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LEON COUNTY  
ATTORNEY'S OFFICE

THE STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

Leon County, Florida,  
Wakulla County, Florida,  
Liberty County, Florida, and  
Franklin County, Florida,

Petitioners,

v.

DOAH No. 10-1688  
Permit No. 04-2009-006 I and  
04-2009-006 O&M

City of Tallahassee and Northwest  
Florida Water Management District,

Respondents.

CITY OF TALLAHASSEE'S CHAPTER 120 MOTION FOR ATTORNEY'S FEES

Respondent, City of Tallahassee (City), by and through its undersigned attorneys, files this Motion for Attorney's Fees pursuant to Sections 120.569(2)(e) and 120.595, Florida Statutes and Rule 28-106.204, Florida Administrative Code (F.A.C.) against Petitioner Leon County.<sup>1</sup> Attorney's fees should be awarded because neither Leon County nor its counsel conducted a reasonable investigation of its summarily-stated claims prior to filing its petition, and filed the petition for an improper purpose. Specifically, the petition was filed – in the words of representatives of Leon County – as a “placeholder” and “attention getter,” intended to get the City “to the table” and be “a player in the permit” with regard to the permitting of a proposed improvement to an emergency spillway and fuse plug system at the City's hydroelectric facility. At the time Leon County authorized the filing of this action, the County's Engineering Staff indicated to the Commissioners that the project modeling had indicated that there would be no downstream impact, and the County Attorney told them that “we have to have grounds why we

<sup>1</sup> The City is currently evaluating the record, applicable law, and rules to determine whether to file a similar motion for attorney's fees against the other Petitioners.

believe the permit ought not to be issued . . . [a]nd, I don't know what that would be at the present time." Moreover, hours after the Petition was filed alleging that the issuance of the permit "would create a hazardous condition which might threaten lives or property," the County Attorney admitted to the Commission that the County "did not have any sort of engineering" to evaluate the proposed project, or propose any alternatives, and it was only after the filing of the petition that funding was even made available to consult a qualified expert to evaluate the project. This was true even though (1) the design at issue had been developed over a number of years, had been part of the public record during that time, and had been the subject of numerous public forums and meetings; (2) the permit had been properly noticed in accordance with applicable law; and (3) the County, pursuant to Rule 28-106.111(3), F.A.C., could have sought an extension of time to file an initial pleading to further investigate their concerns. Under these circumstances, an award of attorney's fees and costs is warranted.

### BACKGROUND

This proceeding involves a challenge to a proposed permit of the Northwest Florida Water Management District (District) that would authorize the City to make certain improvements to the emergency spillway and fuse plug system of the Jackson Bluff Dam, which is located 20 miles southwest of Tallahassee at the southern tip of Lake Talquin, and which forms the lake. (Aff. McGarrah ¶ 3.) At that location, the City operates the C.H. Corn Hydroelectric generating plant in accordance with a sublease with the Florida Department of Environmental Protection, and a license issued by the Federal Energy Regulatory Commission (FERC). (Id. ¶ 3.)

In 2003, the facility underwent a periodic, five-year inspection as required under the FERC license. (Id. ¶ 4.) As a result of that inspection, FERC directed the City to perform

additional studies which lead to the requirement of developing a remediation plan to address certain aspects of the facility's emergency spillway and fuse plug system, which had similarities to another dam (Silver Lake Dam) that had failed elsewhere. (Id. ¶ 4.) Over the next several years, and through an extensive process, the City worked with FERC to develop a dam safety remediation project that proposed certain improvements to the system. (Id. ¶ 4.) The City also worked with the District, Florida Department of Environmental Protection (DEP), Florida Fish and Wildlife Commission, and the United States Army Corp of Engineers, and other governmental entities and stakeholders to secure any necessary environmental and construction permits for the project. (Id. ¶ 4.)

The City's engineers used readily accepted modeling software known as a Dam-break Flood Forecasting Model ("DAMBRK") to identify potential downstream impacts as a result of the final design. (Id. ¶ 5.) When the Ochlocknee River reaches 22 feet in depth, the river is said to be at a "Flood Stage," which is considered to be the level at which the river begins to create a hazard to lives, property, or commerce. (Id. ¶ 5.) During a 100-year flood event, the river is expected to rise to approximately 4 feet above the Flood Stage, to approximately 26 feet. (Id. ¶ 5.)

The DAMBRK modeling indicated that the final design of the proposed project would result in a nominal, 0.22 to 0.35 foot increase – i.e., between 2.6 and 4.2 inches – in floodwaters downstream from the dam for approximately a 40-hour period during the 100-year flood event when the river elevation would already be nearly 4 feet above the currently published 22-foot flood stage elevation. (Id. ¶ 6.) Stated another way, the 0.22 to 0.35 foot increase is in comparison to the approximately 26-foot flood level that would occur under current conditions,

regardless whether the permit is issued. (Id. ¶ 6.) FERC considered the increase insignificant, and approved the design in May of 2009. (Id. ¶ 6.)

Although the 0.22 to 0.35 foot increase was considered insignificant by FERC, the City, in light of citizen input, revised its operational protocol for the facility whereby the water releases through the dam gates would be adjusted under certain circumstances to eliminate the chance of even this nominal increase during 100-year flood conditions. (Id. ¶ 7.) The City's engineers used professionally accepted engineering calculations to develop a protocol for operation of the dam gates that would result in no change in the downstream river elevation as compared to the existing design, thus eliminating the increase. (Id. ¶ 7.) FERC approved the operational protocol. (Id. ¶ 7.)

There were numerous opportunities for the public – and the Petitioners – to stay informed regarding the proposed design changes. (Id. ¶ 8.) For example, on April 22, 2009, a Tri-County Flooding meeting was held in Wakulla County where the project was briefly discussed. (Id. ¶ 8.) At that meeting were representatives from Franklin, Wakulla, and Liberty Counties as well as the public. (Id. ¶ 8.) Leon County was invited to attend the meeting but had no representatives present. (Id. ¶ 8.) Similarly, on May 18, 2009, the Friends of Lake Talquin held a meeting at the Ft. Braden Community Center to discuss the project. (Id. ¶ 8.) On September 22, 2009, the City held its Corn Spillway Open House at the Ft. Braden Community Center. (Id. ¶ 8.) At this meeting, the City had its project team available to address any questions raised by those attending. (Id. ¶ 8.) Further, on September 24, 2009, the City presented information to the Apalachee Regional Planning Council concerning the spillway modification. (Id. ¶ 8.) Leon County Commissioner Jane Sauls attended that meeting. (Id. ¶ 8.)

The City Commissioners also discussed the project at several City Commission meetings, including on October 28, 2009 and November 10, 2009. (Id. ¶ 9.) All of these meetings were open to the public pursuant to Section 286.011 of the Florida Statutes. (Id. ¶ 9.) On December 8, 2010, the City gave a presentation to the Leon County Commission addressing the project, and specifically discussed the possibility of using an operational protocol to address citizen concerns about the potential for a nominal, 0.22 to 0.35 foot increase in floodwaters during certain periods of a 100-year flood event. (Id. ¶ 9.) The City also met with the County Attorney on November 24, 2009 and with County staff on December 23, 2009. (Id. ¶ 9.) In response to an information request from County staff on January 8, 2010, the City provided the County with project information on January 28, 2010. (Id. ¶ 9.) In addition, the City staff made presentations addressing the project to the Gadsden County Commission on November 17, 2009, Liberty County Commission on January 7, 2010, and Franklin and Wakulla County Commissions on February 16, 2010. (Id. ¶ 9.)

In May 2009, the City filed its formal application with the District for the project's surface water permit. (Id. ¶ 10.) On or about January 29, 2010, and after a public notice and comment period, the District issued its Notice of Proposed Agency Action to recommend issuance of the permit to the City. (Id. ¶ 10.) The issuance of the permit is now time sensitive because the project must be constructed outside of the hurricane season. (Id. ¶ 10.)

On February 9, 2010, the Leon County Board of County Commissioners held a meeting and discussed the proposed permit, as well as a resolution adopted by the Liberty County Board of County Commissioners opposing the issuance of any permit by the District to the City for the project. An excerpt of the meeting is set forth below, with emphasis added:<sup>2</sup>

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<sup>2</sup> All of the information from the County Commission meetings is taken from the County's website at <http://www.leoncountyfl.gov/ADMIN/Agenda/realmeetings.asp>.



The Third Commissioner also read into the record an e-mail regarding the City's proposed operational procedure that was intended to ensure that there was "no change in downstream impact as a result of [the project]." The discussion then continued as follows:

Third Commissioner: "Have you had a chance to look at this modification? Does this address our concerns? Just out of fairness to them . . . can you either confirm or deny that?"

County Engineering Staff: "They are using a software program called 'Dam Break' to design what they are doing. It is a software package that simulates a failure of the dam . . . **That is a readily accepted software package for the purpose. What they've done is analyze how they could operate the dam in that circumstance and keep the rise that they are showing from happening, and it appears they have.** . . . They had a permit application in with the District. It was on hold. They deferred construction, but in the meantime they provided this to the District, and apparently this is what made the District believe it was okay to go ahead and issue the permit."<sup>3</sup>

\* \* \*

Third Commissioner: "So, the change that has been made is only in the software application only, not in the actual . . . design? . . ."

County Engineering Staff: "The software predicted the rise. What they've done is they've gone back [and evaluated] what could they physically do to keep that rise from happening. **So, then they modeled that physical [operational] change, and the software showed that it wouldn't rise.**"

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<sup>3</sup> The County Commissioners and staff appeared to have misunderstood the City's comments regarding deferring construction until fall 2010. The City did not say it was going to place its District permit application on hold. To the contrary, the City explained it had asked its engineering firm to come up with physical or operational changes to negate the increase. The City representative stated at the December 8, 2009 meeting of the Leon County Board of County Commissioners:

We've gotten all the approvals from the FERC. **We are still working with DEP and the water management district on some state-level permits.** Those have not been issued yet. We have deferred the construction of the project till next fall because we have worked far enough into the year that even if we got the permits tomorrow, we could not have reasonable assurance that we could be done before the hurricane season so we've advised the FERC that the construction is gonna be deferred until the fall of 2010.

There is nothing in those statements to imply the City was not going to continue to pursue the application that had been pending with the District since May 2009.

County Engineering Staff: "The software is actually intended to take the dam to the failure point – that's why they call it 'Dam Break.' And so, . . . they model what would happen in the dam break. They look at the failure of the dam. They modify the dam's construction. They remodel it. It's been a back and forth process. **They are to the point now with what they have proposed satisfies FERC . . . that this design will protect the people from a massive failure of the dam, should that condition occur . . .**"

The subsequently approved minutes for the meeting state that, during the meeting, the commissioners voted "to direct the County Attorney to file a 'placeholder' while determining whether there were meritorious grounds to intervene."<sup>4</sup>

At the February 9 meeting, the County Commission, by a 7-0 vote, authorized the County to file a petition with the District challenging the Notice of Intended Action to issue the proposed permit. The County Commission, also by a 7-0 vote, adopted a resolution opposing the issuance of the permit to the City. The County Commission did **not** at that time authorize any funding to retain experts to evaluate the proposed project.

On February 23, 2010, Petitioners filed a Petition for Administrative Hearing challenging the proposed permit with the District. The petition failed to cite a single, specific statutory or rule provision supporting its alleged claims, and summarily alleged that "the issuance of [the] permit **would create a hazardous condition which might threaten lives or property. . . . [and] will cause an increase flow such that it will endanger downstream property** in times of flood with respect to state or frequency." (Petition at ¶¶ 24-25.)

After filing the petition, and later that same day, Leon County's Board of County Commissioners held another meeting where the permit challenge was further discussed. An excerpt of the meeting is set forth below, with emphasis added:

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<sup>4</sup> Approved minutes are available on the County's website at [http://www.clerk.leon.fl.us/index.php?section=2&server=cvweb&page=finance/board\\_minutes/index.html](http://www.clerk.leon.fl.us/index.php?section=2&server=cvweb&page=finance/board_minutes/index.html) (last visited April 13, 2010).

County Attorney: "I don't need any further direction to continue to pursue the matter [i.e., the administrative litigation]. The issue that I do have is that there . . . **I have been informed that the public works engineering folks do not believe that they have sufficient expertise in dam construction and the like and we're going to need to hire outside engineering firms or firm that is familiar with these sorts of things – the dam construction, the dam operation . . . and the downstream flooding impacts, and so, before we can go to trial we're going to need to provide additional funding for that operation. I believe that you'll need to spend something in the range of \$50,000. . . . Not surprisingly, they [the other Petitioner Counties] likewise do not have engineering staff that is familiar with this area.**"

\* \* \*

A motion was then proposed to authorize an expenditure to retain a consultant to evaluate the proposed project. Discussion then followed:

First Commissioner: "**I will cautiously support the motion before us, but if I recall, the reason why we were filing in the first place is because of the timing was more or less as a placeholder in the hopes that the City of Tallahassee would really open up the communication lines with the surrounding counties including ourselves as well. And, so, I would obviously highly encourage us to try and engage the City. . . I mean that was the original intent if I remember.**"

\* \* \*

First Commissioner: ". . . The hope, it was my understanding, was still that the City of Tallahassee would engage all of the surrounding Counties and ourselves before actually moving forward with any construction permit . . . [and] bring the collective parties together. . . . I am going to support this cautiously but I just still want to make sure that we're still within our original intent on filing this."

\* \* \*

Second Commissioner: "**I think there is value in getting people's attention and bringing them to the table, and this is probably the only way to do it at this point.**"

\* \* \*

Third Commissioner: ". . . Last meeting, I supported the motion again as a placeholder because what was critical was that we not miss our [deadline]

to file our . . . petition. . . . I thought what we had passed on the last time was just to express our intent to be able to file so that we don't lose that spot, and that before we actually filed, we do engage, we do meet, and we do try to dialogue. I don't want to back peddle here, but I am just expressing an honest feeling . . . maybe we don't withdraw this, but we do engage them. I'll give you an example. In the last meeting, I talked about an email [stating] that they had modified what I thought was the design, and I learned from staff that they had only modified the model, which is the software. It is good to confront that directly from them, whether that is in fact the case or not the case. . . . "

Second Commissioner: "I'm going to weigh in on this. . . . If you're somebody with a project that you expect to have some opposition from, you go for the permits as fast as you can. You force anybody who might be opposed to it, to put up or shut up. I think what we're doing right now is showing a resolve that we want to make sure that the engineering is sound, that there are no downstream effects that will harm the citizens of our county and other counties. So, I hear what you're saying, but we're getting into the litigation strategy, and I think that we need to stick to our guns on this thing. **That's how you get to the negotiating table.**"

First Commissioner: ". . . What is the rush on this vote to take place tonight, besides to just get our ducks in a row with engineering services to prepare for the trial. I mean we're not going to hear back that this is going to go to administrative hearing in the next two weeks?"

County Attorney: "No, but if I wait a month to get funding, then I'm really behind in trying to get the information necessary. **In other words, we don't have any sort of engineering. They have all of the marbles, and we need to be prepared to at least show that we have alternatives to their proposals.** . . . You're right, we probably won't go to hearing at DOAH for a couple of, two or three months at best. But, when that goes, it may be a little late for us to get the experts in line."

Following that discussion, and by a 6 to 1 vote, the Board **for the first time** authorized the expenditure of up to \$50,000 from the County's contingency fund to retain engineering experts to analyze the permit.

On March 5, 2010, ten days after the petition was filed, the District issued an Order Dismissing Petition with Leave to Amend, on grounds that the Petition did not meet the

minimum standard pleading requirements under Chapter 120 of the Florida Statutes. On March 19, 2010, the Petitioners filed an amended petition.

The City has engaged the undersigned law firm to defend against the petition and continues to expend fees and costs in preparation for an administrative hearing in support of the proposed permit. Simultaneous with the filing of the instant motion for attorney's fees, the City has also filed a Motion to Strike.

### DISCUSSION

The City is entitled to attorney's fees because the County failed to conduct a reasonable investigation of the underlying facts prior to filing this action, and filed this action for an improper purpose. Section 120.569(2)(e), Florida Statutes, provides for an award of attorney's fees where, as here, a pleading is filed for "any improper purpose," a "frivolous purpose," or the "needless increase in the cost of litigation." The statute states, with emphasis added:

All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. **The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation.** If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Similarly, Section 120.595, Florida Statutes, provides for the award of attorney's fees where proceedings have been brought for an improper purpose, stating:

The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party<sup>5</sup>

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<sup>5</sup> Because attorney's fees are only available to prevailing parties under section 120.595, the City requests the Division reserve ruling on that issue until a Final Order is issued by the District. By filing this motion at this

only where the nonprevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an **improper purpose**.

§ 120.595(1)(b), Fla. Stat. “Improper Purpose” is defined under Section 120.595, as follows:

1. “Improper purpose” means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause **unnecessary delay** or for **frivolous purpose** or to **needlessly increase the cost of litigation**, licensing, or securing the approval of an activity.

§ 120.595(1)(e)1., Fla. Stat. A frivolous purpose is one which carries little significance or importance in the context of the goal of administrative proceedings. Id. (citing Mercedes Lighting & Elec. Supply, Inc. v. Dep’t of Gen. Svcs., 560 So. 2d 277, 278 (Fla. 1<sup>st</sup> DCA 1990)).

The Courts apply an objective standard to determine whether a party initiated or participated in an administrative proceeding for an improper purpose. In Friends of Nassau Co., Inc. v. Nassau Co., 752 So.2d 42 (Fla. 1st DCA 2000), the Court held, “[i]n the absence of direct evidence of the party’s and counsel’s state of mind, we must examine the circumstantial evidence at hand and ask, objectively, whether an ordinary person standing in the party’s or counsel’s shoes would have prosecuted the claim.” Id. at 51 (citations omitted). “[S]anctions for an initial petition in an environmental case turns ... on the question whether the signer could reasonably have concluded that a justiciable controversy existed under pertinent statutes.” Id. Further, the “use of an objective standard creates a requirement to make reasonable inquiry regarding pertinent facts and applicable law.” Procacci Commercial Realty, Inc. v. DHRS, 690 So. 2d 603, n. 9 (Fla. 1st DCA 1997).

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time with respect to section 120.595, the City is putting the Petitioners on notice of its intent to seek costs and fees and providing them with ample opportunity to mitigate their losses. See St. Johns Riverkeeper, Inc., et al., v. St. Johns River WMD, et al., DOAH 08-1316 (Final Order, Dec. 18, 2009), and Georgalis v. DOT, DOAH 04-2339F (Final Order, Dec. 1, 2005).

Contrary to Sections 120.569 and 120.595, Leon County and its counsel knew or should have known that a reasonable investigation into the facts and law supporting the petition had not been completed, and knew or should have known that their petition was interposed for an improper purpose, including to cause unnecessary delay, for frivolous purposes, and to needlessly increase the cost of litigation. Stark evidence of Leon County's improper purposes is found in the statements made, and actions taken, at the Leon County Commission meetings.

The Commissioners expressly intended for the Petition to be "**a placeholder**," and an "**attention getter**," filed in order to force the City to the "**negotiating table**," to allow Leon County to be a "**player in the permit**," and ultimately to buy Leon County additional time to retain a consultant qualified to evaluate the potential effects of the permit's issuance on downstream interests. No credible evidence was ever presented, or even referred to by the County Attorney, the County Engineering Staff, or any of the Commissioners during any of the Commission meetings indicating that the issuance of the permit might create a hazardous downstream condition, as alleged in the petition. In fact, the County's Engineering Staff informed the Commission that: (1) the City's modeling showed that the proposed operational protocol, which had been discussed preliminarily at the December 8, 2009 Leon County Commission meeting, would resolve the nominal, 0.22 to 0.35 foot increase in flooding during a 100-year flood event, over the already existing flood stage of 26 feet – i.e., "**they modeled that physical [operational] change, and the software showed that it wouldn't rise**," (Feb. 23 Meeting); (2) the modeling used by the City was "**a readily accepted software package for that purpose**" (Feb. 9 Meeting); and (3) FERC had approved the design (Feb. 9 Meeting). At no time during these meetings was any credible evidence, based on modeling or otherwise,

presented or referred to that would indicate that the issuance of the permit would have **any** downstream effect.

No evidence of downstream effects was presented because the County had none. Only hours after the County Attorney filed the petition alleging that “the issuance of [the] permit **would** create a hazardous condition which might threaten lives or property. . . . [and] **will** cause an increase flow such that it **will** endanger downstream property in times of flood with respect to state or frequency,” (Petition at ¶¶ 24-25), the County Attorney told the Board that “**we don’t have any sort of engineering,**” “**the public works engineering folks do not believe that they have sufficient expertise in dam construction and the like,**” and “**they [the other Petitioner Counties] likewise do not have engineering staff that is familiar with this area,**” (Feb. 23 Meeting).

The Commissioners were aware that they needed an expert to evaluate the project, as evidenced by the fact that at least one of the Commissioners asked for such an evaluation – i.e., “**some engineering advice from our staff . . . about this pretty complicated project**” (Dec. 8 Meeting) – at the February 9, 2010 County Commission meeting. Significantly, even though the City had spent extensive time working with various governmental agencies to develop and permit the project, the City had held numerous public forums to address the project and even spoken directly with the Leon County Commissioners and staff on several occasions, and the permit had gone through the appropriate notice and other procedural requirements required by law, Leon County waited until **after** filing the petition on February 23 to even authorize funding to retain an expert in order to evaluate the project.

Moreover, Leon County did not file a request under Rule 28.106.111(3), F.A.C., for an extension of time to file the initial pleading in order to gain additional time to evaluate the

project. Instead, Leon County filed a petition challenging the permit, thereby causing the City to have to spend attorney's fees evaluating potential responses to the petition, conducting discovery, and otherwise preparing for the case.

The original and amended petitions serve as further evidence of Leon County's improper purposes. As noted above, Leon County's original petition was struck down for failing to identify any statutory basis for relief. In preparing the amended petition, Leon County and its counsel also knew or should have known that the allegations that issuance of the permit would be "contrary to the public interest criteria as more specifically set forth in section 373.414, Florida Statutes," (see Am. Pet. ¶¶ 23, 24, 26, 27, and 28), would not be supported by existing law. Although Section 373.414, Florida Statutes, may apply in the jurisdiction of other water management districts, it does not apply to the issuance of a surface water management permit within the jurisdictional boundaries of the District. Instead, the District is treated differently under the law, and Sections 373.413, 373.4145, and 373.416, Florida Statutes, are the provisions of law relevant to the determination of the issues in this case. This argument is set forth at length in the City's motion to strike, which is simultaneously filed herewith, and which is expressly incorporated herein by reference.

In sum, the objective evidence shows that Leon County filed the petition for improper purposes – namely, as a "**placeholder**," "**attention getter**," and a measure to bring the City "**to the negotiating table**," because, despite the lengthy and public design development and permitting process that had occurred, Leon County still "**did not have any sort of engineering**" to evaluate the proposed project even after filing the petition. Additionally, Leon County attempted to apply the incorrect law. Under Sections 120.569 and 120.595, these are improper

and frivolous purposes, lacking any justiciable controversy, and warrant attorney's fees against Leon County.

**RULE 28-106.204(3), F.A.C. COMPLIANCE**

The undersigned has conferred with counsel for the District, Kevin X. Crowley, and is authorized to represent that the District does not oppose the relief sought. The undersigned has also attempted to confer with counsel for each of the Petitioners but has not yet learned whether the Petitioners oppose or support this motion.

**REQUEST FOR RELIEF**

WHEREFORE, based on the foregoing, Respondent, City of Tallahassee respectfully requests that an Order be entered determining that Petitioner Leon County filed this action for improper purposes and requiring them to pay the City's reasonable attorney's fees and costs pursuant to Sections 120.569(2)(e) and 120.595, Florida Statutes, or reserve such ruling as to Section 120.595, Florida Statutes, until it can be determined that the City is a prevailing party. Additionally, the City seeks leave to submit evidence of a reasonable fee at a subsequent hearing.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by electronic mail and U.S. Mail this 14th day of April, 2010, to the following:

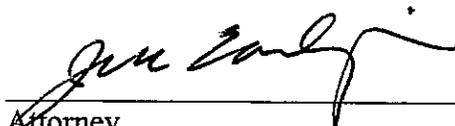
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