deposit. This amount
19 of funds is for regular water and sewer services
20 and so forth.

21 At the end of that time, the accountant
22 interfaces and posts it to the ledger. Now, we
23 generally at some point try to strew up to make
24 sure the funds that's assigned to that account
25 number is in the bank account. We don't have a

1 regular schedule, but it's usually done by the
2 end of the year during the audit.

3 BY MR. PIZZI:

4 Q. Okay. Ms. Parchment, does the City of
5 Opa-Locka have a bank account that specifically
6 states customer deposits?

7 A. When I left, they had one.

8 Q. Did you see those bank accounts?

9 A. Yes.

10 Q. As far as you were there in Opa-Locka, was
11 that always in existence?

12 A. Yes.

13 Q. The customer water deposits, were the
14 customer water deposits placed exclusively in that
15 segregated bank account?

16 A. Yes.

17 Q. Were they intermingled with other funds?

18 A. No.

19 Q. Were they intermingled with the storm or
20 utility fund?

21 A. No.

22 Q. Were they intermingled in the operational
23 budget?

24 A. No.

25 Q. People like Ms. Petit Frere and other

1 people in the cashier department, the billing
2 department, did they receive training in the coding,
3 in the different forms of coding?

4 A. They received the codes that we assigned to
5 the line item. I'm not aware of them getting
6 specific training because, as I said, most of them
7 were there prior to me.

8 Q. What about the -- why were the customer --
9 during the period of time you were finance director,
10 was part of your job to maintain the integrity of the
11 city's bank accounts?

12 A. Yes, it was.

13 Q. That was pretty important?

14 A. It was important.

15 Q. Explain to the judge, her Honor, why were
16 the customer deposits placed segregated into a
17 separate customer water deposit account only? What
18 was the purpose behind that?

19 A. The water deposit was a restricted account
20 to begin with. You recognize on the accounting code
21 as restricted. That's because the customer at any
22 point can decide if they want their money back. We
23 have to be able to pay that back. It's without
24 ordinances or resolution from the board, we cannot
25 just automatically -- we should not automatically use

1 that money because once the customer want their money
2 back, whether they're closing their account or
3 simply, you know, saying they're moving on, we have
4 to be able to repay that deposit.

5 Q. Regarding the customer water deposit
6 account, as finance director, who did that money --
7 when the customer deposits the water deposit, who did
8 the water deposit money belong to?

9 A. The customer.

10 Q. Did that money belong to the city?

11 A. No.

12 Q. It was the customer's money?

13 A. It was the customer's money.

14 Q. And it was there only to give it back to
15 them; right?

16 A. Correct.

17 Q. Did the city have any right to spend that
18 money on something else?

19 A. No.

20 Q. Are you aware of any charter provision,
21 law, ordinance, regulation, that permitted the City
22 of Opa-Locka to spend the customer water deposits on
23 anything other than giving it back to the customers?

24 A. I'm not aware of any ordinances or
25 resolution that authorized that transaction.

1 Q. The city was not permitted to spend the
2 customer deposits -- could the city spend the
3 customer deposits?

4 A. Not -- no. No. They could not without
5 authorization.

6 Q. Could they spend the customer deposits to
7 fill a budget gap?

8 A. No.

9 THE COURT: If a customer was late in
10 paying the bill, could the city apply the
11 deposit to the late bill?

12 THE WITNESS: No. The city can only apply
13 when they close it. When the customer close
14 their account. Once they close their account
15 and there's an outstanding amount, they can
16 apply the deposit to the outstanding amount. If
17 the customer do not have an outstanding amount,
18 they're refunded the total of the deposit.

19 BY MR. PIZZI:

20 Q. Ms. Parchment, with that backdrop, that the
21 money was placed -- that the customer deposits were
22 placed in a segregated account labeled customer
23 deposits that could not be touched, with that
24 backdrop, how much -- at the end of 2014, how much
25 money was in the customer water deposit segregated

1 account?

2 A. From memory, a little bit over \$16,000.

3 Q. I'm talking --

4 A. End of '14?

5 Q. Yes.

6 A. Oh, at the end of '14 at the audit, we had
7 about \$1.6 million.

8 Q. At the end of 2014, there was \$1.6 million
9 in the untouchable restricted customer water deposit
10 account; correct?

11 A. Correct.

12 Q. And who did that \$1.6 million belong to?
13 Did that \$1.6 million belong to the city or did it
14 belong to the customers?

15 A. It belonged to the customers who gave that
16 deposit for utility services.

17 Q. Okay. Now, how much was that account
18 projected to grow to by the end of 2015?

19 A. It was projected about -- to grow to about
20 1.8, thereabout.

21 THE COURT: It was an interest-bearing
22 account?

23 THE WITNESS: For a portion of time, yes,
24 it was.

25 THE COURT: The growth that you testified

1 attributable to this projection, was that
2 related to interest rate or increased customer
3 deposits?

4 THE WITNESS: Increased customer deposits.

5 BY MR. PIZZI:

6 Q. When you became finance director, are you
7 with me?

8 A. Yes.

9 Q. How much money was in the customer water
10 deposit account when you became the finance director
11 in 2016?

12 A. When I became the finance director, August,
13 end of August 2015, there was only \$16,000. A little
14 over \$16,000.

15 THE COURT: So end of August 2015 or 2016?

16 THE WITNESS: End of August 2015.

17 THE COURT: There was how much?

18 THE WITNESS: A little over \$16,000.

19 BY MR. PIZZI:

20 Q. So now I'm a little confused. I want to
21 make sure I understand. There was \$1.6 million in
22 2014 in the customer -- in the exclusive segregated
23 cannot touch water account; right?

24 A. Correct.

25 Q. And the city was not allowed to touch that

1 because that was -- the city couldn't touch that 1.6
2 million because it was the customer's money; correct?

3 A. Correct.

4 Q. They had to give it back to them; correct?

5 A. Correct.

6 Q. They couldn't spend it?

7 A. No.

8 Q. Now, when you became finance director the
9 end of 2015, 2016, are you saying the 1.6 million was
10 gone?

11 THE COURT: Okay. There's not a jury
12 trial. You don't have to get all dramatic.

13 MR. PIZZI: I won't. I'll move on.

14 THE COURT: The point is -- and what
15 happened to the difference? At the end of 2014,
16 there was 1.6 million, according to your memory,
17 and at the end of 2015, there was only 16,000.

18 Do you know what happened to the money?

19 THE WITNESS: During the course, during
20 that time, the city was actually going through
21 some financial hardship, and the previous
22 financial director authorized the transfers of
23 those money.

24 THE COURT: To where?

25 THE WITNESS: From the customer service

1 bank account to the water and sewer operating
2 bank account, and some also went to general
3 government to pay for payroll and other
4 expenditures.

5 BY MR. PIZZI:

6 Q. Ms. Parchment, I want to -- you said there
7 was \$16,000 left; correct?

8 A. Yes.

9 Q. Were you ever requested to make transfers
10 from that remaining \$16,000?

11 A. I was asked to make transfer from that
12 account as well as other restricted accounts.

13 Q. Okay. Did you agree to transfer any money
14 from the \$16,000 in the customer deposits?

15 A. No.

16 Q. Why?

17 A. For me, it's restricted, and, two, I needed
18 authorization from the commissioners to do that.
19 Without all of that, I was not going to do that.

20 Q. But the 1.6 million was gone by that point?

21 A. Yes.

22 MR. PIZZI: I want to show you, I have a
23 certified copy of a document that I received
24 from the city.

25 May I hand it to the witness, your Honor?

1 THE COURT: Did you show it to opposing
2 counsel?

3 MR. PIZZI: I'm going give them a copy.

4 THE COURT: Is this marked for
5 identification?

6 THE CLERK: Plaintiffs' 1-A.

7 MR. PIZZI: Certified public record.

8 THE COURT: Hand it to my clerk, please.

9 MR. PIZZI: I will. Sure.

10 THE COURT: Plaintiffs 1-A for
11 identification.

12 MR. PIZZI: May I approach, your Honor?

13 THE COURT: Yes. You can move around at
14 will.

15 BY MR. PIZZI:

16 Q. Ms. Parchment, can you tell me what exhibit
17 -- are you familiar with city budgets for the City of
18 Opa-Locka?

19 A. Yes.

20 Q. Was it your job to prepare the budgets?

21 A. One of them.

22 Q. Can you tell me what Exhibit 1-A is?

23 A. Exhibit 1-A is the City of Opa-Locka
24 proposed budget for fiscal year 2018 to 2019.

25 Q. I want you to look at page 17 of the City

1 of Opa-Locka's fiscal year 2018 and 2019 budget?

2 THE COURT: Is this in evidence?

3 MR. PIZZI: I'm going to move for the
4 admission of Plaintiff's 1.

5 THE COURT: Is there any objection?

6 MS. SHAW-WILDER: Objection, your Honor.

7 I don't know if this is a final budget,
8 draft budget. This is dated 2018, and the
9 witness was no longer with the city.

10 THE COURT: Lack of foundation. Sustained.

11 MR. PIZZI: It's a certified record of the
12 city.

13 THE COURT: Well, you didn't establish
14 that.

15 MR. PIZZI: Your Honor, it's a certified
16 public document of the city. It's
17 self-authenticating and admissible
18 automatically.

19 THE COURT: Response?

20 MS. SHAW-WILDER: Where is it
21 self-authenticating?

22 MR. PIZZI: If you look at the back of the
23 document, your Honor, this was certified by the
24 city clerk. It's a certified
25 self-authenticating document.

1 THE COURT: You already said that. I just
2 said response and I'm waiting. It's just plain
3 and simple evidence code, you guys.

4 MS. SHAW-WILDER: Yes, your Honor. With
5 that certification of the city clerk, we don't
6 object.

7 THE COURT: Okay. It's admitted.

8 THE CLERK: Plaintiff's Exhibit 1 admitted.

9 BY MR. PIZZI:

10 Q. Ms. Parchment, I want you to read to me --
11 it's a long document. I want you to read to me one
12 paragraph. I want you to read the -- to Judge
13 Butchko the sixth paragraph on Exhibit 1, so we can
14 hear you?

15 A. Page 17. The paragraph reads, in addition
16 to the above mentioned vendors or trader, the city is
17 also required to replenish the 1.6 million of utility
18 customer deposit, which have been depleted. The
19 means by which this shall be accomplished has been
20 underlined in the attached financials, which reflect
21 growth in the deposits --

22 THE COURT: Wait. Replenish the water
23 deposit which what.

24 THE WITNESS: Replenish the \$1.6 million of
25 utility customer deposit, which have been

1 depleted.

2 BY MR. PIZZI:

3 Q. Ms. Parchment, can I have that back?

4 A. I didn't finish the paragraph.

5 Q. Yes. Finish the paragraph.

6 A. The means by which this shall be
7 accomplished have been outlined in the attached
8 financials which reflect growth in the deposits
9 commencing FY 2019 with a targeted 1.6 million
10 accomplished within a five-year period.

11 Q. So basically just so I understand, would
12 the 2018/2019 budget, based on your experience with
13 budgets, would that be the most recently passed
14 budget?

15 A. Yes. It would be.

16 Q. So based on their most recently passed
17 budget for 2019, the City of Opa-Locka is planning to
18 replenish \$1.6 million in utility customer deposits;
19 correct?

20 A. That's correct.

21 Q. And they're planning to replenish the
22 customer deposits because they were depleted?

23 A. Correct.

24 Q. And according to -- and, finally, according
25 to the city's budget for 2019, the city of Opa-Locka

1 plans on beginning the process. They plan on
2 beginning the process of replenishing the 1.6 million
3 of customer deposits that were depleted. They're
4 going to start that five-year process hopefully in
5 2019?

6 A. Yes.

7 Q. Now, I'm going to move on to another area.
8 I'm not going to be much longer, Ms. Parchment.

9 A. Okay.

10 Q. Did the City of Opa-Locka have agreements
11 with all of the water customers?

12 A. Yes, they do.

13 Q. Was the city required by the code to have
14 an agreement with every water customer?

15 A. By the code, yes.

16 Q. So just so be clear, this does not apply to
17 the class reps in this case. This requirement to
18 have an agreement, the requirement to have an
19 agreement like the customer deposits applied across
20 the board to the entire class of residents and
21 businesses; correct?

22 A. That's correct.

23 Q. Applied equally?

24 A. Right.

25 Q. In other words, with regard to customer

1 deposits, everybody was in the same boat; correct?

2 A. Every water customer had to pay a deposit.

3 Q. Okay. They were all on the same boat?

4 A. Yes.

5 Q. No exceptions?

6 A. No exceptions.

7 Q. And with regard to having an agreement to
8 use city water services, was everybody in the same
9 boat?

10 A. Yes.

11 Q. No exceptions?

12 A. No exceptions.

13 Q. Okay. Now, did it ever come to your
14 attention as finance director that the -- by the way,
15 regarding this agreement, what was the city required
16 to do?

17 A. The city required that the customer give
18 them the deposit and provide -- for that, the
19 customer will receive accurate bills as according to
20 the audits.

21 Q. So your understanding of the contract with
22 all the residents was that they give you the deposit
23 and you have to give them accurate billing.

24 A. Right. And the customer paid monthly for
25 their water services.

1 Q. Pretty simple.

2 A. Yes.

3 Q. Now, the billing was supposed to be based
4 on actual consumption; correct?

5 A. Correct.

6 Q. Based upon water meters; correct?

7 A. Yes.

8 Q. Did the city live up to its bargain
9 regarding accurate billing?

10 MS. SHAW-WILDER: Objection, your Honor.

11 MR. PIZZI: I'll restate the question.

12 THE COURT: Okay.

13 BY MR. PIZZI:

14 Q. Did it ever come to your attention that
15 there were problems regarding the accuracy of the
16 water billing?

17 A. Yes. It came to my attention.

18 Q. Okay. And how did that come to your
19 attention?

20 A. There were numerous complaints about the
21 water bills. It was basically consuming the
22 authorities sometimes for the amount of customers
23 that would show up to my office complaining about the
24 water bill. When I first found out, they were
25 estimating the water bills since 2006. That's as far

1 back as I got.

2 Q. Let me go back for a second. When did the
3 city start estimating the water bills based on your
4 knowledge?

5 A. Based on my research --

6 Q. As opposed to using the meters to gauge
7 consumption. When did the city start estimating the
8 bills as opposed to using meters to gauge
9 consumption? When did that practice start, based on
10 your research?

11 A. I was able to track it to 2006.

12 Q. About ten years ago?

13 A. More than ten years ago.

14 Q. Little more than ten.

15 A. Yes.

16 MR. PIZZI: Now, I'm going to show you
17 another document.

18 THE COURT: Ma'am, I have a question. Did
19 you deal with some of these complaints yourself?

20 THE WITNESS: I had to, yes, as the finance
21 director.

22 THE COURT: How did the citizens know that
23 their bill was wrong or suspicious to actually
24 come in to complain to the city? What triggered
25 that?

1 THE WITNESS: Well, what triggered it was
2 that the bill was very high, and they were
3 coming to complain that their bill, for whatever
4 purpose, nothing changed or whatever, their
5 bills were high.

6 BY MR. PIZZI:

7 Q. So you said to the judge, the complaints
8 were -- were the complaints uniformly that the bills
9 were inflated?

10 A. Yes, very high.

11 Q. These people would come to your office.
12 The buck stopped with you. Is that a fair statement?

13 A. Yes. To make a decision how to handle it,
14 yes. It started with me, and then I have to take it
15 to the city manager.

16 Q. Kind of like a complaint department?

17 A. Yes.

18 Q. Were the complaints uniformly that the
19 water bills were too high?

20 A. Yes.

21 Q. Is that a common occurrence?

22 A. It was a common occurrence.

23 Q. Now, was that limited to a few people, or
24 was it across the board?

25 A. It was across the board. It was from

1 businesses. It was from regular residents. Seniors.
2 You name it. Schools. You name it.

3 Q. So it was a -- the fact -- the complaint
4 that the water bills were inflated and too high and
5 not accurate, that was a complaint common across the
6 city?

7 A. Yes, it was.

8 Q. They were all in the same boat?

9 A. Yes.

10 MR. PIZZI: Now, I want to show you what
11 I'm going mark as --

12 THE COURT: Do you have any memory of maybe
13 a resident who lived alone who came in to
14 complain that nothing changed in his or her life
15 and the bill was different?

16 THE WITNESS: I had a lady. I remember her
17 because she brought her granddaughter. She
18 didn't speak much English, and her bill was so
19 high she didn't understand why. I had to make a
20 special appointment for her because she had her
21 granddaughter. She said that she lives alone.
22 She don't know why her bill is going over 100
23 and something dollars a month. I had to arrange
24 to have public works go out and see what's going
25 on out there.

1 THE COURT: To make sure there wasn't a
2 pipe burst.

3 THE WITNESS: A leak or something, yeah.

4 THE COURT: Do you remember the
5 investigation into that lady's claim?

6 THE WITNESS: Eventually, I had to turn it
7 over to the city manager because at that point,
8 you know, there was no leak, and she was living
9 on social security. So we could give her a
10 payment plan, but that didn't really address her
11 issue.

12 BY MR. PIZZI:

13 Q. Did anyone ever complain that they were
14 being billed for -- did any businesses ever complain
15 that they were being billed for water and the
16 business was shutdown?

17 A. I'm not aware of a business being shutdown.
18 I know they complained they would be billed for
19 water, but that they don't use much water. They
20 don't use water. They're not that kind of business.

21 Q. Did people begin showing up in -- did this
22 become a wide topic at commission meetings you
23 attended?

24 A. It was a very wildly-contested subject
25 matter at almost every commission meeting.

1 Q. So during the period of time you were
2 finance director, did people come and complain about
3 these excessive water bills, inaccurate bills at
4 virtually every meeting?

5 A. Almost every meeting, yes.

6 Q. Across the board?

7 A. Yes.

8 Q. Not just the five people who brought this
9 lawsuit?

10 A. No. There were lines of people. There
11 would be a line of people. There would be a line of
12 people at commission meetings complaining about their
13 water bill.

14 Q. Complaining about the same thing that the
15 class reps are complaining about?

16 A. Yes.

17 MR. PIZZI: Now, I want to show you what
18 I'm going to mark as Exhibit 2.

19 THE CLERK: 1-B for ID. Counsel?

20 BY MR. PIZZI:

21 Q. Can you tell me what this document is?

22 A. This document is certified by the city
23 clerk. It's the company that did a study.

24 THE COURT: What company?

25 THE WITNESS: Avanti.

1 THE COURT: Avanti, A-v-a-n-t-i.

2 MR. PIZZI: And this was certified by the
3 city clerk; correct?

4 THE WITNESS: Yes.

5 MR. PIZZI: Move for the admission of
6 Plaintiff's 2.

7 THE COURT: Any objection?

8 MS. SHAW-WILDER: Your Honor, I object
9 because there's no foundation for this document.
10 The face of the document also suggests it was
11 created by -- for the Miami-Dade County as well,
12 so I don't know if this was made for the city at
13 the city's request.

14 If you can lay a foundation?

15 THE COURT: Mr. Pizzi, what is this
16 document?

17 MR. PIZZI: The city clerk certified this
18 as a public record of the City of Opa-Locka.

19 THE COURT: What is it?

20 MR. PIZZI: Should be sufficient. I would
21 note if you look at the first page, executive
22 summary, it says, the City of Opa-Locka and
23 Miami-Dade asked them to prepare a report for
24 the city, and at the bottom of the document is
25 the city seal. In fact, it says, submitted to

1 Miami-Dade/Opa-Locka. I don't know how much
2 more -- it was certified by the clerk.

3 THE COURT: Right. But that doesn't make
4 it a public record. If it's a study done by a
5 company called the Avanti Company at the request
6 of the city, it doesn't make it a public record.

7 MR. PIZZI: It was submitted to the city
8 commission. It was submitted to the city
9 commission. It was prepared for and submitted
10 and entered into the record of the city
11 commission of the City of Opa-Locka, and is an
12 official document maintained and approved by
13 resolution of the city commission. This is as
14 public -- this is a document prepared for and
15 approved by and accepted as a public record in
16 the City of Opa-Locka, and the city clerk --

17 THE COURT: Okay. Mr. Pizzi, a public
18 record is a legal term. Just because a document
19 is found or accepted by the commission, *per se*,
20 and it's certified by some clerk at the city, it
21 doesn't make it a public record. I'm just --
22 I'm not saying that I'm not admitting that.

23 MR. PIZZI: I'll lay the foundation.

24 THE COURT: Okay.

25 BY MR. PIZZI:

1 Q. Ms. Parchment, regarding this document,
2 1-B, have you seen this document before?

3 A. Yes, sir. I've seen it before.

4 Q. Can you explain to the judge what this
5 document is?

6 A. Because of the constant issue of customers
7 complaining, a study was commissioned by the city
8 commission along with Miami-Dade County to look at
9 the water meters of the city, and basically they
10 assessed or determined what of these water meters
11 were, one, working, how many of them were actually
12 working, and if there were -- that every citizen that
13 we supply water to had a water meter.

14 Q. Was this received by the city commission?

15 A. It was received by the city commission.

16 Q. Did it become a city document?

17 A. Yes.

18 Q. In fact, after it became a city document,
19 did the City of Opa-Locka hold workshops that you
20 attended giving this out and discussing it?

21 A. Yes. It was made available to every
22 resident who wanted one, and to the board for the
23 State of Florida and to Miami-Dade County, as well.

24 Q. Did the City of Opa-Locka give this when --
25 you as finance director, did you give this on behalf

1 of the city to the oversight board?

2 A. Yes, I did.

3 Q. Did you give this document on behalf of the
4 city to any resident who wanted it?

5 A. Any resident who wanted it could get it.

6 Q. As a city record?

7 A. As a city record.

8 Q. Did you maintain it as a city record?

9 A. Yes.

10 MR. PIZZI: I move for the admission of
11 Plaintiffs' 2, your Honor.

12 THE COURT: Any objection?

13 MS. SHAW-WILDER: Objection. Lack of
14 foundation. She did not testify as to the
15 accuracy of this information, who prepared the
16 information. There's hearsay in the document,
17 so there's double layers of hearsay. So I don't
18 think the document should be fully admitted.

19 THE COURT: Okay.

20 MR. PIZZI: I have a few more foundation
21 questions in needed.

22 THE COURT: Go ahead.

23 BY MR. PIZZI:

24 Q. Was this done at the direction of the City
25 of Opa-Locka?

1 A. Yes.

2 Q. Was it paid for by the City of Opa-Locka?

3 A. It was paid for by the City of Opa-Locka.

4 Q. So this was done at the direction of the
5 city. They paid for it. It was read by the
6 commission. It was distributed by is the city, given
7 to the oversight board, maintained as a city record,
8 and was Avanti acting as an agent of the city when
9 they did this?

10 A. Yes.

11 MR. PIZZI: Your Honor, I move for the
12 admission of Plaintiffs' 2. I would note this
13 has been admitted at other hearings without
14 objection regarding water lawsuits.

15 MS. SHAW-WILDER: I maintain my objection,
16 your Honor.

17 MR. PIZZI: And that may go to weight.

18 THE COURT: So the problem is this --

19 MR. PIZZI: I'm sorry?

20 THE COURT: The issue is this: This
21 document is a report by a company called the
22 Avanti Company, flow meters and metering
23 systems. It was a systems survey prepared for
24 the City of Opa-Locka, and it's 34 pages long,
25 and it was prepared on or around March 14, 2017,

1 and apparently, according to the testimony,
2 presented to the commission.

3 So this is not a record that is a public
4 record normally kept by the city like the
5 finance file or, you know, history of meter
6 readings. So this is an expert report, if you
7 will, that was provided the City of Opa-Locka,
8 so I don't think this is actually a public
9 record, even though it was accepted by the
10 commission and it has this certification.

11 All this certification tells you is that
12 this is a true and accurate copy of the one that
13 was submitted to the commission.

14 So there's a hearsay objection. How do you
15 overcome the hearsay by some sort of exception?

16 MR. PIZZI: They were an agent of the city.
17 She's testified and we established a foundation
18 that they did this as an agent of the city, and
19 this became -- this became the city's record of
20 the workings of the meters.

21 BY MR. PIZZI:

22 Q. Ms. Parchment, quickly: Did they do this
23 as an agent of the city?

24 A. Yes. They were hired by the city. Went
25 through the approval process.

1 Q. Did the city assist them and work
2 hand-in-hand with reviewing the working meters?

3 A. We provided documentation and public works,
4 yes, provided whatever assistance they needed like
5 any over study we have done.

6 Q. Did this become the city's record of the
7 working meters in the city?

8 A. Yes.

9 Q. Okay. Did the city -- they prepared this
10 as your agent. Did the city then rely upon this as
11 your record of the working nature of the meters?

12 A. Yes.

13 MR. PIZZI: Your Honor, it's an exception
14 to hearsay because based upon them doing it,
15 based upon the agency admission. They did it as
16 an agent of the city. This right now is the
17 city's record of whether the meters work or not.
18 What I'm saying is instead of public works doing
19 it -- if public works had done this document
20 themselves, but she's -- Ms. Parchment has
21 testified that they did this. The city hired
22 them to do the survey, and this is their record
23 of the working meters.

24 THE COURT: Okay. What's your response to
25 the fact that instead of public works doing the

1 investigation, they hired a company who became
2 their agent for the purposes of conducting this
3 investigation and reporting to the commission.

4 MS. SHAW-WILDER: Your Honor, there's no
5 foundation that there was an agent or that the
6 witness understands that this nature between
7 agency and an expert and independent contractor.
8 And within -- or that she knows what work they
9 did or can vouch for the quality of the work.

10 Within this document itself, there's double
11 hearsay that they're reporting on statements
12 made by others, so there's no independent
13 testimony or foundation to establish that this
14 is a reliable document or the contents within it
15 is reliable, or that the city commissioners are
16 able to distinguish whether or not this was
17 reliable or the work could be something to
18 relied on.

19 MR. PIZZI: Rule 980318D admissions. A
20 statement by the party's agent or servant
21 concerning a matter within the scope of the
22 agency or employment thereof majoring the
23 existence of the relationship.

24 BY MR. PIZZI:

Q. Did they make these statements while an

1 agent of Opa-Locka?

2 A. They made that report while employed by
3 Opa-Locka.

4 Q. Was this within the scope of their
5 employment?

6 A. While they were with Opa-Locka, yes.

7 MR. PIZZI: This is the statement made in
8 the scope of their employment with the -- it's a
9 hearsay exception because it's a statement made
10 by a servant, an employee, an independent
11 contractor acting within the scope of the agency
12 with the city. This is why the city hired them.

13 THE COURT: Admitted over defense's
14 objection.

15 THE CLERK: 1-B is now Plaintiffs' 2.

16 MR. PIZZI: May I approach?

17 THE COURT: Yes.

18 BY MR. PIZZI:

19 Q. Ms. Parchment, I'm not going to have you up
20 here much longer, but just a couple of things. I
21 want you to turn -- hang on to that.

22 Ms. Parchment, I want you to look at page 3 of
23 the exhibit, executive summary. You see that there,
24 page 3.

25 A. Okay.

1 Q. Simply read one paragraph. Read the third
2 paragraph, based on the results. Slowly so we can
3 hear.

4 A. Based on the results of our findings to
5 date, the city's AMR system is operating at an
6 approximately overload AMR system regrade of 57
7 percent with an accuracy, AMR system regrade, of 34
8 percent.

9 THE COURT: Operating at what percent?

10 THE WITNESS: Approximately overload of 57
11 percent.

12 MR. PIZZI: I have a copy.

13 THE COURT: And --

14 THE WITNESS: With accuracy AMR system
15 regrade of 34 percent.

16 THE COURT: Okay. Next question.

17 THE WITNESS: Which is well below the
18 recommended minimum 98.5 regrade industry
19 standard for a healthy AMR system.

20 BY MR. PIZZI:

21 Q. Just so I understand, when they're talking
22 about AMR system, is that the water meter system?

23 A. Yes.

24 Q. Now, it says here that -- what is the
25 accuracy according to report? According to this

1 report, what is the accuracy read rate? What
2 percentage of meters are supposed to give an accurate
3 reading? What's the national standard?

4 A. The national standard is 98.5 percent.

5 Q. Now, 57 percent -- only 57 percent of
6 Opa-Locka meters were even capable of being read; is
7 that correct?

8 A. Only 57 percent was operating.

9 Q. Even operating?

10 THE COURT: With an accuracy of 34 percent.

11 What is your next question?

12 MR. PIZZI: Got you. I understand.

13 BY MR. PIZZI:

14 Q. So what did the city do in terms of utility
15 billing regarding the fact that almost 70 percent of
16 the water meters weren't working, weren't accurate?

17 A. They were estimating the bills because the
18 reading was not accurate.

19 Q. So just to move it along, the city was
20 estimating water bills because the meters were
21 inaccurate?

22 A. Correct.

23 Q. And how long had the meters not been
24 accurate? How long had 70 percent of the city's
25 meters not been working?

1 A. I guess since 2006, I can speak to.

2 Q. Little over ten years?

3 A. Yes.

4 Q. At the time you left, had the problem been
5 -- when did you stop being finance director?

6 A. I left the end of August. August 22, 2017.

7 Q. I want you to turn to page 4. I just have
8 one more question about this report. How many meters
9 were counted?

10 A. They counted 5,637 meters.

11 Q. And how many of the 5,000 meters needed
12 work?

13 A. 3,049 meters.

14 Q. Weren't working properly?

15 A. Weren't working.

16 MR. PIZZI: Now, I want to show you what
17 I'm going to mark as Plaintiffs' C.

18 And I just have two more documents, Judge,
19 and I'll be done with this witness.

20 THE COURT: Mr. Pizzi, do you have any more
21 questions?

22 MR. PIZZI: Yes, I do.

23 BY MR. PIZZI:

24 Q. Can you please tell me, if I may approach,
25 your Honor, what is Exhibit 1-C?

1 A. Exhibit 1-C is a memo from the city
2 manager, Ms. Harold, to the mayor and commissioners.

3 Q. And were you familiar with this document?

4 A. Yes.

5 MR. PIZZI: Move for the admission of the
6 city's memo as Exhibit 3.

7 THE COURT: And that's certified?

8 MR. PIZZI: Yes. It is, your Honor.

9 THE COURT: Any objection?

10 MS. SHAW-WILDER: No objection, your Honor.

11 THE COURT: It's admitted.

12 THE CLERK: Plaintiffs' 3.

13 THE COURT: Plaintiffs 3?

14 THE CLERK: Yes.

15 BY MR. PIZZI:

16 Q. Why was it imperative at this point for the
17 city to continue estimating water bills on December
18 21, 2016?

19 A. It was necessary because based on the
20 report, they weren't able to get accurate reads, and
21 bills from what they were able to read -- were not
22 able to read were a bit high.

23 Q. I want you to read me the last sentence of
24 the first paragraph of this document of December 21,
25 2016. The last sentence.

1 A. As a result of the city's estimation policy
2 over the course of several years, it would be unfair
3 for the city to suddenly begin to bill customers the
4 actual read amounts under the circumstances.

5 Q. Did the city, while you were finance
6 director -- so it would be unfair to go by the meters
7 because they were inaccurate?

8 A. Right.

9 Q. And people were being overbilled; correct?

10 A. Correct.

11 Q. So the city stopped reading the meters
12 because people were being overbilled with inaccurate
13 meters; correct?

14 A. Correct.

15 Q. And now when you were finance director, did
16 the city adopt a policy of not turning off anybody's
17 water because they couldn't trust the accuracy of the
18 meters?

19 A. Yes. They adopted that policy.

20 Q. And how long was that policy in place?

21 A. For a while. Not sure if they discontinued
22 it, but it was in effect for a while.

23 MR. PIZZI: And I want to show you finally
24 what I'm going to mark as Exhibit 1-D.

25 THE CLERK: 1-D for ID.

1 MR. PIZZI: Thank you.

2 BY MR. PIZZI:

3 Q. Ms. Parchment, I want you to tell me what
4 Exhibit 1-D is.

5 A. Exhibit 1-D is minutes of the city
6 commission, regular city commission meeting of
7 Wednesday, February 8, 2017.

8 Q. Is this a certified record of the city?

9 A. Yes, it is.

10 MR. PIZZI: Move for the admission of
11 Exhibit 4.

12 THE COURT: Any objection?

13 MS. SHAW-WILDER: No, objection, your
14 Honor.

15 THE CLERK: 1-D is now Plaintiffs' 4.

16 BY MR. PASTOR:

17 Q. Okay. I want you to read for her honor
18 just one paragraph in this document. I want you to
19 read for Judge Butchko the last paragraph in page --
20 let's wait until the judge is ready.

21 THE COURT: Okay.

22 MR. PIZZI: I want you to read for Judge
23 Butchko the last paragraph on page 5.

24 THE WITNESS: City of Miami Dade County
25 said that it was advised in several meetings

1 that there is difficulty in determining what the
2 actual bills are. Individuals who are receiving
3 consecutive water bills is because they have not
4 received water bills for three months. For
5 almost ten years, the meters were not being read
6 properly, and now it is being read and actual
7 numbers are being taken.

8 BY MR. PIZZI:

9 Q. So were you present during this meeting?

10 A. Yes.

11 Q. So for -- this was dated -- this meeting
12 took place February 8, 2017?

13 A. Correct.

14 Q. So on February 8, 2017, the city manager
15 advised --

16 THE COURT: You're not going read the
17 paragraph.

18 MR. PIZZI: No, I'm not.

19 BY MR. PIZZI:

20 Q. Did anybody dispute the fact? Did anybody
21 get up? When she said for ten years the meters were
22 not being read properly, did anybody during the
23 period of time when you were finance director, at
24 this meeting or at any subsequent date, during your
25 entire period to the day you left -- what day did you

1 leave?

2 A. August 22, 2017.

3 Q. Up until August 22, 2017, did anybody
4 dispute the findings of the Avanti report?

5 A. To my knowledge, no.

6 Q. Up until August 22, 2017, did anybody
7 dispute the city manager's statement that for ten
8 years the meters were not being read properly and it
9 was unfair to the residents?

10 A. No.

11 Q. Final question, this inability to read the
12 meters that Ms. Harold said was in effect for ten
13 years, these unfair and inflated ten years worth of
14 bills, did this apply to just the people sitting in
15 this case, or did this apply across the board to all
16 Opa-Locka residents and businesses?

17 A. To all Opa-Locka residents and businesses.

18 MR. PIZZI: No further questions, your
19 Honor.

20 THE COURT: Cross-examination?

21 MS. SHAW-WILDER: Your Honor, may I provide
22 you with a binder of documents that I may work
23 with this witness.

24 THE COURT: Sure. Thank you.

25 MS. SHAW-WILDER: May I provide a copy for

1 the witness?

2 BY MS. SHAW-WILDER:

3 Q. Good afternoon, Ms. Parchment.

4 A. Good afternoon.

5 Q. I have a few questions for you just to
6 follow up on your testimony.

7 I would like to start with the issue of the
8 contract that you testified about on direct. Do I
9 understand that your testimony is that there's a
10 contract between the city that says the city is to
11 provide water and bills to the residents, and the
12 residents are to pay for the water. Is that your
13 testimony?

14 A. That is a contract based on an ordinance
15 that the city provide water in exchange for payment.

16 Q. So am I correct in understanding, you
17 haven't seen a document that says contract or that is
18 a document that the residents sign or that the city
19 signs relating to the water utilities system at
20 Opa-Locka?

21 A. There's an ordinance.

22 Q. Correct. But have you seen a document that
23 is a written contract that is between the City of
24 Opa-Locka and its residents involving the
25 relationship of paying for and providing water?

1 A. Not a contract.

2 Q. You have not seen a contract. And when you
3 testified about the contract, what you were referring
4 to is the city ordinance; correct?

5 A. Correct.

6 Q. And it's your understanding that the city
7 ordinance governs the relationship between the city
8 and its customers?

9 A. Correct.

10 MS. SHAW-WILDER: Okay. Can you turn with
11 me in the notebook that I provided to you to
12 Tab 4?

13 Your Honor, Tab 4.

14 I would like to mark this for ID as
15 Defendant's ID 1.

16 MR. PIZZI: Can I have a copy?

17 BY MS. SHAW-WILDER:

18 Q. And in preparing for your testimony or when
19 you were the finance director, you became familiar
20 with the city water ordinance; is that correct?

21 A. Yes.

22 Q. The document marked Defendant's A-1, is
23 that the city ordinance you were talking about?

24 A. This is a part of it, yes.

25 Q. What part is missing?

1 A. There's several -- let me make sure.

2 THE COURT: Just for brevity, Ms.
3 Shaw-Wilder, is this a copy of all the
4 ordinances?

5 MS. SHAW-WILDER: This is a copy of the
6 ordinance relating to water.

7 THE COURT: Articles to water.

8 MS. SHAW-WILDER: Articles to water.

9 THE COURT: And this is the whole water
10 ordinance?

11 MS. SHAW-WILDER: Yes, for article two.
12 There's sewer and other parts, but for purposes
13 of --

14 THE COURT: Is there an objection to the
15 admissibility of Defendant's A-1, a copy of the
16 articles to water ordinances?

17 MR. PIZZI: Yes, because it's not certified
18 by the city clerk. I don't know whether or not
19 it's complete. There are portions highlighted.
20 I think that if they are going to submit city
21 documents or portions --

22 THE COURT: It's not a city document. It's
23 from some source.

24 MR. PIZZI: It says Opa-Locka Water --

25 THE COURT: Okay. Overruled.

1 THE CLERK: A-1 is now Defendant's
2 Exhibit A.

3 BY MS. SHAW-WILDER:

4 Q. Is this the document that your testimony is
5 that this code governs the relationship between the
6 city and the water customers?

7 A. Yes.

8 Q. I wanted to ask you to turn your attention
9 to Section 21-80, Deposits.

10 THE COURT: What page is that because it's
11 1 of -- 21-80 is -- let's see, 2312 is page 5.

12 MS. SHAW-WILDER: Page 12 of 20, your
13 Honor.

14 THE COURT: Thank you.

15 THE WITNESS: Okay.

16 MS. SHAW-WILDER: Apologies. We don't have
17 a better copy.

18 THE COURT: It's fine.

19 BY MS. SHAW-WILDER:

20 Q. Now, in your understanding of this contract
21 or ordinance between the -- that governs the city
22 water relationship with its customers, you agree with
23 me that this ordinance provides that customers are
24 only entitled to receive their deposits when they
25 terminate their water services; correct?

1 A. That's correct.

2 Q. I'm sorry?

3 A. Yes.

4 Q. So if a customer is still getting water and
5 has not disconnected its service, that customer is
6 not entitled to receive its deposit back?

7 A. Right.

8 Q. Okay. And you see on page 12 of 20, it
9 says, upon the request of the owner/consumer making
10 such deposit or assigns for discontinuation of
11 service and upon payment of all charges arising out
12 of any service of said premises, the deposit shall be
13 refunded. Do you see that?

14 A. Yes, on page 12.

15 Q. Page 12 of 20. Existing consumers who
16 prior to the effective date of the section who have
17 minimum deposits with the city in accordance with the
18 provision of the code shall be permitted to maintain
19 said minimum deposit, unless said deposit is in
20 default. Do you see that? Delinquent or a lien is
21 filed by the city.

22 A. Yes. I see that.

23 Q. So as the person who is in charge of the
24 finance director, is it your understanding that it is
25 a requirement of the code that if a person is

1 receiving water, they must have a deposit in place
2 with the city?

3 A. Yes.

4 Q. And you haven't seen any document or any
5 provision in this code that requires the city to
6 segregate the deposits when they receive them from
7 the customers; correct?

8 A. No. I haven't seen that.

9 Q. Okay. So this ordinance doesn't say
10 anywhere that when customer A comes to the city and
11 provides a deposit, that the city has to segregate
12 that deposit?

13 A. This document does not say that.

14 Q. And you're not aware of anywhere in this
15 code or any other document that allows a customer to
16 just come to the city and say, can I have my deposit
17 back?

18 A. They can only receive their deposit back
19 once they close their account.

20 Q. Now, staying with the question of the
21 deposit, as the finance director, you were in charge
22 of the cashier area; is that correct?

23 A. That's correct.

24 Q. And the cashier area is where customers go
25 to open their account?

1 A. No. Customer service is in -- is where
2 they go to open up their account.

3 Q. Thank you. So a customer goes to customer
4 service and within customer service, there's the
5 cashier department; correct?

6 A. Correct.

7 Q. If you want to open an account, you go to
8 customer service and you fill out an application; is
9 that right?

10 A. Correct.

11 Q. If you turn to Tab 3, I can show you what's
12 been marked as defendants -- for ID as A-2.

13 Ms. Parchment, do you recognize Defendant's A-2
14 as the application a customer fills out when they
15 open their deposits or their water account?

16 A. Yes.

17 THE COURT: What tab? Sorry. Tab 3?

18 MS. SHAW-WILDER: It is Tab 3, your Honor.

19 THE COURT: Okay.

20 BY MS. SHAW-WILDER:

21 Q. This application that has been marked as
22 Defendant A-2 is, in fact, the contract between the
23 city and the customer; right?

24 MR. PIZZI: Objection, mischaracterizes
25 testimony.

1 THE COURT: It's cross-examination, so if
2 the witness knows, she can answer. Overruled.

3 THE WITNESS: This is an operational
4 process.

5 THE COURT: The question is: Do you
6 understand this to be a contract?

7 THE WITNESS: No. I would understand this
8 to be an application for service.

9 BY MS. SHAW-WILDER:

10 Q. Will you turn back to Defendant's 1, which
11 is the ordinance, the water code, and if you turn to
12 page 3. Are you at page 3, Ms. Parchment?

13 A. Yes.

14 Q. If you read page 3 at the very top of the
15 page where it starts, service is to be furnished?

16 A. Yes.

17 Q. Have you had an opportunity to read that?

18 A. Yes.

19 Q. Okay. So the code provides that the
20 service is to be -- the water service is to be
21 provided upon application; correct?

22 A. Correct.

23 Q. And we agree that this is the application?

24 A. Yes.

25 Q. And then this application is what results

1 in a binding contract between the city and the
2 consumer; right?

3 A. Correct.

4 Q. So this is the -- this being the contract
5 says what the city -- whatever the city has agreed to
6 do and what the customer is supposed to do. This is
7 the contract; correct?

8 A. The application for service.

9 Q. And do you agree that the code provides
10 that this application is, in fact, the contract for
11 service that is binding upon the city and the
12 customer; correct?

13 A. I understand it to be the application to
14 start the process to create the contract, which is in
15 this ordinance.

16 Q. And other than this document, you see no
17 other contract between the city and the customers,
18 other than this application?

19 MR. PIZZI: Objection. Calls for legal
20 conclusion as to what a contract is, Judge.

21 THE COURT: Overruled.

22 THE WITNESS: It's the application process
23 to be serviced for water and sewer, yes.

24 BY MS. SHAW-WILDER:

25 Q. And this is one of the documents that is in

1 the process; correct?

2 A. Yes.

3 Q. No other document?

4 A. No other document for application.

5 Q. For application. Okay. And do you also
6 understand that the code says that the city is under
7 no obligation to render any service to the residents,
8 other than what is available from its then existing
9 equipment. Do you understand that to be the case
10 when you were the finance director?

11 A. Then existing equipment?

12 Q. Correct.

13 A. Yes.

14 Q. So what did you understand that to mean
15 when you were in charge of water utility?

16 A. I understood they would be using proper
17 operating water meters, and at that point when the
18 reading was done, the customer would be getting a
19 correct reading.

20 THE COURT: Could you show me that in the
21 ordinance, what your referring to?

22 MS. SHAW-WILDER: Still on the same place
23 on Defendant's Exhibit 2, page 3. Binder Tab 3
24 is the code.

25 THE COURT: Page 3, this one?

1 MS. SHAW-WILDER: Tab 3. Oh, I'm sorry.

2 Tab 4. Tab 4.

3 THE COURT: Tab 4 is the ordinance.

4 MS. SHAW-WILDER: That's what we're
5 referring to. Then it's Defendant's Exhibit 1,
6 page 3, very top of the page.

7 THE COURT: Thank you.

8 BY MS. SHAW-WILDER:

9 Q. Are you there, Ms. Parchment?

10 A. On page 3?

11 Q. Yes.

12 A. Yes.

13 Q. So the question is: When you were the
14 finance director, did you understand that the city
15 was only responsible -- was under no obligation on
16 the part of the city to render service other than
17 that which is then available from its existing
18 equipment. Did you understand that?

19 A. From the existing equipment, yes.

20 THE COURT: But the equipment is supposed
21 to be operating.

22 MS. SHAW-WILDER: I'm not -- I'm just
23 asking what her understanding if the city has --

24 THE COURT: Okay.

25 BY MS. SHAW-WILDER:

1 Q. The document that you has testified as the
2 contract, Ms. Parchment, it says that the city has to
3 provide what's available from its then existing
4 equipment; correct?

5 A. That's what it said.

6 Q. And you infer that the equipment has to be
7 operating, but just what we're talking about doesn't
8 say that.

9 A. Any reasonable person would expect it to be
10 operating.

11 Q. I'm not debating or arguing either. I just
12 want to make sure the contract that we are referring
13 to, we are on the same page about what it says.

14 A. Okay. The contract says that.

15 Q. Thank you. So we're working with our
16 customer who goes to the city, goes to customer
17 service, wants to open an account. We've seen the
18 application. And then do you agree with me that what
19 happens next in order to have water is that the
20 customer is required to sign a deposit slip?

21 A. Correct.

22 Q. Correct. And you're familiar with the
23 deposit slip. If you can turn to Tab 3 of your
24 notebook in front of you? Do you see that?

25 A. I see that.

1 Q. Is that the deposit slip that the city
2 gives the customer when it opens its account?

3 A. Yes.

4 Q. And when you were the finance director,
5 every customer who opened an account received this
6 deposit slip?

7 A. Yes.

8 Q. And the process is that they would sign the
9 deposit slip?

10 A. Yes.

11 Q. And you were familiar with this document
12 and you read it and you were aware of it when you
13 were finance director?

14 A. I was aware of it, yes.

15 Q. And you were aware as the finance director
16 that this deposit slip -- which I'm sorry, your
17 Honor. I would like to mark this for ID as
18 defendants . . .

19 THE CLERK: A-3.

20 THE COURT: Any objection?

21 MR. PIZZI: No.

22 THE COURT: It's admitted.

23 MS. SHAW-WILDER: I would like to move in
24 A-2 and A-3.

25 THE CLERK: A-2 is now Defendant's Exhibit

1 B. A-3 is now Defendant's Exhibit C for ID.

2 THE COURT: Got it.

3 BY MS. SHAW-WILDER:

4 Q. Just to make sure we're on the same page,
5 you agree with me that this deposit slip makes up an
6 agreement between the city and the customer; correct?

7 A. Yes.

8 Q. Okay. And have you had an opportunity to
9 read it?

10 A. I read it initially, yes.

11 Q. You agree with me that according to this
12 contract between the city and its customers, the city
13 is entitled to use the deposit funds as if its the
14 absolute owner thereof; correct?

15 A. No.

16 Q. So you disagree with the language in this
17 document?

18 A. Yes. Because as an accountant, I need to
19 account for the money in a way of conformity to
20 financial requirements.

21 Q. So I want to put aside your personal
22 opinions and what's guiding you as an account. I'm
23 talking about as the finance director and a contract
24 between the city and the customer, what did you
25 understand this deposit slip to mean when it says --

1 and let's go there together. When it says in the
2 quote, that the City of Opa-Locka may use said
3 deposit as fully as if the city were the absolute
4 owner thereof? What did you understand that to mean?

5 A. That they feel they can use it.

6 Q. Well, when you were the finance director
7 and you were in charge of the contracts and deposit
8 slips, when the deposit slip says the city can use
9 the deposits as if they were the absolute owner
10 thereof, what did you understand it to mean?

11 MR. PIZZI: I'm going to object as being
12 asked and answered three times.

13 THE COURT: Overruled.

14 THE WITNESS: That the city can say they're
15 the owner, but I'm governed by the financial
16 entity.

17 MS. SHAW-WILDER: I understand --

18 MR. PIZZI: Objection, your Honor. She
19 should be allowed to finish her answer and not
20 be interrupted.

21 THE COURT: Sustained.

22 MS. SHAW-WILDER: Yes. My apologies.

23 Please finish.

24 THE WITNESS: I'm governed by the financial
25 government integrity which is a part of the

1 Opa-Locka code. So even though they have this,
2 I as a finance director per the code say I'm
3 responsible for making sure that the monies are
4 dealt with properly. That's the ordinance.

5 BY MS. SHAW-WILDER:

6 Q. What provision of the code --

7 A. Integrity.

8 Q. What provision of the code says that the
9 city cannot use the deposits as if they're the
10 absolute owner thereof? Which provision is that?

11 A. If the state have a statute that states
12 that if the municipality want to change the use of
13 the deposit, they have to do it by ordinance. They
14 cannot just -- we can cannot just use it as we want
15 to.

16 Q. Ms. Parchment, just so we're on the same
17 page --

18 A. Uh-huh.

19 Q. Is there an Opa-Locka code provision that
20 provides that the city cannot use the deposits as if
21 they're the absolute owner thereof?

22 A. There's no Opa-Locka code. And what this
23 says is we have to use either the county or the state
24 rules to govern us.

25 Q. What state provision provides that a

1 municipality cannot use its deposit funds as if
2 they're the absolute owner thereof?

3 A. There's a state statute that states that if
4 you -- the municipality wish to use the deposits,
5 they can do so by ordinance, and in this case, the
6 city did not have an ordinance telling us to use
7 those funds.

8 Q. What state statute are you relying on?

9 A. Statutes 2.-something. I don't quite
10 remember. It's a state statute. It's addressing
11 water deposits.

12 Q. Do you have a copy of that state statute
13 with you today?

14 A. No, I don't.

15 Q. I'm sorry. Do you have a copy of that
16 state statute?

17 A. No, I don't have it.

18 Q. And you said it was state statute what?

19 A. I believe it's 2. State statute is 2. All
20 they do is put in water deposits, and it will come
21 up.

22 Q. If there is no -- if there is no state
23 statute that says the municipality has to use -- what
24 did you say the statute says?

25 A. That if the municipality would want to use

1 the funds in a different way other than to pay the
2 customer, they have to do so by an ordinance, a
3 resolution ordinance.

4 Q. And if there is no state statute that says
5 that, is there anything else that you're relying on
6 that says a municipality has to have an ordinance
7 that allows it to use the deposits?

8 A. What I'm relying on too is that the city
9 have an ordinance that requires us, if we're going to
10 do interfunds transaction, to come to them and get
11 authorization to do that.

12 Q. I'm sorry?

13 A. The city has an ordinance that states if
14 we're going use interfunds, which is money from
15 another fund, for purposes other than what it's
16 supposed to be for, we have to get authorization to
17 do so from the commission.

18 Q. What ordinance is that?

19 A. That is -- I don't remember the ordinance
20 right now.

21 Q. Okay. So in your -- when you were the
22 finance director, you just disregard the contract
23 that says the city is entitled to use the deposits as
24 if its the absolute owner thereof?

25 MR. PIZZI: Objection, your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: I did not disregard. I
3 utilize what governs us as a finance director to
4 govern how to treat the deposits.

5 BY MS. SHAW-WILDER:

6 Q. Okay. So you didn't give any weight to the
7 contract?

8 A. That part of the contract could cause
9 issues for us. What I mean is that we actually have
10 it segregated for a reason. Should the customer
11 decide if they want to close their account, we need
12 to be able to repay them. It requires the proper
13 authorization, not our the finance department to
14 decide to utilize funds which technically is supposed
15 to go back to the customers.

16 Q. Ms. Parchment, just a very simple question:
17 As the finance director when you were there, you
18 disregard this provision of the contract --

19 A. I disregard --

20 Q. You have to let me finish, and I have to
21 let you finish.

22 Did you disregard this contract that says that
23 the city is entitled to use the deposits as if its
24 the absolute owner thereof?

25 MR. PIZZI: Objection.

1 Respectfully, she is badgering the witness
2 at this point.

3 THE COURT: She is not. I'm going to
4 sustain the objection. Asked and answered.

5 Can I see a big version like yours?

6 MS. SHAW-WILDER: My apologies.

7 MR. PIZZI: I can't read it either.

8 THE COURT: Did the citizens get one that
9 was the size of this copy?

10 MS. SHAW-WILDER: It isn't. It's actually
11 bigger.

12 THE COURT: Now I can see it. Let me read
13 this again. I've read this before in motion
14 practice.

15 MS. SHAW-WILDER: Yes.

16 THE COURT: Let's move ahead. Let's move
17 ahead, guys.

18 BY MS. SHAW-WILDER:

19 Q. Do you agree with me, Ms. Parchment, that
20 the city deposits, whether or not they were
21 segregated or not, are city funds?

22 A. They're money collected by the city. Yes.
23 It's restricted due to the fact that it has to be
24 returned to the customer at some point in whatever
25 form. Until it is applied to the bill, it's not

1 current. It's not a part of our operational revenue.

2 Q. Okay. And do you agree with me that the
3 city can use its general funds to repay a deposit if
4 it chooses to do so?

5 A. To repay a deposit?

6 Q. Yes. So the customer has opened the
7 account, signed the deposit slip, and now they're
8 coming to the city to terminate the account.

9 A. Uh-huh.

10 Q. Okay. And if the customer does that, the
11 city can use funds from the general fund to repay the
12 deposit.

13 A. The city, with the proper authorization
14 from the board, can do that.

15 Q. And, in fact, the city did do that when you
16 were finance director. The city would use money from
17 either the water utility account or the general fund
18 account and return the deposits; correct?

19 A. And we got authorization to do that.

20 Q. I'm not saying whether it's authorized, but
21 that can happen --

22 A. Yes.

23 Q. And when you were the finance director --

24 THE COURT: Excuse me a moment.

25 But the general funds, does that have a

1 yearly budget for that money?

2 THE WITNESS: Both have a yearly budget.

3 THE COURT: And so general funds budget --
4 let me rephrase that.

5 The funds in the general funds budget is
6 earmarked for specific functions of the city;
7 right?

8 THE WITNESS: Correct.

9 THE COURT: So in accounting principles,
10 are you supposed to use the general funds money
11 for whatever you want, notwithstanding the
12 budget?

13 THE WITNESS: No. You have to go by the
14 budget, which is why I keep saying that with
15 proper authorization, which means we have to
16 tell them where the money is coming from, when
17 we plan to replenish it, which is a part of the
18 ordinance, too. How we plan -- give them a plan
19 of action if we decide -- if we have to use
20 money from another fund.

21 THE COURT: Let me ask this question
22 because I have no idea about municipal
23 government. Let's say you have a budget in the
24 city funds for the maintenance of police
25 vehicles: oil changes, things like that. And

1 the chief decides, my officers are so good; I
2 want them to have all new cars, and that was not
3 in the budget for new cars. Can he just say I
4 want new cars for my officers?

5 THE WITNESS: Well, he can't just buy it.
6 He can say he wants new cars. Goes to the
7 commission. Tell them where he's getting the
8 money from, which line item is he reducing to
9 pay for that?

10 THE COURT: Well, there aren't any. In the
11 budget there was no line item for all new cars.

12 THE WITNESS: Right.

13 THE COURT: Where would that money come
14 from?

15 THE WITNESS: That's up to the chief. What
16 does he want to reduce?

17 THE COURT: So from the police budget, he
18 could choose to take it from somewhere else?

19 THE WITNESS: Somewhere else.

20 THE COURT: New uniform.

21 THE WITNESS: He can choose to reduce
22 something in the budget.

23 THE COURT: As a proposal.

24 THE WITNESS: As a proposal. And if they
25 afford it, they authorize it and go forward, but

1 he has to remember that his budget is now
2 reduced and at what line item and what amount.

3 THE COURT: Why can't he come to you as the
4 director of finance and just ask you to get the
5 money from general funds for the new fleet of
6 police cars?

7 THE WITNESS: Because there's a budget
8 requirement, and it's not really going to come
9 through me in finance. It goes through budget
10 and city manager in order to do that. Each
11 budget change requirement is required by the
12 law.

13 THE COURT: So if the citizens water
14 deposit fund was depleted and 50 citizens
15 decided to move from Opa-Locka and wanted their
16 deposit back and it was paid out of general
17 funds, whose money did that come out of? Whose
18 budget?

19 THE WITNESS: That's something the
20 commissioner would have to decide. The city
21 manager would have to decide.

22 THE COURT: In the general funds account,
23 was there a fund set aside for returning water
24 deposits?

25 THE WITNESS: Usually, we don't pay that

1 from general fund. Technically you ask them.
2 The first place it would come from is water
3 service reserve fund, and then you would still
4 need to get authorization to do that.

5 THE COURT: What's a water service reserve
6 fund for?

7 THE WITNESS: Water -- it's like a savings
8 account where you put aside money for
9 emergencies.

10 THE COURT: Like a water main break.

11 THE WITNESS: Yes, to cover those things.

12 THE COURT: Okay. Thank you.

13 BY MS. SHAW-WILDER:

14 Q. So, Ms. Parchment, I just want to make sure
15 we're on the same page because you're talking about
16 general government governess, and you're saying in
17 terms of how the city should use the funds and steps
18 they should handle; correct?

19 A. Correct.

20 Q. I'm asking you questions about a contract
21 between the city and its customers, and you're not
22 aware, I understand it, that there is no contract
23 between the city and the customers that requires the
24 city to only return back deposits from the customer
25 deposit account, no contract that you've seen?

1 A. That's correct.

2 Q. That's correct?

3 A. Yes.

4 Q. Okay. Now, when you were the finance
5 director, were there customers who came to the city
6 after the funds were moved that you testified the
7 funds were moved. Were there customers who came to
8 the city who closed their account who asked for their
9 deposit who could not get the account -- who have not
10 received their deposit back?

11 A. No.

12 Q. So when you were the finance director, when
13 people came to close -- as far as you know when they
14 came to close the account, they got their deposit
15 back?

16 A. They got their deposit or it was applied to
17 their account.

18 Q. Just to make sure we understand, what
19 happens is when the customer comes, they're not
20 entitled to get the exact amount of their deposit
21 back. They get it net of any outstanding bills;
22 correct?

23 A. They can get the full amount back if they
24 don't owe anything.

25 Q. If a customer owes something, they get it

1 back a net of the bill?

2 A. Yes.

3 Q. I want to go back to the process just very
4 quickly about the segregating of the account to make
5 sure we understand what we're saying. I'm going to
6 hand you the declaration of Marilyn Petit Frere.

7 THE CLERK: Mark it for ID?

8 MS. SHAW-WILDER: Yes.

9 THE CLERK: Plaintiff's A-4 for ID.

10 BY MS. SHAW-WILDER:

11 Q. Ms. Parchment, I would like to ask you to
12 read exhibit -- I'm sorry. What's been marked as A-4
13 for ID. Paragraph 2. Can you read paragraph 2?

14 A. You mean --

15 MR. PIZZI: Objection. Not in evidence,
16 your Honor.

17 THE COURT: Sustained.

18 MS. SHAW-WILDER: To read to yourself. I
19 wasn't asking her to read it out loud. Read it
20 to yourself.

21 MR. PIZZI: I'm going to object to her
22 reading a document not in evidence, unless she
23 stated that she cannot recollect something,
24 there are exceptions to that. I'm going to
25 object to her reading a document not in evidence

1 with no exceptions.

2 THE COURT: She can read it. Whether or
3 not she can give an answer based on that is a
4 different story. So just read paragraph 4 and
5 see what the -- paragraph 2.

6 THE WITNESS: Okay.

7 BY MS. SHAW-WILDER:

8 Q. Based on your knowledge, is there anything
9 in paragraph 2 that is fraudulent?

10 THE COURT: Sustained. Is there an
11 objection?

12 MR. PIZZI: Objection. It's not in
13 evidence, your Honor.

14 THE COURT: Sustained.

15 BY MS. SHAW-WILDER:

16 Q. Ms. Parchment, are you aware that Ms. Petit
17 worked for the city's water department since 1995?

18 A. Since -- I cannot really state when she
19 started, but I know she did work -- she's worked for
20 the water department.

21 Q. Do you have any reason to believe that is a
22 false statement?

23 MR. PIZZI: Objection as to her basis.

24 Speculation, your Honor, also. I think she's
25 already testified that I think it was --

1 paragraph A was false.

2 THE COURT: What?

3 MS. SHAW-WILDER: She hasn't testified.

4 Objection.

5 MR. PIZZI: Your Honor, she's being
6 examined and reading from a document that's not
7 in evidence.

8 THE COURT: Okay. So that objection is
9 sustained, but that's not what is happening
10 here. The question now is: Do you have any
11 reason to believe that Ms. Petit Frere did not
12 work with the department since 1995.

13 THE WITNESS: I have no reason to.

14 THE COURT: Do you know when she started?
15 I think that's the best question. Do you know
16 when Maryln Petit started?

17 THE WITNESS: No.

18 THE COURT: Next question. She doesn't
19 know.

20 BY MS. SHAW-WILDER:

21 Q. So when she worked there, she had been --
22 when you worked at the city, Ms. Frere had been at
23 the city for quite a long time?

24 A. She was there before me, yes.

25 Q. And Ms. Frere held the position in the

1 city, she was a cashier in the customer service
2 department; correct?

3 A. When I met Ms. Frere, she was a customer
4 service representative.

5 Q. Are you aware that Ms. Petit also served in
6 the position as a cashier?

7 A. I know -- not whether she served in a
8 position, but I know she could do cashier as well.

9 Q. You've seen Ms. Petit working in the
10 cashier area at the city?

11 A. Yes. Uh-huh.

12 Q. Are you aware that Ms. Petit also worked in
13 accounts payable?

14 A. Yes.

15 Q. Are you aware that Ms. Petit was also a
16 billing supervisor?

17 A. Yes.

18 Q. And she was the billing supervisor --

19 THE COURT: Okay. So we are not going to
20 have a hearing to test the voracity of this
21 affidavit. You're going to have to call this
22 witness back another day.

23 Right now this is cross-examination in
24 regards to class certification because I just
25 don't have the luxury. It's two o'clock. I've

1 been on the bench since nine o'clock. I haven't
2 had a moment of break, and we still have a lot
3 of witnesses, and we have to end at five.

4 MS. SHAW-WILDER: Your Honor, I respect
5 that. Ms. Parchment is from Clearwater. I was
6 just trying to use her time, but I will respect
7 that and move on.

8 THE COURT: We just don't have the luxury.

9 MS. SHAW-WILDER: I will move on.

10 BY MS. SHAW-WILDER:

11 Q. Ms. Parchment, when customers come to the
12 water department to pay the water utility deposit,
13 they pay the deposit by cash, debit, credit card, or
14 money order; correct?

15 A. Correct.

16 Q. That is done in the cashier area at the
17 City of Opa-Locka?

18 A. Yes.

19 Q. When the customers -- when the customer
20 makes the deposit, a customer comes in with \$100
21 deposit.

22 A. Okay.

23 Q. That deposit isn't segregated in a special
24 account set for customer A; is that correct?

25 A. Repeat.

1 Q. Meaning there's no account. You don't have
2 in the city individual accounts under the name of
3 each customer for their specific deposits that they
4 pay to the city; correct?

5 A. It is applied to the account for the
6 customer. It shows up on their bill that there is a
7 deposit on their account.

8 THE COURT: No the question is -- I don't
9 know. If you have 30,000 residents in the city
10 of Opa-Locka, you don't have 30,000 different
11 accounts for each person.

12 THE WITNESS: We have different accounts
13 for each property. Account numbers associated
14 with each property. And under those account
15 numbers, a deposit shows up under it.

16 THE COURT: And then it's put together in a
17 separate deposit account?

18 THE WITNESS: Correct.

19 THE COURT: But not for each person.

20 THE WITNESS: Not for each person.

21 BY MS. SHAW-WILDER:

22 Q. There's no bank account that says when
23 customer X pays \$100, you don't separate that into an
24 account. Just so we're on the same page with that,
25 there's no --

1 A. No separate account.

2 Q. Not a separate account. Okay.

3 THE COURT: It's a separate deposit
4 account, but not a separate customer account.

5 MS. SHAW-WILDER: I think it's reversed.

6 There's a customer account that is set up for
7 each customer, correct, but there's no bank
8 account for each individual customer.

9 THE WITNESS: Correct.

10 THE COURT: But the witness did testify
11 that there are three general accounts.

12 MS. SHAW-WILDER: Let me go back on that.

13 BY MS. SHAW-WILDER:

14 Q. Ms. Parchment, the city has a general funds
15 account; correct?

16 A. Correct.

17 Q. And the city has a general water utility
18 operating account; correct?

19 A. Let me go through that. The city --

20 Q. You have to answer my question.

21 A. The city has a water/sewer operating
22 account, not a general fund account. It's water and
23 sewer account.

24 Q. The city has a general fund, a general
25 operating account for the city; correct?

1 A. Correct.

2 Q. And then the city has a water utility
3 operating account; correct?

4 A. Correct.

5 Q. And then the city also has a customer
6 deposit account; correct?

7 A. Correct.

8 Q. And the process is the customer comes to
9 the cashier area with their deposit, and they give
10 the cashiers their deposit; correct?

11 A. Correct.

12 Q. And the cashiers don't have a deposit -- a
13 bank deposit account form where they deposit those
14 funds into a separate account, those customer's
15 accounts?

16 A. No. Cashier doesn't do that.

17 Q. Okay. But you said the cashiers have a
18 code where they code the accounts; correct?

19 A. Correct.

20 Q. And that code, the cashier can code the
21 account to either the general water utility fund, or
22 they code it to the water -- to the water utility
23 operating account; correct?

24 A. Yes. They have codes.

25 Q. Because the cashier takes all of the funds

1 that are paid to the city with all the funds that
2 come into the city; correct?

3 A. Correct.

4 Q. The cashier isn't just taking deposit
5 funds; right?

6 A. The cashier takes all the funds that comes
7 in the city.

8 Q. All the funds that come to city. There is
9 no form. They don't deposit it to Mr. Jones' deposit
10 account. They code it, and then the money goes into
11 -- is deposited later. There's a next step; correct?

12 A. Correct.

13 Q. But the cashier doesn't' make the decision
14 as to whether or not the money goes into which
15 account?

16 A. The cashier does not do anything with the
17 deposit.

18 THE COURT: Well, wait. When the cashier
19 designates the code, the code determines where
20 the money goes; right?

21 THE WITNESS: Right. But she's talking
22 about the bank deposits.

23 THE COURT: The way you explained it was if
24 you have a deposit for water and sewer, the
25 deposit gets a code, and then the computer then

1 merges that money where it goes.

2 THE WITNESS: Correct.

3 THE COURT: And then you verify that, and
4 then somebody authorizes the deposit into
5 general code -- into general or the deposit
6 account or to somewhere else.

7 THE WITNESS: Right.

8 THE COURT: Okay.

9 MS. SHAW-WILDER: But the cashier doesn't
10 do that.

11 THE WITNESS: I'm telling her the cashier
12 doesn't do that.

13 THE COURT: It doesn't matter.

14 THE WITNESS: She keep talking to me about
15 cashier.

16 MS. SHAW-WILDER: It matters in the sense,
17 your Honor, which we will explain later -- we
18 will tie that in later.

19 BY MS. SHAW-WILDER:

20 Q. I just want to make sure we understand.
21 The money that comes into the city is accounted for,
22 and the money goes into either -- goes into either
23 the general operating account or the deposit account.

24 A. No.

25 Q. Okay.

1 A. The deposits are made to the operating
2 accounts for both funds, for the general fund and the
3 water and sewer fund. Based on the code, at the time
4 you close at the end of the day, the amount allocated
5 to water and sewer fund and the amount designated to
6 the general fund account is what is posted on the
7 deposit slip. You have two bank accounts that they
8 deal with.

9 Q. So originally they all come to this general
10 facility account, and then later someone accounts for
11 it and says this amount goes to the customer deposit,
12 this amount goes to the general fund --

13 A. No, no, no.

14 Q. Okay.

15 A. The cashier closes her cashier. Her report
16 is run. It says 1600 for general fund. 32,000 for
17 water and sewer. A deposit slip is done by the
18 accountant for the amount for general funds in the
19 general funds bank account deposit slip, and the
20 amount for water and sewer, which is 32, is posted on
21 a water and sewer account deposit book.

22 Q. The general utility account?

23 A. Yes.

24 Q. And then later, there's a next step where
25 it gets to the finance department, and the finance

1 department looks at the general water utility account
2 and does a true-up and says X dollar goes to the
3 deposit account, and this amount stays in the general
4 utility fund?

5 A. The general water fund.

6 Q. Water.

7 A. Yes.

8 Q. Okay. I want to go and talk about the
9 water billing issues that you talked about,
10 Ms. Parchment. Now, I want to start with -- I want
11 to make sure I understand about the customer service
12 complaints that you received. So the City of
13 Opa-Locka has a customer service department; correct?

14 A. Yes.

15 Q. That department's responsibilities is to
16 take complaints from water customers; correct?

17 A. That's a part of their responsibility.

18 Q. And it is not unusual for water customer --
19 do you agree with me it's not unusual for water
20 customers to come in and complain that their water
21 bill is high for any particular reason?

22 A. No. That was not unusual.

23 Q. Most cities have a customer service
24 department where water customers can come in and
25 complain about their bill or have questions; correct?

1 A. Yes.

2 Q. Like you work for the City of Clearwater.
3 They have a customer service department where people
4 can come in and complain about their water bill;
5 correct?

6 A. Yes.

7 Q. Now, when you were there at the city from
8 2014 to 2017, correct, for that three-year period?

9 A. As which position?

10 Q. When you were involved with the water
11 utility was from 2016 to 2017?

12 A. Yes.

13 Q. For one year?

14 A. For two years. Started August 2015.

15 Q. Okay. So from August 2015 to August 2017,
16 you were involved in the water utility?

17 A. Yes.

18 Q. Okay. You testified during that time
19 customers would come in and complain that there were
20 high water bills; correct?

21 A. Yes.

22 Q. Let me ask you this, were there 1,000
23 customers who came in to complain? 100? Do you have
24 a sense of how many people in that two-year period
25 complained about water?

1 A. I don't know how many. I just know it was
2 taking up a lot of time. They come every day and
3 more than one.

4 Q. So your testimony is meaning to say there
5 were thousands. You're not testifying there were
6 thousands --

7 A. I'm not testifying there were thousands.
8 I'm not testifying there was 20. Just a lot of
9 customers coming in.

10 Q. You don't know how many?

11 A. I don't know how many.

12 Q. And sometimes the customers would come in
13 and they would complain, and there would be different
14 reasons for them to complain about their water bill
15 being high; correct?

16 A. I can't say that. I just say that they
17 complained their water bill is high and try to help
18 them figure it out.

19 Q. When you were in the water department, you
20 agree with me a person's water bill could be high
21 because there was a leak in the system. Do you gee
22 with that?

23 A. Yes.

24 Q. It could be high because they left the
25 water hose on?

1 A. That's a possibility.

2 Q. A lot of different reasons why one person
3 would have and feel like their water bill was too
4 high; correct?

5 A. Yes.

6 THE COURT: Did you -- I don't understand
7 -- I don't understand that last question and
8 answer. When these people came to complain,
9 they said that their water bill was high. What
10 was the procedure after that?

11 THE WITNESS: First, check to see if -- do
12 a work order, check it was filled out. Check to
13 see if there was a leak. If there's a leak
14 leading from the city to them, we'll ask them to
15 do a check to see if they have a leak. If
16 that's not the case, you know, there's nothing
17 else for us to really do. We look at public
18 works and the meter. We take another read. We
19 go 30 days and take different reads to see if
20 there's a change.

21 THE COURT: Do you have a sense of how many
22 folks that complained about high bills were
23 because they had a pipe broken or some unknown
24 leak?

25 THE WITNESS: No. For the most cases of

1 them that came in said they didn't have a leak.
2 They had a plumber who said they didn't have a
3 leak.

4 BY MS. SHAW-WILDER:

5 Q. So you mentioned that when the customer
6 came, they would send someone out to take a read; is
7 that correct?

8 A. That's our procedure. We would send
9 somebody out to take another read.

10 Q. When they would go out, they would read the
11 meters; correct?

12 A. Yes.

13 Q. But you're understanding is someone would
14 go out and read the meters?

15 A. Right.

16 Q. You did a research and from -- your
17 testimony is that from 2006 to 2017, the city did not
18 read any meters?

19 A. I'm not testifying they did not read any
20 meter. What I see in the meter books is that they
21 were estimated.

22 Q. Well, I'm asking you about reads. Is it
23 your testimony that from 2006 to 2017, the city did
24 not read any meters?

25 A. Based on their records, yes.

1 Q. Based on what?

2 A. Their records.

3 Q. What records?

4 A. The meter reader book. They all have books
5 for each account, and they would have a read, and
6 most times they would say estimated.

7 Q. So --

8 A. By the side of it.

9 Q. So the city, you agree with me the city had
10 a public works department; correct?

11 A. They did, yes.

12 Q. And they had employees. How many employees
13 did the public works department have?

14 A. About 30.

15 Q. And the responsibility for those employees
16 was to go out and read the meters; correct?

17 A. No. Of the 30, they only had five meter
18 readers and that was their responsibility.

19 Q. So the city employed five meter readers to
20 go out and read meters?

21 A. Yes.

22 Q. And from 2006 to 2017, they had these
23 employees; correct?

24 A. From before that.

25 Q. And your testimony is that they paid these

1 five employees for all these years, and they never
2 went out to read a meter, not one meter?

3 A. I cannot say they didn't read a meter. I'm
4 saying what is in the book. That is what is in the
5 book.

6 Q. Ms. Parchment, can you say to the Court and
7 is it your testimony that from 2006 to 2017, that the
8 city's public works department did not read one
9 meter?

10 THE COURT: No. She has answered that
11 question. She said during that time period, the
12 books revealed that the amount of money billed
13 was based on an estimated reading.

14 What I surmise from that is that these five
15 people were probably going into the field and
16 reporting an inability to read a meter and so
17 somebody just took their readings and said, this
18 is garbage. Let's just estimate. I mean, if --
19 this is the testimony that I'm hearing today.

20 There may be testimony tomorrow from the
21 meter guy who will show me that the meters were
22 in perfect shape, and that they had meter
23 readings for every customer, and then that will
24 be the testimony today or tomorrow or whatever.

25 But so far, this is what I'm hearing.

1 MS. SHAW-WILDER: What I'm trying to get at
2 is does she know or is it just --

3 THE COURT: She said she saw the books.

4 THE WITNESS: I saw the books. I don't
5 know for sure. I cannot say for a fact they
6 didn't. I can only say what I see in a book.

7 BY MS. SHAW-WILDER:

8 Q. And did the books that you read, did you
9 review the books of every customer at the city from
10 2006 to 2017?

11 A. Yes. I looked at all of them because so
12 many complaints. I went through it. I brought it to
13 my boss. I did my homework.

14 Q. And you saw that -- your testimony is that
15 for every -- for the whole ten-year period, every
16 customer at the City of Opa-Locka had an estimated
17 bill for every month. Every --

18 A. That's what it looks like.

19 Q. And what book are you referring to?

20 A. It's called -- they have -- they have
21 folders with meter reading pages in there. It tells
22 you for each account number and location how much
23 each customer used, and right besides it, it says
24 estimate.

25 THE COURT: Did you ever speak to the

1 supervisor of the meter readers to say, I'm
2 tired of dealing with these customers
3 complaining. What is the business with you guys
4 estimating?

5 THE WITNESS: Yes. They were a part of the
6 whole process. We had to bring them in.

7 THE COURT: And what did they say?

8 THE WITNESS: He was -- part of the issue
9 is he was also new to his position, so the city
10 had a major turnover in top management, and so
11 nobody really knows what was going on prior to
12 that. All we can do is look at the documents
13 that's there.

14 THE COURT: But when you spoke to the --
15 I'm assuming there was a supervisor in charge of
16 the meter readers; right?

17 THE WITNESS: Yes.

18 THE COURT: Did you ever speak to that
19 person?

20 THE WITNESS: I spoke to their director.

21 THE COURT: To the director.

22 THE WITNESS: Yes.

23 THE COURT: And what did he say about why
24 the papers said estimated?

25 THE WITNESS: He was doing his homework,

1 trying to get them to read the meter. That's
2 when we had a study done, and we brought the
3 accounting in trying to get to the bottom of it.

4 THE COURT: Oh.

5 BY MS. SHAW-WILDER:

6 Q. So when you say it was estimated, do you
7 know -- not what you're guessing, but do you know if
8 a particular customer had its bill estimated, why the
9 city estimated the bill?

10 A. No. I don't know.

11 Q. Do you know what method was used to
12 estimate the bill?

13 A. For some, it was average of two months
14 estimates. That's all I know.

15 Q. Do you know that?

16 A. I know that.

17 Q. And how do you know that?

18 A. Because that's what -- I spoke to the
19 billing person, and that's what he explained to me,
20 that they took the estimate of the previous month and
21 the estimate of the current month and did another
22 estimate.

23 THE COURT: But if the meter was broken,
24 how valid was that first month?

25 THE WITNESS: That's the issue.

1 BY MS. SHAW-WILDER:

2 Q. Ms. Parchment, you're not testifying that
3 everybody in the city had a broken meter, are you?

4 A. I'm not testifying to that. I'm going by
5 the report.

6 Q. You don't know -- you're not testifying
7 that the estimate -- or are you testifying that the
8 estimate was because everyone in the city had a
9 broken meter?

10 A. No. I'm not testifying that.

11 Q. And you're not testifying today that every
12 -- that you know how -- if assuming the estimates
13 were done, that you know how every one in the city
14 was estimated?

15 A. No. I'm just telling you the ones I know.

16 Q. I have a question for you, Ms. Parchment.
17 Do you know whether or not those estimations were
18 underestimating the usage or overestimating the
19 usage?

20 A. I can't speak to that.

21 Q. So your testimony is it that when you saw
22 estimate that that means that the city was
23 overcharging for water. That's not your testimony;
24 right?

25 A. I'm not testifying what the estimates mean.

1 I just know they were estimates.

2 THE COURT: Did you have a long line of
3 people complaining that their bill was too low?

4 THE WITNESS: No. Nobody complained the
5 bill was too low. We almost had a riot about
6 the bill being high.

7 THE COURT: How many people were saying, I
8 think Opa-Locka is not billing me enough because
9 my bill looks unusually low?

10 THE WITNESS: Nobody said that.

11 BY MS. SHAW-WILDER:

12 Q. Would you expect someone to come in and
13 tell you that, hey, my bill is too low? Would you
14 expect that?

15 A. They may expect something is wrong. They
16 may bring it up because you don't want to see a
17 really high bill the next time.

18 Q. I'm saying you wouldn't expect someone to
19 come in and say you didn't charge me enough for water
20 because I filled my pool this month, and you didn't
21 charge me for it. You wouldn't expect that.

22 A. No. I wouldn't expect that.

23 Q. In customer service, did you ever have
24 someone come and say, hey, I left my water hose on.
25 You guys didn't charge me --

1 A. I can't speak of customer service.

2 Q. Weren't you in charge of customer service?

3 A. Yes, but I don't get every report. When
4 something goes really wrong, that's what I hear
5 about.

6 Q. In fact, what was happening in the city,
7 Ms. Parchment, is that when the city -- or when
8 customers were being undercharged, and then when the
9 city did actual reads, the bills were higher and
10 people were upset. That's what happened; right?

11 A. No. They were upset before that, and then
12 it got worse.

13 Q. And when that happened in 2016/2017, when
14 you started getting a lot of complaints, it's because
15 the city was -- you were basing on actual reads and
16 no longer undercharged, and then people were
17 complaining because the bills were high; right?

18 A. No. The complaints began the day I stepped
19 into the finance director's position, and then we got
20 the county involved. And when they actually started
21 doing the -- looking at the whole thing and got the
22 study done, then it got even worse because now they
23 started to try to bring the bills up to where it is
24 supposed to be. They weren't even sure about that.

25 Q. Because the customers were being

1 undercharged for a number of years, and when the city
2 started doing actual reads, the bills were higher;
3 correct?

4 A. Yes. Excuse me. They couldn't do actual
5 reads because the meters weren't working.

6 THE COURT: That's what I don't understand.

7 MS. SHAW-WILDER: Can you turn to
8 Plaintiff's Exhibit 3 that you talked about
9 earlier?

10 THE CLERK: All the exhibits are still up
11 there. That's Exhibits 1 and 4.

12 THE COURT: How much more do you have?

13 MS. SHAW-WILDER: I'm almost done, your
14 Honor.

15 THE COURT: Okay. Because I need to take a
16 break, and the court reporter needs a break.

17 She's got the exhibit.

18 BY MS. SHAW-WILDER:

19 Q. And, in fact, here Ms. Harold is explaining
20 that the city will continue to estimate because the
21 actual read amounts for a number of customers are far
22 greater than their previously estimated bills. Do
23 you see that?

24 A. Yes.

25 Q. That, as you understood it, based on actual

1 reads, when the city did bills based on actual reads,
2 the customers had higher bills; correct?

3 A. Correct.

4 Q. And when the city estimated the bills, they
5 were getting lower bills than their actual usage?

6 A. This is dated --

7 Q. You have to say yes or no.

8 A. I cannot say yes or no because the truth of
9 the matter is that there was an issue out there. The
10 reads were incorrect to begin with.

11 Q. Right. Can we -- I need you to focus and
12 answer my question so we know exactly what you can
13 testify to. Do you agree based when you were there,
14 Avanti and everyone who was looking at the -- I'm
15 sorry. Scratch that.

16 In 2016 when there's no question that the bills
17 -- customers were being billed based on actual reads,
18 those bills were higher than bills based on
19 estimates?

20 A. But there were still questions. That's why
21 we continued with the report.

22 THE COURT: Ask another question. You're
23 asking her if when the customers were based on
24 actual reads, if the bills were higher. That
25 actual read based on her testimony and that

1 Avanti statement, what is in the record now is
2 that only 35 percent of the meters were in
3 functioning condition. So these actual reads
4 are based on defective meters, and who knows if
5 the bills were accurate.

6 Now, I don't know if that's the truth or
7 not. I'm not prejudging the evidence. I'm just
8 summarizing what I've heard today. So that's
9 why there's a problem with that premise of that
10 question.

11 MS. SHAW-WILDER: Your Honor, I wasn't -- I
12 was just debating whether --

13 THE COURT: She answered it. She said she
14 cannot answer that question yes or no.

15 Correct.

16 THE WITNESS: That is correct.

17 THE COURT: Okay. Next question, please.

18 BY MS. SHAW-WILDER:

19 Q. Ms. Parchment, you would agree with me that
20 the Avanti report, neither the Avanti report or
21 Avanti itself ever reported to the city or concluded
22 that the city was overbilling its customers for
23 water?

24 A. The Avanti report did not look at that. It
25 looked at the meters.

1 MS. SHAW-WILDER: No further questions,
2 your Honor.

3 THE COURT: Is there any redirect?

4 MR. PIZZI: It's not going be that long.

5 Can I just ask if the witness wants a little
6 break or a glass of water?

7 THE COURT: We all need a break.

8 MR. PIZZI: Yes, there is, your Honor.

9 I'll be brief.

10 REDIRECT EXAMINATION

11 BY MR. PIZZI:

12 Q. Ms. Parchment, counsel asked you a number
13 of questions several times about your statement about
14 having knowledge of a statute that requires the city
15 to pass an ordinance to touch the customer water
16 deposits. Do you remember those questions?

17 A. Yes.

18 Q. And you stated that you -- upon examination
19 from --

20 THE COURT: Show her the statute, please.

21 MR. PIZZI: I just want to show you a
22 statute and ask if it refreshes your
23 recollection as to whether or not this was that
24 statute you were talking about.

25 May I approach, your Honor?

1 THE COURT: Yes.

2 BY MR. PIZZI:

3 Q. Is this the statute you were referencing?

4 A. Yes.

5 Q. Is that Florida Statute 180.135?

6 A. That's correct.

7 Q. Subsection 3 that we talked --

8 THE COURT: Do you have a copy for opposing
9 counsel?

10 MR. PIZZI: I don't. But I'm going to ask
11 you to read that one sentence into the record.

12 MS. SHAW-WILDER: Can I read that, your
13 Honor?

14 THE COURT: How come you pulled that out,
15 and you don't have a copy for opposing counsel?

16 MR. PIZZI: I didn't know it was going to
17 be an issue, Judge. But counsel brought it up,
18 and I --

19 THE COURT: So you magically happen to have
20 the pertinent statute with you?

21 MR. PIZZI: Mr. Kuehne magically had a
22 copy. I didn't.

23 THE COURT: Mr. Kuehne probably does have
24 all the statutes.

25 MS. SHAW-WILDER: I'm sorry. I have to

1 read. I've never seen it.

2 THE COURT: What statute number is that?

3 MR. KUEHNE: 180.135, your Honor.

4 THE COURT: Let me go to the back real
5 quick with my bailiff.

6 BY MR. PIZZI:

7 Q. Regarding the number of questions about --
8 I just want to make sure it's clear. This went on
9 and you've been here awhile. Nobody ever complained
10 about their water bill being too low?

11 A. No.

12 Q. Everybody complained about their water bill
13 being too high?

14 A. Yes.

15 Q. Did the complaints about the water being
16 too high, did that predate anything the county did?

17 A. Yes.

18 Q. Were people making those complaints before
19 and after any actual reads by the county or anyone
20 else?

21 A. Yes.

22 Q. So the complaints that the water bills were
23 too high, were inflated excessive water bills, that
24 complaint that the water bills were excessive and too
25 high, that was the consistent complaint across the

1 board?

2 A. That was a consistent complaint.

3 Q. When you say that was almost a riot, what
4 do you mean by that?

5 THE COURT: Okay. I know what a riot is,
6 and there's going to be one right now.

7 MR. PIZZI: Got you. All right. We have
8 our copies, Judge.

9 THE COURT: Let's give everybody a chance
10 to read it, please.

11 MR. PIZZI: Sure.

12 THE COURT: Go ahead.

13 THE WITNESS: Any provision of law to the
14 contrary notwithstanding any municipality may
15 adopt an ordinance authorizing the municipality
16 to withdraw and expect any security deposit
17 collected by the municipality from any occupant
18 or tenant from the provision of utility, water,
19 or sewer service with an opinion of services
20 charged by the occupant or tenant.

21 BY MR. PIZZI:

22 Q. For the nonpayment by the occupant or
23 tenant; correct?

24 A. Correct.

25 Q. Just one of the statutes you're referring

1 to?

2 A. This is one of the statutes.

3 Q. Is there anywhere in here that says -- are
4 you aware of whether or not Opa-Locka ever adopted an
5 ordinance allowing the city to use the security
6 deposits for nonpayment of water bills by the
7 particular customer?

8 A. Yes, they did. They do have one where for
9 nonpayment they -- for payment once you close your
10 account, you can get the money.

11 Q. Is there anything in Florida Statute
12 180.135 or any ordinance in the City of Opa-Locka or
13 any law that you're aware of that says the city can
14 use customer deposits for anything other than
15 nonpayment of the bill by the customer?

16 A. No. I'm not aware of any ordinance that
17 states that.

18 Q. During the period of time when you were
19 finance director, did the city commission ever pass
20 an ordinance even attempting to authorize using water
21 deposits for any purpose other than the customers
22 actual water account?

23 A. No. I did not.

24 Q. You mention on cross-examination there were
25 different water accounts. There was the water and

1 sewer operating account.

2 THE COURT: We're not going to go through
3 that again.

4 MR. PIZZI: Okay.

5 BY MR. PIZZI:

6 Q. The water and the customer deposit account
7 was restricted; correct?

8 THE COURT: She already testified to that
9 on direct.

10 MR. PIZZI: Okay.

11 BY MR. PIZZI:

12 Q. Now, there was mention -- just one
13 question. There wasn't -- your testimony on direct
14 and on cross-examination about the meters, the
15 complaints about the high bills. Meters, complaints
16 about high bills, taking the deposits. All of that
17 applied to residential commercial and business
18 customers alike; correct?

19 A. That's correct.

20 Q. Meaning, without going into all of your
21 testimony on direct and cross about the complaints,
22 applied to business customers, commercial customers,
23 and residential customers; correct?

24 A. Correct.

25 Q. All right. Now, I want to ask you about

1 the -- you were asked about the deposit form. Was
2 the purpose of the deposit to guarantee payment of
3 that person's particular bill?

4 A. Yes. To assure that we were able to
5 receive payment for outstanding bills.

6 MR. PIZZI: I have two more questions. Can
7 I have that form that I can read? The larger
8 size one that's in evidence.

9 Let me approach the witness, Judge.

10 I want you to read the first clause of the
11 deposit.

12 THE COURT: Deposit slip.

13 MR. PIZZI: Deposit slip.

14 THE WITNESS: Deposit is made with express
15 understanding and agreement that all or any part
16 thereof may be applied by the City of Opa-Locka,
17 Florida at any time in satisfaction of said
18 guarantee. The very top?

19 MR. PIZZI: The beginning.

20 THE WITNESS: As a deposit to guarantee the
21 due payment of and any all indebtedness for
22 water services or charges. Incidental --

23 BY MR. PIZZI:

24 Q. As a deposit to guarantee what?

25 A. As a deposit to guarantee the due payment

1 of any and all indebtedness for water services or
2 charges.

3 Q. Okay. So the person is paying a deposit
4 for the purpose of guaranteeing that customer's
5 payment of the water bill; right?

6 A. Correct.

7 Q. Okay. And are you aware of anything that
8 authorized the usage of that money to pay for
9 anything else other than that person's water bill?

10 A. No. I don't know of any other ordinance,
11 resolution, nothing.

12 Q. As a finance director, Judge Butchko asked
13 you about various authorizations and so on. Was it
14 appropriate to take people's water deposits, whether
15 you intended to pay it back later or not?

16 A. Not without authorization if the
17 commission.

18 Q. And that never came?

19 A. That did not happen.

20 Q. Now, they asked -- counsel asked you about
21 the contract. I just have a couple of questions
22 about that; then I'm done. May I approach?

23 Counsel showed you this ordinance, Section
24 21-15. Premises shall be required to be connected to
25 the city water distribution system. Do you see that

1 there?

2 A. Yes.

3 Q. Was the city required to connect people to
4 the city water distribution system?

5 A. Yes.

6 Q. Section 21-23. Application for service
7 required, nature of contract. Is that in the
8 ordinance?

9 A. Yes. On page 2.

10 Q. Section 21-26 on the next page.
11 Expiration, renewal of contracts for service. Is
12 that in the Opa-Locka code?

13 A. Yes.

14 Q. All contracts for water supply service
15 shall expire at the end of the next proceeding
16 calendar year, but shall be automatically renewed
17 from month to month unless ten day's notice. Was the
18 city required to give notice prior to terminating
19 service?

20 A. Yes. Prior to, we have to give notice.

21 Q. Section -- I just have one more section.
22 Go back to Section 21-23. Service is to be furnished
23 only upon a signed application accepted by the
24 department. Do you see that?

25 A. Yes.

1 Q. And conditions of such application and the
2 resulting contract for service are binding upon the
3 customer's as well as the department. As a resulting
4 contract for service are binding upon the customer as
5 well as the department. Do you see that?

6 A. Yes.

7 Q. You mentioned, is there some common sense
8 to looking at these things when you're a finance
9 director?

10 A. Yes.

11 Q. Based upon what you reviewed of this
12 statute on both direct and cross, if somebody paid
13 their bill, was the city required to provide water
14 service?

15 A. Yes.

16 Q. Under the agreement with the city with all
17 the water customers, was the city required to bill
18 people based upon their actual consumption?

19 A. Yes.

20 Q. Was the city required under the contract to
21 give people an accurate bill?

22 MS. SHAW-WILDER: Objection, your Honor.

23 What contract? Lack of foundation. He's
24 referencing a document without identifying it.

25 THE COURT: What contract?

1 MR. PIZZI: The people under the services
2 agreement with each water customer, based on
3 your personal knowledge as finance director, was
4 the city required to provide them with an
5 accurate bill?

6 MS. SHAW-WILDER: Same objection, your
7 Honor.

8 THE COURT: Sustained.

9 BY MR. PIZZI:

10 Q. Was the city required to provide water
11 service?

12 A. Yes.

13 MR. PIZZI: No further questions, Judge.

14 THE COURT: So it's 2:35. We have to take
15 a very limited break until three o'clock, and
16 we'll resume at three.

17 MS. SHAW-WILDER: Planning purposes. What
18 time do you intend to go today?

19 THE COURT: Until five. I have to teach a
20 class at the University of Miami at 6:30. You
21 know, US-1 is -- off the record.

22 (Brief recess was taken.)

23 THE COURT: Let's see where we are. Call
24 your next witness.

25 MR. PIZZI: The plaintiffs call George

1 | Suarez.

2 THE COURT: Come forward, please. Raise
3 your right hand and be sworn.

4 THEREUPON:

GEORGE SUAREZ

6 Was called as a witness and, having been first duly
7 sworn and responding "Yes," was examined and
8 testified as follows:

DIRECT EXAMINATION

10 BY MR. PIZZI:

11 Q. Mr. Suarez, what's your address?

12 A. 1341 Dunad Avenue; Opa-Locka, Florida
13 33054.

14 Q. How long have you lived in the City of
15 Opa-Locka?

16 A. Since 2015.

17 Q. Okay. Do you own the home?

18 A. Yes, sir.

19 Q. Do you co-own it with your wife?

20 A. Yes, sir.

21 Q. What do you do for a living?

22 A. I'm a catering executive chef at FIU.

23 Q. When you and your wife bought the house,
24 were you required to open up a water account with
25 Opa-Locka?

EXHIBIT "D"



Def. EX. (B)
Filed 2/26 A.D. 2019
Case No. 17-8285 (CJC)
HARVEY RUVIN
Clerk Circuit Court



CITY OF OPA-LOCKA UTILITY BILLING DEPARTMENT NEW TENANT WATER & SEWER APPLICATION

DATE: _____

TENANT/OWNER INFORMATION

BUSINESS/APARTMENT NAME: _____

NAME: _____ (LAST) _____ (FIRST) _____ MI.

NAME: _____ (LAST) _____ (FIRST) _____ MI.

PREVIOUS ADDRESS: _____

SS#: _____ Email: _____

FL DL#: _____

BUSINESS ID: _____

OTHER ID: _____

PHONE NO: _____ (HOME) _____ (BUSINESS) _____ (CELLULAR)

CONNECTION INFORMATION

SERVICE ADDRESS: _____

MAILING ADDRESS (IF DIFFERENT): _____

_____ (CITY) _____ (STATE) _____ (ZIP CODE)

LANDLORD/OWNER INFORMATION

NAME: _____ (LAST) _____ (FIRST) _____ MI.

MAILING ADDRESS: _____

_____ (CITY) _____ (STATE) _____ (ZIP CODE)

PHONE NO: _____ (HOME) _____ (BUSINESS) _____ (CELLULAR)

+++++
+++++
+++++
+++++

FOR OFFICE USE ONLY

ACCOUNT NO: _____ DEPOSIT: _____ W/S (WATER ONLY)
TYPE OF UNIT: _____ S/C

RES/APT/BUS

DATE OPEN/REOPEN: _____ DATE SERVICE STARTED: _____

ACCOUNT TYPE: _____ LIENS: _____ YES: _____ NO: _____

APPROVED BY: _____ DATE: _____

EXHIBIT "E"

ACCOUNT NO. 13661

CUSTOMER GUARANTEE	DATE	13661
RECEIVED	LAST	FIRST
FROM		
ADDRESS		
	DOLLARS	CENTS

AS A DEPOSIT TO GUARANTEE THE DUE PAYMENT OF ANY AND ALL INDEBTEDNESS FOR WATER SERVICE OR CHARGES INCIDENT TO THE WATER DEPARTMENT CONNECTIONS, WHICH MAY BE OF BECOME DUE TO THE CITY OF OPA LOCKA, FLORIDA, BY THE CONSUMER NAMED HEREIN. THIS DEPOSIT IS MADE WITH THE EXPRESS UNDERSTANDING AND AGREEMENT THAT ALL OR ANY PART THEREOF MAY BE APPLIED BY THE CITY OF OPA LOCKA, FLORIDA, AT ANY TIME IN SATISFACTION OF SAID GUARANTEE; AND THAT THE CITY OF OPA LOCKA, MAY USE SAID DEPOSIT AS FULLY AS IF THE SAID CITY WERE THE ABSOLUTE OWNER THEREOF. UPON DISCONTINUANCE OF ANY OR ALL SERVICES COVERED BY THIS DEPOSIT, AND THE PRESENTATION OF THIS RECEIPT, TOGETHER WITH PROPER IDENTIFICATION, THE CITY OF OPA LOCKA AGREES TO REFUND TO THE SAID CONSUMER OR WHOEVER MAY BE LAWFULLY ENTITLED THERETO, THAT PORTION OF THE DEPOSIT APPLYING TO THE SERVICE OR SERVICES DISCONTINUED, LESS ANY AMOUNTS THEN DUE TO THE CITY OF OPA LOCKA, FLORIDA. THIS DEPOSIT SHALL NOT PRECLUDE THE CITY OF OPA LOCKA FROM DISCONTINUING ANY AND ALL SERVICE TO THE CONSUMER FOR FAILURE TO PAY ANY AND ALL INDEBTEDNESS TO THE SAID CITY REGARDLESS OF WHETHER OR NOT THE AMOUNT OF SAID DEPOSIT IS SUFFICIENT TO COVER THE AMOUNT OF SUCH INDEBTEDNESS. THIS DEPOSIT SHALL NOT BE TRANSFERABLE.

TOTAL DEPOSIT \$

CUSTOMER SIGNATURE	CITY OF OPA LOCKA, FLORIDA
	BY

AS A DEPOSIT TO GUARANTEE THE DUE PAYMENT OF ANY AND ALL INDEBTEDNESS FOR WATER SERVICE OR CHARGES INCIDENT TO THE WATER DEPARTMENT CONNECTIONS WHICH MAY BE OF BECOME DUE TO THE CITY OF OPA-LOCKA FLORIDA BY THE CONSUMER NAMED HEREIN THIS DEPOSIT IS MADE WITH THE EXPRESS UNDERSTANDING AND AGREEMENT THAT ALL OR ANY PART THEREOF MAY BE APPLIED BY THE CITY OF OPA-LOCKA FLORIDA AT ANY TIME IN SATISFACTION OF SAID GUARANTEE AND THAT THE CITY OF OPA-LOCKA MAY USE SAID DEPOSIT AS FULLY AS IF THE SAID CITY WERE THE ABSOLUTE OWNER THEREOF. UPON DISCONTINUANCE OF ANY OR ALL SERVICES COVERED BY THIS DEPOSIT AND THE PRESENTATION OF THIS RECEIPT TOGETHER WITH PROPER IDENTIFICATION THE CITY OF OPA-LOCKA AGREES TO REFUND TO THE SAID CONSUMER OR WHOEVER MAY BE LAWFULLY ENTITLED THERETO, THAT PORTION OF THE DEPOSIT APPLYING TO THE SERVICE OR SERVICES DISCONTINUED, LESS ANY AMOUNTS THEN DUE TO THE CITY OF OPA-LOCKA FLORIDA. THIS DEPOSIT SHALL NOT PRECLUDE THE CITY OF OPA-LOCKA FROM DISCONTINUING ANY AND ALL SERVICE TO THE CONSUMER FOR FAILURE TO PAY ANY AND ALL INDEBTEDNESS TO THE SAID CITY REGARDLESS OF WHETHER OR NOT THE AMOUNT OF SAID DEPOSIT IS SUFFICIENT TO COVER THE AMOUNT OF SUCH INDEBTEDNESS. THIS DEPOSIT SHALL NOT BE TRANSFERABLE.

EXHIBIT "F"

8/29/16

To: Melinda Miguel, Chair, and Members of the Governor's Financial Emergency Board, and Mayor Myra Taylor and Members of the Opa-locka City Commission.

From: Merrett R. Stierheim, Special Assistant to the Chair, Oversight Board.

Subject: Critical Financial Condition—City of Opa-locka

I was recently appointed (Aug. 15th) by Ms. Melinda Miguel, Oversight Board Chairperson and the Governor's Inspector General for the State of Florida as her pro bono (unpaid) Special Assistant. The ONLY REASON I accepted that appointment was to try and help the people of Opa-locka resolve the critical financial crisis their City is facing and, hopefully, to preserve Opa-locka as a functioning municipality.

In discussions with Mayor Taylor, Commissioner Riley and the City Manager the issue of respect for Opa-locka's elected officials was clearly stated as a major concern and I have shared that concern with Inspector General Miguel and some members of the Oversight Board. This is my first meeting with both bodies and I hope that while we may occasionally disagree we can still be civil and respectful of each other—because, collectively we share a common objective in wanting, if at all possible, the City of Opa-locka to survive this financial crisis. And, that will not be easy if we start blaming one another for one thing or another.

Twenty years ago, in Oct. 1996 as interim Miami city manager I did much the same thing for that City, after discovering a \$68 million shortfall in a once approved city budget. A cash flow analysis determined that Miami would not have funds to meet its payroll by Feb. or March, 1997. Years later, I led a similar effort in the City of Homestead. Unfortunately, Opa-locka is in much worse condition because we are currently trying to determine how many more weeks the City has left to meet its employee payroll and what we can collectively do about it.

HOW DID THIS HAPPEN: Opa-locka's financial condition certainly did not happen overnight. It has been steadily worsening for several years, and you may ask how? There are many reasons and the alleged criminal investigation by the FBI IS

NOT, up to this point, a major reason. Of far greater significance in recent years, are the serious break-downs in ethics, accountability standards, and professionalism within the City administration. Respectfully, but realistically, Opa-locka's elected officials who are responsible for governance, policy, and oversight over their City administration share in the responsibility for the City's condition.

PRIOR EXTERNAL AUDITS: Opa-locka's past external audits give clear evidence of the financial breakdown. External audits are a critical safeguard for corporate boards and city/county elected officials. In the City of Miami we fired the external auditor and sued them for not adequately advising the city commission. Opa-locka's 2011/12 External Audit, four years ago, identified five (5) Material Weaknesses, which are the most serious of audit findings. They dealt with utility billings, financial reporting, and employee benefits. In addition, the audit spelled out nine (9) more "Significant Deficiencies" in several other financial functions.

The official 2012/13 External Audit findings were far more serious. Quoting from page 87, under "Deteriorating Financial Condition"....."If financial conditions continue to deteriorate, the City may require state assistance which would then be deemed a financial emergency pursuant to---Florida Statutes". Could anything be more clearly stated? The Audit further identified many previous findings that had not been corrected along with several new "Material Weaknesses" and "Significant Deficiencies".

The 2012/13 Audit Report was officially addressed to the City Commission on September 17th, 2014. I don't know if the auditors appeared before the City Commission, or what transpired after it was distributed—if it was distributed. So, here we are, two years later, with a Declaration of Financial Emergency and a State Oversight Board. The External Audit for 2013/14 was completed and submitted. I understand the auditors have requested additional dollars to complete the 2014/15 audit, now, almost a full year after the City's books closed on Sept. 30, 2015. The external audit for the year ending September 30, 2014 states that the audit recommendations from the 2012/13 audit pertaining to Budgets and the Deteriorating Financial Condition have "Not been Implemented". It further states that "Budgets are not being adhered to, properly balanced, or

being utilized by management". Finally, it flags for the second year in a row the "deteriorating financial condition" of the City and "financial emergency" under a Florida Statute.

RECOMMENDED IMMEDIATE ACTIONS: Meeting Opa-locka's employee payroll and keeping the City operational is the most important and immediate need and unfortunately there is no "quick fix" to address this need. Fundamentally, the financial and operational survival of the City of Opa-locka is very much at stake and it is, and should be, a State of Florida concern because cities are creatures of the State. Having said that, Miami-Dade County, inescapably has major concerns and potential liabilities if Opa-locka doesn't survive. The citizens of Opa-locka will require continued services, whether by the City or the County; such as police protection, water and sewer service, public works, sanitation services, and many other important services.

The Oversight Board's agenda for Aug. 30, as well as past agendas and Committee reports, are filled with issues needing attention and direction, while individual Board members and volunteers try to address deficiencies and generate badly needed dollars. Oversight Board Chairperson Melinda Miguel has been in discussion with and researching possible financial relief from the State of Florida. She advises that the only known loan from the State, short of legislative action, which is many months away, might be an advance of certain taxes such as revenue sharing and the half cent. She has also been seeking professional staff support from State Chief Financial Officer Atwater's office.

CITY WATER AND SEWER OPERATION: At the request of Oversight Board member J.D. Patterson the City of Opa-locka is fortunate to have a team of professionals under the leadership of Assistant Director David Richie from the County Department of Water and Sewers in City Hall. They have been reviewing the operation of the City's Water and Sewer system, including billing, receivables, and related systems and procedures. The County's W&S operation is professionally managed and is the largest in the Southeast and it collects over 99% of its receivables. The good news is that this professional review process has

identified several opportunities for the City of Opa-locka to significantly increase its utility revenue along with other efficiencies.

To highlight just a few of their initial findings:

1. Based on a review of \$1.9 million in W&S receivables approximately \$1 million has been outstanding for a considerable period of time.
2. Of 5800 W&S accounts 2000 are manually read, and a recent review indicated that at least 50% of W&S usage is estimated.
3. Of the 5800 W&S accounts approximately 600 are currently unknown and are being researched.
4. There appears to be no follow up on return invoices.
5. There is inadequate staffing and supervision over billing and collection and the same staff perform both functions, which should be separated.

There is a very real opportunity to substantially increase the City's utility revenue by the professional management of these functions. Accordingly, I am recommending that the Oversight Board in cooperation with City staff negotiate an interlocal agreement between the City of Opa-locka and the County Water and Sewer Department that can be presented to both the City and County Commissions for approval. Increased utility revenues would continue to flow to the City after deducting the reasonable expense incurred by the County. The County W&S Department currently handles these functions for the cities of Coral Gables and Miami Springs.

ADDITIONAL RECOMMENDATION: In order to keep the City of Opa-locka operational while we seek outside financial support, as outlined below, I am urging the Oversight Board to support the initial utilization of unrestricted W&S funds followed by the use of restricted W&S reserves and general fund reserves as needed.

I also recommend that while we continue to explore any opportunities for financial or staff support from State agencies and that we immediately begin negotiations with County Mayor Gimenez' Office for a bridge loan or longer term financial assistance to give the City and the Oversight Board time for corrective

actions while sustaining basic City operations and services. In addition we should approach banking and other institutions, including Miami Dade County, for Tax Anticipation Notes (TAN's) which can be short or long term with interest to be paid back from ad valorum property tax revenue. We can also explore lease-back options for City owned assets, but that will take time and competition.

It should be clearly understood by everyone that the survival of the City is at stake and it will be a difficult road to travel. There are NO FREE SOLUTIONS to the City's financial crises. There are no blank checks and there will be PAY BACK PROVISIONS IN ANY SUPPORTIVE FINANCIAL ARRANGEMENT WE CAN NEGOTIATE. It should also be understood that the survival of the City is precarious and requires a true partnership between the City Commission, the Oversight Board and respective staff.

Fundamentally, the City Commission of Opa-locka, with the Oversight Board's guidance and help, has to clean up and professionalize its administration, and the City Commission has to fully and aggressively support that effort if the City is to survive.

Cc: Hon. Miami-Dade Mayor Carlos Gimenez

Hon. Chair and Members, Miami-Dade County Commission

Ed Marques, Miami-Dade Deputy Mayor

Lester Sola, Director, Miami-Dade W&S Dept.

Yvette Harrel, Opa-locka City Manager

EXHIBIT "G"

**IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL CIVIL DIVISION**

CASE NO.

AMBROSE OBASI,
Plaintiff,

JURY TRIAL DEMANDED

vs.

CITY OF OPA-LOCKA, FLORIDA,
a municipal Florida corporation,
Defendant.

COMPLAINT UNDER FLORIDA'S WHISTLE BLOWER ACT

Plaintiff Ambrose Obasi ("Obasi" or "plaintiff"), sues the City of Opa-Locka, Florida ("City" or "defendant") for damages, demands a trial by jury, and states:

1. This is a Florida Whistleblower complaint seeking damages in excess of \$4,000,000.00 and other relief by a well-respected employee of the City of Opa-Locka who is responsible for reading water meters in the City for over eleven (11) years and who was subjected to adverse personnel action to punish him for his participation in multiple investigations of misconduct by City authorities, personnel, and officials as outlined herein.

2. Plaintiff is *sui juris*, a resident of Miami-Dade County, and was an employee of the City of Opa-Locka.

3. The City of Opa-Locka is a municipal government entity organized under the Constitution and laws of the State of Florida, and as such is an "agency" as within the scope of Section 112.3187(3)(a), Florida Statutes.

4. Venue is proper in this judicial circuit because defendant Opa-Locka is located within Miami-Dade County, Florida. All of the relevant acts occurred within Miami-Dade County.

5. All conditions precedent to this cause of action have been met, waived, excused, occurred, or would be otherwise futile.

6. To the extent any exist, plaintiff has exhausted all administrative remedies.

GENERAL ALLEGATIONS

7. Plaintiff is an employee of the City of Opa-Locka who and has been in charge of reading the water meters in the City of Opa-Locka for over 11 years.

8. During this period, on a daily basis, plaintiff has been responsible for meter reading at Opa-Locka homes and businesses and insure the water billings are billed based on actual consumption.

9. It is and has been the plaintiff's job responsibilities to make sure that he and the City of Opa-Locka comply with the City Code by only billing residents and businesses for the water they actually consume.

10. Accurate meter reading and billing for actual consumption are required for the City to comply with its contracts and obligations to supply water to customers through accurate billing.

11. For more than ten (10) years, the City of Opa-Locka has intentionally falsified the water billing records of customers by destroying and not using actual meter readings but charging residential and business water customers higher water rates based on fabricated usage numbers.

12. Specifically, on a daily basis for more than ten (10) years, for those meters that plaintiff was able to read, plaintiff presented his actual meter readings to the City's billing staff working under the direction and supervision of the City Manager.

13. Opa-Locka staff intentionally altered and falsified the water consumption records and meter readings to intentionally overbill residential and business water customers in order to make more revenue available for the City.

14. When plaintiff complained about this practice and misconduct to City supervisory personnel, he was threatened with termination.

15. As a result of plaintiff's insistence to the City that the City correctly and accurately bill water customers, plaintiff has been disciplined by being denied raises and promotional opportunities.

16. Plaintiff has been black-balled and ostracized because of his refusal to go along with the City's corrupt water billing practices.

17. Plaintiff retained the undersigned attorneys, and said lawyers are entitled to the recovery of their reasonable attorney's fees and costs pursuant to Fla. Stat. § 112.3187.

COUNT I
VIOLATION OF SECTION 112.3187, FLORIDA STATUTES
(Against Defendant CITY)

18. Plaintiff incorporates paragraphs 1 through 17 as if fully set forth herein.

19. The City of Opa-Locka is an agency, a term defined by Section 112.3187(3)(a), Florida Statutes.

20. Plaintiff was and is at all times material, an employee as that term is defined by Section 112.3187(3)(b), Florida Statutes.

21. The City of Opa-Locka took adverse personnel action against the plaintiff, as that term is defined by Section 112.3187(3)(c), Florida Statutes.

22. The action taken against plaintiff includes termination, and loss of titles, positions, compensation, and benefits within the City.

23. The actions taken by the City were prohibited under Section 112.3187(4), Florida Statutes.

24. The prohibited actions were taken as a direct result of the plaintiff disclosed information, as defined by § 112.3187(5), Florida Statutes.

25. Specifically, plaintiff participated in an investigation and other inquiry conducted by an agency of State and Local government.

26. In addition, plaintiff refused to participate in actions prohibited by Florida law.

27. In addition, plaintiff refused to participate in unethical, illegal, and inappropriate violations of federal, state, and local laws, rules, regulations and policies prohibited by § 112.3187, Florida Statutes.

28. In addition, plaintiff refused to participate in unethical, illegal, and inappropriate violations of federal, state, and local laws, rules, regulations and policies, and disclosed to City and state officials and officers such violations and misrepresentations.

For these reasons, plaintiff requests compensatory damages. Plaintiff additionally seeks immediate payment of her attorney's fees and costs and all other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury for all issues so triable as a matter of law.

Dated: September 3, 2019.

[INTENTIONALLY BLANK]

VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

Pursuant to § 92.525, Florida Statutes, under penalties of perjury, I declare that I have read the foregoing Verified Complaint, and that the facts alleged and stated therein are true and correct to the best of my knowledge and belief. 

AMBROSE OBASI

Respectfully submitted,

MICHAEL A. PIZZI, JR., P.A.
MICHAEL A. PIZZI, JR.
Florida Bar No. 07945
6225 Miami Lakes Drive East, Suite 313
Miami Lakes, Florida 33014
Tel: (305) 777-3800; Fax: (305) 777-3802
mpizzi@pizzilaw.com

KUEHNE DAVIS LAW, P.A.
BENEDICT P. KUEHNE
Florida Bar No. 233293
MICHAEL T. DAVIS
Florida Bar No. 63374
100 S.E. 2nd Street, Suite 3550
Miami, Florida 33131-2154
Tel: 305.789.5989
ben.kuehne@kuehnelaw.com
efiling@kuehnelaw.com; mdavis@kuehnelaw.com

REINER & REINER, P.A.
9100 So. Dadeland Boulevard, Suite 901
Miami, Florida 33156-7815
Tel: (305) 670-8282; Fax: (305) 670-8989
dpr@reinerslaw.com; eservice@reinerslaw.com

/S/ DAVID P. REINER, II
By: _____
DAVID P. REINER, II; Fla. Bar No. 416400

EXHIBIT "H"



Collection Notice/Intent To Lien

11/30/2020

D J OPPORTUNITIES INC, APTS
2751 SW 141ST TR
DAVIE, FL 33330

Ref: 02011-02

Legal Description:

Folio # :08-2122-011-0060
Sub Division: Community Gardens
Plat 31
Book 5
Lot 7 & 8
Block 150

Type of Service:

WATER & SEWER

Property Address: 2561 NW 135 ST
Amount Due: \$28,665.19
Interest Rate Annually: 7%
Processing Fee: \$6.90
Release Fee: \$35.00

Total Amount Due: \$28,665.19

Please be advised that this notice is an attempt to collect an outstanding debt for the Water & Sewer utility account listed above. We have made several attempts to collect this debt and as of today the City has not received a response. Please note that if the above amount is not paid by **01/13/2021** a lien will be filed against the property through the City's Lien Department for the stated amount and any other fees imposed by the City of Opa-locka. If you have already submitted a payment or have made arrangements with our staff, please disregard this notice.

Return this notice with your payment by money order or cashier's check to:

**Mail: City of Opa-locka
P. O. Box 540371
Opa-locka, FL 33054**

**In Person:
780 Fisherman St. Suite 120
Opa-locka, FL 33054**

Payments can also be made in person by cash, all Visa Cards, Master Cards, Discover, American Express, Debit Cards, Money Orders, and Cashier's Checks.

If you desire further information, please contact our office at (305) 953-2868 option 1, between the hours of 8:30 am through 4:30pm Monday through Friday.

Sincerely,

Finance Department
The Great City of Opa Locka



Collection Notice/Intent To Lien

11/30/2020

LAKEVIEW APTS LLC
844 SW 1ST ST
MIAMI, FL 33130

Ref: 02013-04

Legal Description:

Folio # :08-2122-011-0100
Sub Division: Community Gardens
Plat 31
Book 5
Lot 14 thru 24
Block 150

Type of Service:

WATER & SEWER

Property Address: 2405 NW 135 St
Amount Due: \$96,044.88
Interest Rate Annually: 7%
Processing Fee: \$6.90
Release Fee: \$35.00

Total Amount Due: \$96,044.88

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Sincerely,

Finance Department
The Great City of Opa Locka

Utility Billing V8.1
DATE: 11/30/2020
TIME: 14:48:41

CITY OF OPA-LOCKA
CUSTOMER HISTORY REPORT

PAGE NUMBER: 1
MODULE : histfun

ACCOUNT NUMBER 02013-04
CUSTOMER NAME LAKEVIEW APTS LLC
SERVICE ADDRESS 2405 NW 135 ST

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
10/14/2020	10/14/2020	ADJ BILL	CORR UNDERBILL 1/16-4/19&SWU	81,066.64	96,044.88
06/03/2019	06/03/2019	ADJ BILL	BILLING ERROR CANCEL MAY 2019	-3,744.56	14,978.24
05/17/2019	05/17/2019	BILLED	STANDARD BILLING	3,744.56	18,722.80
05/16/2019	05/16/2019	PAYMENT	PAYMENT	3,744.56	14,978.24
04/30/2019	04/29/2019	BILLED	STANDARD BILLING	3,744.56	18,722.80
04/02/2019	04/02/2019	PAYMENT	PAYMENT	3,744.56	14,978.24
03/29/2019	03/29/2019	PAYMENT	PAYMENT	3,744.56	18,722.80
03/20/2019	03/20/2019	BILLED	STANDARD BILLING	3,744.56	22,467.36
03/11/2019	03/11/2019	BILLED	STANDARD BILLING	3,744.56	18,722.80
03/04/2019	03/04/2019	PAYMENT	PAYMENT	3,744.56	14,978.24
02/28/2019	02/28/2019	BILLED	STANDARD BILLING	3,744.56	18,722.80
02/06/2019	01/24/2019	BILLED	STANDARD BILLING	3,744.56	14,978.24
01/24/2019	01/24/2019	PAYMENT	PAYMENT	3,744.56	11,233.68
01/14/2019	01/14/2019	PAYMENT	PAYMENT	3,744.56	14,978.24
12/21/2018	12/21/2018	BILLED	STANDARD BILLING	3,744.56	18,722.80
12/14/2018	12/14/2018	PAYMENT	PAYMENT	3,744.56	14,978.24
12/11/2018	12/11/2018	BILLED	STANDARD BILLING	3,744.56	18,722.80
11/30/2018	11/30/2018	BILLED	STANDARD BILLING	3,744.56	14,978.24
11/15/2018	11/15/2018	PAYMENT	PAYMENT	3,744.56	11,233.68
11/13/2018	11/13/2018	BILLED	STANDARD BILLING	3,744.56	14,978.24
11/05/2018	11/05/2018	BILLED	STANDARD BILLING	3,744.56	11,233.68
10/28/2018	10/28/2018	BILLED	STANDARD BILLING	3,744.56	7,489.12
10/23/2018	10/23/2018	PAYMENT	PAYMENT	7,489.12	3,744.56
10/18/2018	10/18/2018	BILLED	STANDARD BILLING	3,744.56	11,233.68
10/05/2018	10/05/2018	PAYMENT	PAYMENT	3,744.56	7,489.12
10/02/2018	10/02/2018	BILLED	STANDARD BILLING	3,744.56	11,233.68
09/24/2018	09/24/2018	BILLED	STANDARD BILLING	3,744.56	7,489.12
09/04/2018	09/04/2018	BILLED	STANDARD BILLING	3,744.56	3,744.56
08/09/2018	08/06/2018	PAYMENT	PAYMENT	3,744.56	0.00
07/06/2018	07/06/2018	PAYMENT	PAYMENT	3,186.56	3,744.56
07/06/2018	07/06/2018	BILLED	STANDARD BILLING	3,744.56	6,931.12
06/13/2018	06/11/2018	BILLED	STANDARD BILLING	3,186.56	3,186.56
05/30/2018	05/30/2018	PAYMENT	PAYMENT	3,186.56	0.00
05/11/2018	04/27/2018	BILLED	STANDARD BILLING	3,186.56	3,186.56
04/25/2018	04/25/2018	PAYMENT	PAYMENT	11,647.77	0.00
03/27/2018	03/21/2018	BILLED	STANDARD BILLING	11,647.77	11,647.77
03/22/2018	03/22/2018	PAYMENT	PAYMENT	11,647.77	11,647.77
03/07/2018	03/01/2018	BILLED	STANDARD BILLING	11,647.77	11,647.77
12/18/2017	12/18/2017	PAYMENT	PAYMENT	6,441.20	0.00
11/21/2017	11/14/2017	BILLED	STANDARD BILLING	6,441.20	6,441.20
10/30/2017	10/30/2017	PAYMENT	PAYMENT	8,207.34	0.00
10/12/2017	09/25/2017	BILLED	STANDARD BILLING	8,207.34	8,207.34
08/29/2017	08/29/2017	PAYMENT	PAYMENT	5,848.30	0.00
08/09/2017	07/28/2017	BILLED	STANDARD BILLING	5,848.30	5,848.30
08/08/2017	08/08/2017	PAYMENT	PAYMENT	5,950.60	5,848.30
07/05/2017	07/05/2017	BILLED	STANDARD BILLING	5,950.60	5,950.60
06/20/2017	06/20/2017	PAYMENT	PAYMENT	6,050.81	0.00
06/01/2017	05/19/2017	BILLED	STANDARD BILLING	6,050.81	6,050.81
05/15/2017	05/15/2017	PAYMENT	PAYMENT	4,094.69	0.00
04/26/2017	04/18/2017	BILLED	STANDARD BILLING	4,094.69	4,094.69
04/20/2017	04/20/2017	PAYMENT	PAYMENT	9,341.74	4,094.69
03/28/2017	03/23/2017	BILLED	STANDARD BILLING	4,670.87	9,341.74
03/09/2017	03/09/2017	PAYMENT	PAYMENT	4,670.87	9,341.74
02/21/2017	02/21/2017	PAYMENT	PAYMENT	4,670.87	14,012.61
02/06/2017	02/06/2017	BILLED	STANDARD BILLING	4,670.87	14,012.61
02/01/2017	02/01/2017	PAYMENT	PAYMENT	6,819.05	9,341.74



City of
PA-LOCKA
Florida

Collection Notice/Intent To Lien

10/01/2020

Peleg Group USA LLC
15155 NW 7 Ave 2nd FL
Miami, FL 33169

Ref: 02739-03

Legal Description:

Folio # :08-2122-035-0120
Sub Division: Opa Locka Warehouse Condo
Plat
Book
Lot
Block

Type of Service:

WATER & SEWER

Property Address: 14615 NW 27 Ave
Amount Due: \$132,122.01
Interest Rate Annually: 7%
Processing Fee: \$5.61
Release Fee: \$35.00

Total Amount Due: \$132,122.01

Please be advised that this notice is an attempt to collect an outstanding debt for the Water & Sewer utility account listed above. We have made several attempts to collect this debt and as of today the City has not received a response. Please note that if the above amount is not paid by **11/02/2020** a lien will be filed against the property through the City's Lien Department for the stated amount and any other fees imposed by the City of Opa-locka. If you have already submitted a payment or have made arrangements with our staff, please disregard this notice.

Return this notice with your payment by money order or cashier's check to:

Mail: City of Opa-locka
P. O. Box 540371
Opa-locka, FL 33054

In Person:
780 Fisherman St. Suite 120
Opa-locka, FL 33054

Payments can also be made in person by cash, all Visa Cards, Master Cards, Discover, American Express, Debit Cards, Money Orders, and Cashier's Checks.

If you desire further information, please contact our office at (305) 953-2868 option 1, between the hours of 8:30 am through 4:30pm Monday through Friday.

Sincerely,

Finance Department
The Great City of Opa Locka

Utility Billing V8.1
DATE: 10/01/2020
TIME: 14:46:11

CITY OF OPA-LOCKA
CUSTOMER HISTORY REPORT

PAGE NUMBER: 1
MODULE : histfun

ACCOUNT NUMBER 02739-03
CUSTOMER NAME PELEG GROUP USA LLC
SERVICE ADDRESS 14615 NW 27 AVE

TRANSACTION DATE	POST DATE	TYPE	DESCRIPTION	AMOUNT	BALANCE
10/01/2020	10/01/2020	PAYMENT	PAYMENT	600.00	132,122.01
09/28/2020	09/28/2020	PAYMENT	PAYMENT	600.00	132,722.01
08/17/2020	08/17/2020	ADJ BILL	CORR UNDEREST 2/18-6/19	26,829.06	133,322.01
07/11/2019	07/12/2019	BILLED	STANDARD BILLING	2,781.59	106,492.95
06/10/2019	06/10/2019	BILLED	STANDARD BILLING	2,781.59	103,711.36
05/08/2019	05/08/2019	BILLED	STANDARD BILLING	2,781.59	100,929.77
04/30/2019	04/30/2019	BILLED	STANDARD BILLING	2,781.59	98,148.18
04/19/2019	04/19/2019	BILLED	STANDARD BILLING	2,781.59	95,366.59
04/04/2019	04/04/2019	BILLED	STANDARD BILLING	2,422.52	92,585.00
04/02/2019	04/02/2019	BILLED	STANDARD BILLING	2,422.52	90,162.48
03/14/2019	03/13/2019	BILLED	STANDARD BILLING	3,299.34	87,739.96
02/21/2019	02/21/2019	BILLED	STANDARD BILLING	3,299.34	84,440.62
02/05/2019	02/04/2019	BILLED	STANDARD BILLING	3,299.34	81,141.28
01/22/2019	01/22/2019	BILLED	STANDARD BILLING	2,938.16	77,841.94
01/09/2019	12/18/2018	BILLED	STANDARD BILLING	2,940.25	74,903.78
11/19/2018	11/19/2018	BILLED	STANDARD BILLING	2,942.34	71,963.53
10/24/2018	10/24/2018	BILLED	STANDARD BILLING	2,940.25	69,021.19
10/02/2018	10/02/2018	BILLED	STANDARD BILLING	512.32	66,080.94
09/24/2018	09/24/2018	BILLED	STANDARD BILLING	512.32	65,568.62
09/04/2018	09/04/2018	BILLED	STANDARD BILLING	2,868.20	65,056.30
03/21/2018	03/21/2018	PAYMENT	PAYMENT	10,000.00	62,188.10
01/25/2018	01/25/2018	PAYMENT	PAYMENT	15,000.00	72,188.10
01/24/2018	01/24/2018	ADJ BILL	DEBIT ADJ 6.2014 TO 12.2017	85,188.10	87,188.10
01/24/2018	01/24/2018	ADJ BILL	DEPOSIT DUE	2,000.00	2,000.00



City of
OPA-LOCKA
Florida

Collection Notice/Intent To Lien

11/10/2020

Mr. Daniel Fernandez
13240 Port Said Road LLC
2751 SW 141 Terrace
Davie, FL 33330

Ref: 03190-03

Legal Description:

Folio # :08-2128-007-0160

Sub Division: Nile Gardens Sec 1

Plat: 38

Book: 56

Lot

Block

Type of Service:

WATER & SEWER

Property Address: 13240 Port Said Road

Amount Due: \$40,493.32

Interest Rate Annually: 7%

Processing Fee: \$5.61

Release Fee: \$35.00

Total Amount Due:\$40,493.32

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Opa-locka, FL 33054**

**In Person:
780 Fisherman St. Suite 120
Opa-locka, FL 33054**

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Sincerely,

Finance Department
The Great City of Opa Locka