



Keith W. Babb, Jr.  
MAYOR

Regina Bohlen  
VICE-MAYOR

Rodney D. Lucas  
Interim CITY MANAGER

Jongelene Adams  
Acting City Clerk

*"Building a City and Community of Choice"*  
207 Begonia Dr.  
Pahokee, FL 33476  
Phone: (561) 924-5534  
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[www.cityofpahokee.com](http://www.cityofpahokee.com)

**COMMISSIONERS:**

Clara "Tasha" Murvin

Juan Gonzalez

Sara Perez

Burnadette Norris-Weeks  
City Attorney

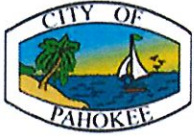
**CITY COMMISSION OF THE CITY OF PAHOKEE  
REGULAR COMMISSION AGENDA  
Tuesday, June 22, 2021 6:30 p.m.  
Meeting Streamed By YouTube - LIMITED CAPACITY**

- A. INVOCATION AND PLEDGE OF ALLEGIANCE
- B. ROLL CALL
- C. ADDITIONS, DELETIONS, AND APPROVAL OF AGENDA ITEMS
- D. CITIZEN COMMENTS/PUBLIC SERVICE ANNOUNCEMENTS – ALL ITEMS ON AGENDA (3 MINUTES)
- E. APPROVAL OF MINUTES
- F. CONSENT AGENDA:
  - 1. Contract – Tijauna Warner, City Clerk
  - 2. Memorandum of Understanding between the City of Pahokee and South Florida Water Management District
- G. ORDINANCE(S)
- H. RESOLUTION(S)
- I. PUBLIC HEARINGS
- J. PROCLAMATION(S)
- K. PRESENTATION(S)
- L. REPORT OF THE MAYOR
- M. REPORT OF THE CITY MANAGER
- N. REPORT OF THE CITY ATTORNEY
- O. OLD BUSINESS
- P. NEW BUSINESS:
- Q. FUTURE AGENDA ITEMS OF COMMISSIONERS, IF ANY
- R. FOR THE GOOD OF THE ORDER (COMMUNITY EVENTS, FEEL GOOD ANNOUNCEMENTS)
- S. ADJOURN

**NOTICE**

If a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, he or she will need a record of the proceedings, and he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**SUBJECT TO CHANGE**



## CONSENT AGENDA

### MEMORANDUM

TO: HONORABLE MAYOR & CITY COMMISSIONERS

VIA: RODNEY LUCAS, INTERIM CITY MANAGER

FROM: RODNEY LUCAS, INTERIM CITY MANAGER

SUBJECT: CITY CLERK CONTRACT

DATE: JUNE 18, 2021

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#### **GENERAL SUMMARY/BACKGROUND:**

At the request of the City Commissioners last City Commission meeting, Tuesday, June 8, 2021 staff was task with completing the City Clerk's Contract.

#### **BUDGET IMPACT:**

\$62,500 Salary, plus pending other benefits.

#### **LEGAL NOTE:**

None.

#### **STAFF RECOMMENDATION:**

Consensus from City Commissioners to approve City Clerk's contract.

#### **ATTACHMENTS:**

City Clerk Contract

RESOLUTION 2021-12

**A RESOLUTION OF THE CITY OF PAHOKEE, FLORIDA, APPROVING THE RECOMMENDATION OF TIJUANA WARNER AS CITY CLERK AND THE EMPLOYMENT AGREEMENT FOR AN ANNUAL SALARY OF \$62,500.00; AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE THE EMPLOYMENT AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Pahokee is in need of a City Clerk for day to day operations at City Hall; and

**WHEREAS**, after careful vetting and consideration of candidates, the City Commission of the City of Pahokee ("City Commission") has approved Tijuana Warner as the City Clerk; and

**WHEREAS**, Ms. Warner is a native of Pahokee, Florida and possesses a desire to serve the City; and

**WHEREAS**, the City Commission has agreed that Ms. Warner will be provided an annual salary of Sixty Two Thousand Five Hundred Dollars (\$62,500.00), together with benefits as more particularly described in the body of the Employment Agreement attached hereto as Exhibit "A"; and

**WHEREAS**, execution of the Employment Agreement between the Interim City Manager and Tijuana Warner is in the best interest of the residents of the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AS FOLLOWS:**

**Section 1.** Adoption of Representations. The foregoing "whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

**Section 2.** Authorization of Mayor and Interim City Manager. The City Commission of the City of Pahokee, Florida, hereby authorizes the Mayor and Interim City Manager to execute the Employment Agreement between Tijuana Warner and the City of Pahokee, attached hereto as Exhibit "A."

**Section 3.** Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this \_\_\_ day of June 2021

\_\_\_\_\_  
Keith W. Babb, Jr., Mayor

**ATTEST:**

\_\_\_\_\_  
Interim City Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Burnadette Norris-Weeks, P.A.  
City Attorney

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**VOTE:**

Commissioner Bohlen	_____ (Yes)	_____ (No)
Commissioner Gonzalez	_____ (Yes)	_____ (No)
Commissioner Perez	_____ (Yes)	_____ (No)
Vice-Mayor Murvin	_____ (Yes)	_____ (No)
Mayor Babb	_____ (Yes)	_____ (No)

**EXHIBIT “A”**  
**Employment**  
**Agreement**  
**between Tijuana**  
**Warner and the**  
**City of Pahokee**



## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), is by and between the City of Pahokee, Florida, a Florida municipal corporation (the "City") and Tijuana Warner (hereinafter "Tijuana Warner" or the "City Clerk").

### W I T N E S S E T H:

WHEREAS, the City desires to employ Tijuana Warner as City Clerk of the City, as provided for in the City's Charter and all relevant sections of the City's Code of Ordinances. Article 3, Section 3.05 of the City's Charter; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Clerk and to establish conditions of employment applicable to the City Clerk; and

WHEREAS, Tijuana Warner desires to accept employment as City Clerk of the City under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and benefits set forth in this Agreement, the parties agree as follows:

### **Section 1. Employment.**

A. The City hereby hires and appoints Tijuana Warner as its City Clerk, under the terms established herein, to perform the duties and functions specified in the City's Charter, the City's Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City's employment of Tijuana Warner as City Clerk shall become effective June 28, 2021. This Agreement shall remain in effect until terminated by the City or by the City Clerk as provided herein.

### **Section 2. Salary and Evaluation.**

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Clerk an annual salary of \$62,500.00, payable in installments at the same time as other City employees are paid with a 2% increase in salary per year as approved by the City Commission for the first five (5) years.

B. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Clerk in the absence of a satisfactory performance evaluation. Further, pursuant to Section 2-63(9) of the City's Code of Ordinances, the City Clerk shall serve under the direct supervision of the city commission, and both the city manager and the City Commission shall evaluate the City Clerk.

### **Section 3. Duties and Obligations.**

A. The City Clerk shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City. The City Clerk agrees to perform all duties and responsibilities faithfully, industriously, and to the best of her ability and in a professional and competent manner.

B. The City Clerk shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skills necessary to faithfully perform her duties under this Agreement. She shall not serve or become employed by any other entity while this agreement is in effect. The City Clerk may, however, engage in educational and professional activities upon receipt of approval by the City Commission, provided that such activities shall not interfere with her primary obligation to the City as its City Clerk. The City Clerk shall dedicate no less than an average of forty (40) hours per week in the performance of her duties hereunder.

C. In the event the City Clerk shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to her professional activities, in the event any monies are paid, or gifts received, by the City Clerk related to such service, such money or property shall be paid over to or delivered to the City, unless otherwise determined by the City Commission.

### **Section 4. Dues and Subscriptions**

The City agrees to pay the City Clerk's professional dues for membership in one Florida local government clerk's association.

### **Section 5. Professional Development**

The City agrees to pay reasonable and customary travel and subsistence expenses for the City Clerk's travel to and attendance at least one annual, professional conference of Florida local government clerks or national government clerks.

### **Section 6. Vacation and Sick Leave**

The City Clerk shall earn leave at a rate equivalent with other City employees. Detailed records of leave time shall be kept on file with the City's Human Resources Department. The City Clerk shall be entitled to fifty (50) hours of vacation time and fifty (50) hours of sick time upon execution of this Agreement.

### **Section 7. Holidays**

The City Clerk is entitled to the same paid holidays as the general City staff.

### **Section 8. Health, Dental, Life and Disability Insurance**

The City agrees to provide, or make available, health insurance and other benefits to



the City Clerk on the same terms and conditions as are established from time to time for all City employees generally.

**Section 9. Retirement.**

The City and the City Clerk agree that the City Clerk may participate in the General Employees' Retirement Fund under the terms and conditions as may from time to time be established for that Fund.

**Section 10. Automobile**

The City Clerk shall be provided with a city automobile within the pool of automobiles already existing.

**Section 11. Termination by the City Clerk**

A. The City Clerk shall serve at the pleasure of the City Commission and shall not be a member of the City's Civil Service, if applicable, and the City Commission may terminate this Agreement and the City Clerk's employment consistent with Section 3.03 of the City's Charter.

B. In the event the City Clerk is terminated, the City shall have no obligation to pay unused vacation time if terminated for any of the reasons set forth below. Vacation time shall cap at 225 hours per year. If unused, said amount shall not carry over to the subsequent year. For purposes of this Agreement, the parties agree that "just cause" for termination is defined and limited for purposes of this Agreement to any of the following:

1. Misfeasance, malfeasance and/or nonfeasance in performance of the City Clerk's duties and responsibilities.
2. Conviction or a plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld.
3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
4. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination.
5. The commission of any fraudulent act against the interest of the City.
6. The commission or counsel of any act which involves moral turpitude, or which causes the City disrepute.
7. Violation of the International City/County Management Association Code of Ethics.



8. Any other act of a similar nature of the same or greater seriousness, including those listed in the definition of "Misconduct" contained in Section 443.036(29) Florida Statutes (2019).

#### **Section 12. Termination by the City Clerk**

The City Clerk may terminate this Agreement at any time by delivering to the City Commission a written notice of termination not later than ninety (90) days prior to the effective date of the termination. If the City Clerk voluntarily resigns pursuant to this Section, the City shall pay to the City Clerk all accrued compensation due the City Clerk up to the City Clerk's final day of employment. The City shall have no further financial obligation to City Clerk pursuant to this Agreement. This subsection shall not prevent the City Clerk from collecting any money earned as a result of participation in the City's retirement program.

#### **Section 13. Disability**

If the City Clerk becomes permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health (but excluding death), for a period of four consecutive weeks beyond any accrued leave, the City shall have the option to terminate this Agreement.

#### **Section 14. Bonding**

The City agrees to bear the full cost of any fidelity or other bonds required of the City Clerk under any policy, regulation, ordinance or law.

#### **Section 15. Communications Equipment**

The City shall provide the City Clerk with a city cell phone and pay the minimum monthly charge for service. The City Clerk shall utilize the City cell phone for City business only.

#### **Section 16. Code of Ethics**

The "Code of Ethics" promulgated by the Florida Association of City Clerks is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to guide the City Clerk's duties, responsibilities, conduct and actions as City Clerk of the City.

#### **Section 17. Attorney's Fees**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection therewith, including appellate fees and

expenses.

## **Section 18. General Terms and Conditions**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement, or the failure to demand strict compliance with any provision, shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision, or as a modification of the same or any other provision.

C. This Agreement is a personal agreement between the City and the City Clerk and may not be voluntarily assigned or involuntarily transferred.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in the 15<sup>th</sup> Judicial Circuit, in and for Palm Beach County, Florida.

F. Upon City Clerk's death, the City's obligations under this Agreement shall terminate except for the following which shall be for the benefit of the City Clerk's personal representative or heirs:

1. Transfer of ownership of retirement funds, if any, to her designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization , medical and dental bills in accordance with City's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the City's insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other by reason of authorship, and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate counterparts, each of which

shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

[Remainder of page intentionally  
blank.]

Executed by the CITY this \_\_\_ day of June 2021.

CITY OF PAHOKEE

By: \_\_\_\_\_

Keith Babb, Mayor

By: \_\_\_\_\_

Rodney D. Lucas, Interim City Manager

ATTEST:

\_\_\_\_\_  
Jongelene Adams  
Acting City Clerk

APPROVED AS TO LEGALITY AND FORM:

\_\_\_\_\_  
Burnadette Norris-Weeks, P.A., City Attorney

Executed by the CITY CLERK this \_\_\_ day of \_\_\_\_\_, 2021.

Witnesses:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Tijuana Warner

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name





## CONSENT AGENDA

### MEMORANDUM

TO: HONORABLE MAYOR & CITY COMMISSIONERS

VIA: RODNEY LUCAS, INTERIM CITY MANAGER

FROM: RODNEY LUCAS, INTERIM CITY MANAGER

SUBJECT: MOU BETWEEN THE CITY OF PAHOKEE AND SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT

DATE: JUNE 18, 2021

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#### **GENERAL SUMMARY/BACKGROUND:**

The MOU is for the remove of sheet metal at the Southwest fishing pier opening and install circulators in the water to improve the circulation of the waters confine in the interiors of the marina.

#### **BUDGET IMPACT:**

None. SFWMD

#### **LEGAL NOTE:**

None.

#### **STAFF RECOMMENDATION:**

Consensus from City Commissioners to approve MOU agreement.

#### **ATTACHMENTS:**

MOU



## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

MOU 4600004438

### MEMORANDUM OF UNDERSTANDING

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

CITY OF PAHOKEE

This Memorandum of Understanding (**MOU**) is made and entered into on, June 14, 2021, by and between the "Parties," the South Florida Water Management District, hereunder referred to as the "**DISTRICT**", and City of Pahokee (**CITY**).

#### WITNESSETH THAT:

**WHEREAS**, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes to include entering into contracts and agreements with public agencies, private corporations or other persons; and

**WHEREAS**, the **DISTRICT** and **CITY** wish to enter into a **MOU** to improve the circulation of waters confined to the interior of the Pahokee Marina; and

**WHEREAS**, each party to this **MOU** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **MOU**; and

**NOW THEREFORE**, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

#### **ARTICLE 1 – OBLIGATIONS OF THE PARTIES**

1.1 The **DISTRICT** agrees to:

The **DISTRICT** and its contractors will remove currently installed sheet pile at the south west pier opening. This opening is adjacent to wave attenuator 1. Work to consist of unbolting, physical removal and disposal of the sheet pile that is currently blocking the opening. Equipment will need to be placed on the pier to accomplish this task.

The **DISTRICT** and its contractors will cut out, remove and dispose of a 12-foot-long section of sheet pile at the intersection of the marina entrance sheet pile Jetty/ breakwater and the pier which lies to the south. The 12- foot cut will be made down to an approximate elevation of 9.0 ft NGVD29.

1.2 The **CITY** agrees to:

The **CITY** shall maintain, repair and operate the water circulators in perpetuity for continued effective operation of the circulators.

#### **ARTICLE 2 – COMPENSATION/CONSIDERATION**

This **MOU** defines in general terms the basis on which the Parties to this agreement will cooperate. No funds will be exchanged between the cooperating Parties on the basis of this **MOU**.

#### **ARTICLE 3 - TERM OF THE MOU**

The period of performance of this **MOU** shall commence on the effective date specified on Page 1 of this **MOU** and continue for one (1) year.

#### **ARTICLE 4 - PROJECT MANAGEMENT/NOTICE**

- 4.1 The Project Manager for the **DISTRICT** is Tom DeBold at 3301 Gun Club Road, West Palm Beach, FL 33406, telephone (561) 682-6278. The Project Manager for **CITY** is City Manager, City of Pahokee, 207 Begonia Drive, Pahokee, FL 33476.
- 4.2 All notices, demands, or other communications to **CITY** under this **MOU** shall be in writing and shall be deemed received if sent by certified mail, return receipt requested, to:

City of Pahokee  
Attn: City Manager  
207 Begonia Drive  
Pahokee, FL 33476

All notices to the **DISTRICT** under this **MOU** shall be in writing and sent by certified mail to:

South Florida Water Management District  
Attn: Tom DeBold  
3301 Gun Club Road  
West Palm Beach, Florida 33406

The **CITY** shall also provide a copy of all notices to the **DISTRICT'S** Project Manager. All notices required by this **MOU** shall be considered delivered upon receipt. Should any party change its mailing address, written notice of such new address shall promptly be sent to the other parties.



All correspondence to the **DISTRICT** under this **MOU** shall reference the **DISTRICT'S MOU** number **4600004438**.

#### **ARTICLE 5 - TERMINATION**

- 5.1 Any party hereto may terminate its respective obligations pursuant to this **MOU** at any time for convenience upon thirty (30) calendar days prior written notice to the other parties. The performance of work under this **MOU** may be terminated in accordance with this clause in whole, or from time to time in part, whenever a party hereto determines that such termination is in its best interest. Any such termination shall be affected by delivery of a Notice of Termination to the other parties specifying the extent to which performance of work under the **MOU** is terminated, and the date upon which such termination becomes effective.
- 5.2 If any party hereto fails to fulfill its obligations under this **MOU** in a timely and proper manner, the other parties shall have the right to terminate this **MOU** by giving written notice of any deficiency. The party in default shall then have ten (10) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, the non-defaulting parties shall have the option to terminate this **MOU** at the expiration of the ten (10) day time period.

#### **ARTICLE 6 - STANDARDS OF COMPLIANCE**

- 6.1 The parties to this **MOU** will not discriminate against any person on legally protected bases in any activity under this agreement.
- 6.2 **CITY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **CITY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **CITY**.
- 6.9 **CITY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this **MOU**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **CITY**, upon request, as to any such laws of which it has present knowledge.

#### **ARTICLE 7 - RELATIONSHIP BETWEEN THE PARTIES**

- 7.1 The parties to this **MOU** are independent entities and are not employees or agents of the other parties. Nothing in this **MOU** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, **CITY**, their employees, agents, subcontractors, or assigns, during or after the term of this **MOU**.
- 7.2 The parties to this **MOU** shall not assign, delegate, or otherwise transfer their rights and obligations as set forth in this **MOU** without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.



## ARTICLE 8 – MAINTENANCE OF RECORDS

The Parties to this **MOU** shall maintain records and the other party shall have inspection and audit rights as follows:

- A. Maintenance of Records: Each party shall maintain all financial and non-financial records and reports directly or indirectly related to this **MOU**. Such records shall be maintained and made available for inspection for a period of five years from the expiration or termination date of this **MOU**.
- B. Examination of Records: Each party or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **MOU**. Such examination may be made only within five years from the expiration or termination date of this **MOU** and upon reasonable notice, time and place.
- C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **MOU**, the **CITY** shall extend the period of maintenance for all records relating to the **MOU** until the final disposition of the legal dispute, and all such records shall be made readily available to the **DISTRICT**.
- D.

## ARTICLE 9 - GENERAL PROVISIONS

- 9.1 In the event any provisions of this **MOU** shall conflict, or appear to conflict, the **MOU**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.
- 9.2 Should any term or provision of this **MOU** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **MOU**, to the extent that the **MOU** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 9.3 Notwithstanding any provisions of this **MOU** to the contrary, the parties shall not be held liable for any failure or delay in the performance of this **MOU** that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this **MOU** shall otherwise remain in effect.
- 9.4 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **MOU** by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **MOU**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **MOU** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless



the writing states otherwise.

- 9.5 This **MOU** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **MOU**.
- 9.6 This **MOU** may be amended only with the written approval of the parties hereto through a duly executed amendment.
- 9.7 The **CITY** recognize that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **MOU** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
- 9.8 Any dispute arising under this **MOU** which cannot be readily resolved shall be submitted jointly to the signatories of this **MOU** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative disputes resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
- 9.9 The **CITY** assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the **CITY** and the officers, employees, servants, and agents thereof. The **CITY** warrants and represents that it is self-funded for Worker's compensation and liability insurance, covering at a minimum bodily injury, personal injury and property damage with protection being applicable to the **CITY's** officers, employees, servants and agents while acting within the scope of their employment during performance under this **MOU**. The **CITY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

#### **ARTICLE 10 – APPLICABLE LAW AND VENUE**

- 10.1 Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this **MOU** and the transactions it contemplates. This waiver applies to an action or legal proceeding, whether sounding in contract, tort or otherwise.
- 10.2 The laws of the State of Florida shall govern all aspects of this **MOU**. In the event it is necessary for either party to initiate legal action regarding this **MOU**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.

IN WITNESS WHEREOF, the parties or their duly authorized representative hereby executive this **MOU** on the date first written above.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

By: Candida Heater  
Candida Heater, Division Director  
Administrative Services Division

Legal Form Approved  
SFWMD Office Of Counsel

BY: [Signature]  
DATE: 6/11/21

SFWMD Procurement Approved

BY: [Signature]  
DATE: 6/11/2021

**CITY OF PAHOKEE**

By: [Signature]  
Name: Jenjelene Adams  
Title: Interim City Manager