



CITY COMMISSION OF THE CITY OF PAHOKEE

## **WORKSHOP**

Tuesday, August 14, 2018 6:00 p.m.

360 E. Main Street, Pahokee, Florida

This Workshop of the City Commission of the City of Pahokee is being held to discuss the August 14, 2018 Agenda.

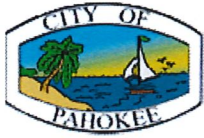
A. INVOCATION & PLEDGE OF ALLEGIANCE

B. ROLL CALL

C. TOPIC

D. DISCUSSION, COMMENTS, CONCERNS

E. ADJOURN



# AGENDA

CITY COMMISSION OF THE CITY OF PAHOKEE  
REGULAR COMMISSION MEETING  
TUESDAY, AUGUST 14, 2018 6:30 P.M.

- A. INVOCATION & PLEDGE OF ALLEGIANCE
- B. ROLL CALL:
- C. ADDITIONS, DELETIONS, AND APPROVAL OF AGENDA ITEMS:
- D. CITIZEN COMMENTS (AGENDA ITEMS ONLY):
- E. PUBLIC SERVICE ANNOUNCEMENTS (FILL OUT PUBLIC COMMENT CARD):
- F. APPROVAL OF MINUTES:
  - 1. **July 24, 2018 Regular Commission Meeting Minutes**
- G. CONSENT AGENDA:
- H. ORDINANCE:
  - 1. **ORDINANCE 2018 - 03 (first reading) AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, REPEALING SECTION 2-272(6) OF THE CODE OF LAWS AND ORDINANCES OF THE CITY OF PAHOKEE, PROVIDING FOR THE WAIVER OF COMPETITIVE BIDDING FOR PROCUREMENTS WHERE THE FUNDING SOURCE FOR THE PROJECT MAY BE JEOPARDIZED BY THE LENGTH OF THE NORMAL PROCUREMENT PROCESS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND EFFECTIVE DATE.**
  - 2. **ORDINANCE 2018 - 04 (first reading) AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, PROHIBITING THE PARKING OF CERTAIN VEHICLES IN RESIDENTIAL ZONING DISTRICTS, INCLUDING THE CORE DISTRICT; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND EFFECTIVE DATE.**
- I. RESOLUTIONS:
  - 1. **RESOLUTION 2018 - 45 A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY (#SL041) FOR \$990,000 FOR INFRASTRUCTURE IMPROVEMENTS TO THE PAHOKEE MARINA.**
  - 2. **RESOLUTION 2018 - 46 A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF PAHOKEE AND THALLE CONSTRUCTION COMPANY.**
- J. PUBLIC HEARINGS:
- K. PROCLAMATIONS (approval):
- L. PRESENTATIONS:
  - 1. **Mayor's Gold Nail and Hammer Award - Eduardo Bernal**
- M. REPORT OF THE MAYOR:
- N. REPORT OF THE CITY MANAGER:
- O. REPORT OF THE CITY ATTORNEY:
  - 1. **Second Amendment To Contract For Community Based Agencies - Substitution of page 4 of 5**
- P. OLD BUSINESS:
- Q. NEW BUSINESS:
  - 1. **Lt. Picciolo (PBSO Report)**



# AGENDA

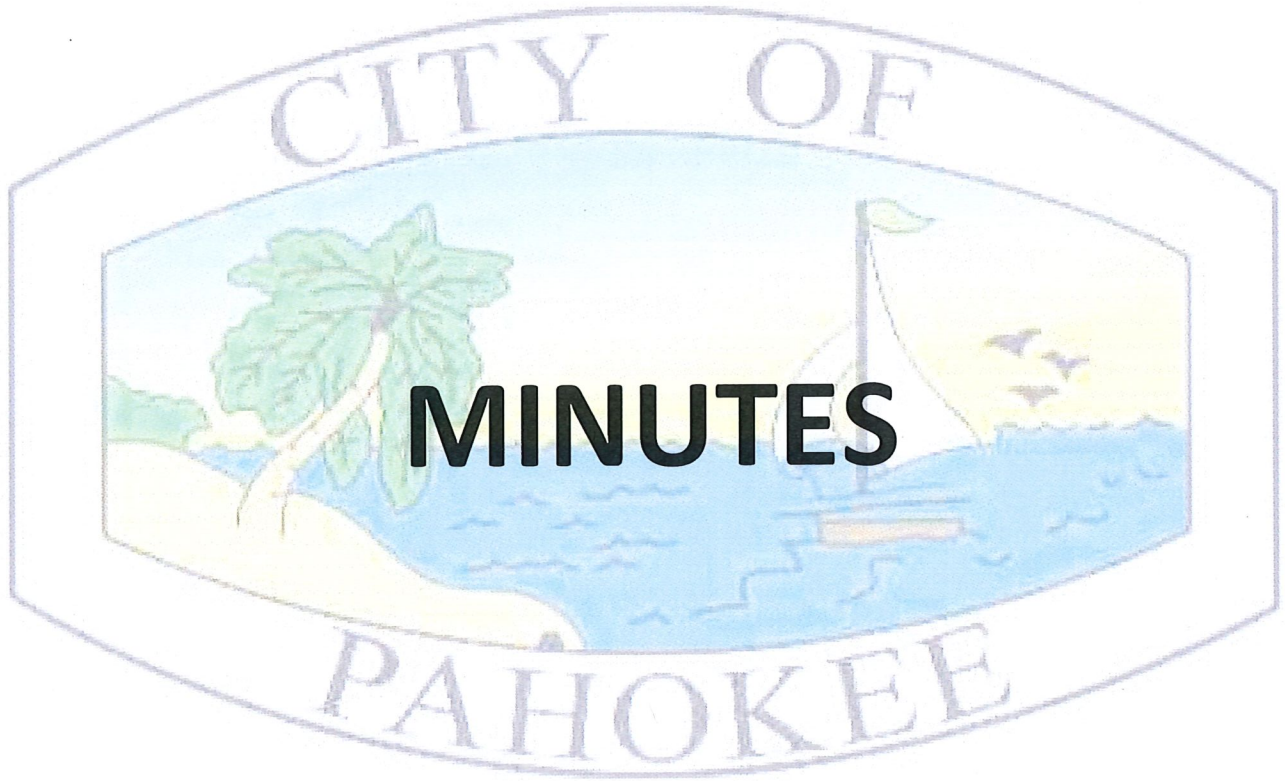
CITY COMMISSION OF THE CITY OF PAHOKEE  
REGULAR COMMISSION MEETING  
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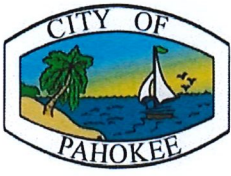
- R. CITIZEN COMMENTS / GENERAL CONCERNS:
- S. CORRESPONDENCE /COMMENTS AND CONCERNS OF THE CITY COMMISSIONERS:
- T. ADJOURN:

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**





CITY COMMISSION OF THE CITY OF PAHOKEE  
REGULAR COMMISSION MEETING MINUTES  
Tuesday, July 24, 2018

Pursuant to due notice the regularly scheduled Commission meeting was held in the Commission Chambers at 360 E. Main St., Pahokee, Palm Beach County, Florida on July 24, 2018.

The meeting was called to order by Mayor Babb at 6:35p.m.

Official attendance was recorded as follows:

<b>Roll Call:</b>	Mayor Keith W. Babb, Jr.	Present
	Commissioner Benny L. Everett, III	Present
	Commissioner Felisia C. Hill	Present
	Vice Mayor Clara M. Murvin	Present
	Commissioner Diane L. Walker	Present
	City Manager Chandler Williamson	Present
	City Attorney Gary Brandenburg	Present
	Sergeant At Arms Lieutenant Picciolo	Present
	City Clerk Tijauna Warner	Present

**Additions, Deletions, and Approval of Agenda Items:**

Mr. Williamson added appointment of Ms. Clarke as Interim City Clerk for 60 days to the agenda.

**Approval of Agenda with additions.**

**Motion by Vice Mayor Murvin. Seconded by Commissioner Hill.**

**Motion carried unanimously.**

**Citizen Comments (Agenda Items Only):** *(none)*

**Public Service Announcements:** *(none)*

**Approval of Minutes:**

- July 10, 2018 Regular Scheduled Commission Meeting Minutes

**Approval of July 10, 2018 Regular Scheduled Commission Meeting Minutes.**

**Motion by Vice Mayor Murvin. Seconded by Commissioner Everett.**

**Motion carried unanimously.**

**Consent Agenda:***(none)*

**Ordinances:***(none)*

**Resolutions:**

*Mr. Brandenburg read Resolution 2018 -42 into the record.*

- RESOLUTION 2018 – 42 A RESOLUTION OF THE CITY OF PAHOKEE, FLORIDA, AMENDING THE EMPLOYMENT AGREEMENT FOR THE CITY MANAGER; PROVIDING FOR CONFLICTING RESOLUTIONS; PROVIDING EFFECTIVE DATE.**

Commissioner Walker inquired about the resolution.

- Mr. Brandenburg explained the purpose of the resolution and a discussion ensued.

**Approval of Resolution 2018 - 42.**

**Motion by Vice Mayor Murvin. Seconded by Commissioner Walker.**

**Motion Failed (1) Aye; (4) Nays.** (Walker, Everett, Hill, Babb)

*Mr. Brandenburg read Resolution 2018 -43 into the record and explained the purpose of the resolution.*

- 2. RESOLUTION 2018 – 43 A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF PAHOKEE AND PALM BEACH COUNTY FOR CODE ENFORCEMENT ACTIVITIES.**

**Approval of Resolution 2018 - 43.**

**Motion by Commissioner Everett. Seconded by Commissioner Hill.**

**Motion carried unanimously.**

*Mr. Brandenburg read Resolution 2018 - 44 into the record and explained the purpose of the resolution.*

- 3. RESOLUTION 2018 – 44 A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE SECOND AMENDMENT TO CONTRACT BETWEEN THE CITY OF PAHOKEE AND PALM BEACH COUNTY FOR COMMUNITY BASED AGENCIES.**

**Approval of Resolution 2018 - 44.**

**Motion by Commissioner Hill. Seconded by Commissioner Everett.**

**Motion carried unanimously.**

**Proclamations:**

1. Mel Tillis

**Approval of Proclamation for Mel Tillis.**

**Motion by Vice Mayor Murvin. Seconded by Commissioner Everett.**

**Motion carried unanimously.**

**Presentations:**

1. Darren T Hill & Sylvia Hill – Lawn of the Month

*Commissioner Hill presented the Lawn of the Month Certificate to Darren T Hill & Sylvia Hill.*

**Report of the Mayor:**

Mayor Babb discussed the live stream videos and the City Manager’s contract. He thanked the City Clerk for her hard work and dedication during her tenure.

**Report of the City Manager:**

Mr. Williamson provided updates on the following items: lease agreement for 246 East Main Street, the gymnasium, Glades Citizen’s Villas, financial reports, and vendors/peddler. Mr. Williamson also thanked the City Clerk for her services during her tenure.

- Discussions ensued.

**Report of the City Attorney:**

Mr. Brandenburg provided updates on the Technomarine lawsuit and Sara Perez's lawsuit.

- Discussions ensued.

**Old Business** *(none)*

**New Business:**

1. **Lt. Picciolo (PBSO Report)** *(none)*
2. **Appointment of Interim City Clerk**

Mr. Williamson recommended that the Commission consider appointing Ms. Clarke as Interim City Clerk for 60 days, and a discussion ensued.

**Approval of appointing Ms. Clarke as Interim City Clerk for 60 days.**  
**Motion by Commissioner Everett. Seconded by Vice Mayor Murvin.**  
**Motion carried unanimously.**

A discussion ensued regarding advertising the City Clerk's position.

**Approval of advertising City Clerk's position for 30 days.**  
**Motion by Commissioner Hill. Seconded by Vice Mayor Murvin.**  
**Motion carried unanimously.**

**Citizens Comments:** *(none)*

**City Commission Comments:**

Commissioner Hill advised the City Manager that she supports him and his vision, but she has concerns regarding the funding for the gymnasium and Ordinance 2018-01. She recommended that employees and contractors be surveyed by an outside entity, and requested clarity on as to why the City is seeking funding for the football field.

- Discussions ensued.

Commissioner Walker advised she will speak with the City Manager.

Commissioner Everett mentioned the following items: financial reports and their accessibility to the citizens, Commissioners serving as liaisons, one-on-one meeting schedules with the City Manager, Commissioner's Retreat date, and a follow up date for Town Hall Meeting.

- Discussions ensued.

Vice Mayor Murvin mentioned the Commissioner's Retreat date, the Town Hall Meeting date, and clarified her decision for the City Manager's contract.

- Discussions ensued.

**Town Hall Meeting date was verbally set by Commission for August 6, 2018 at 6:00 p.m.**

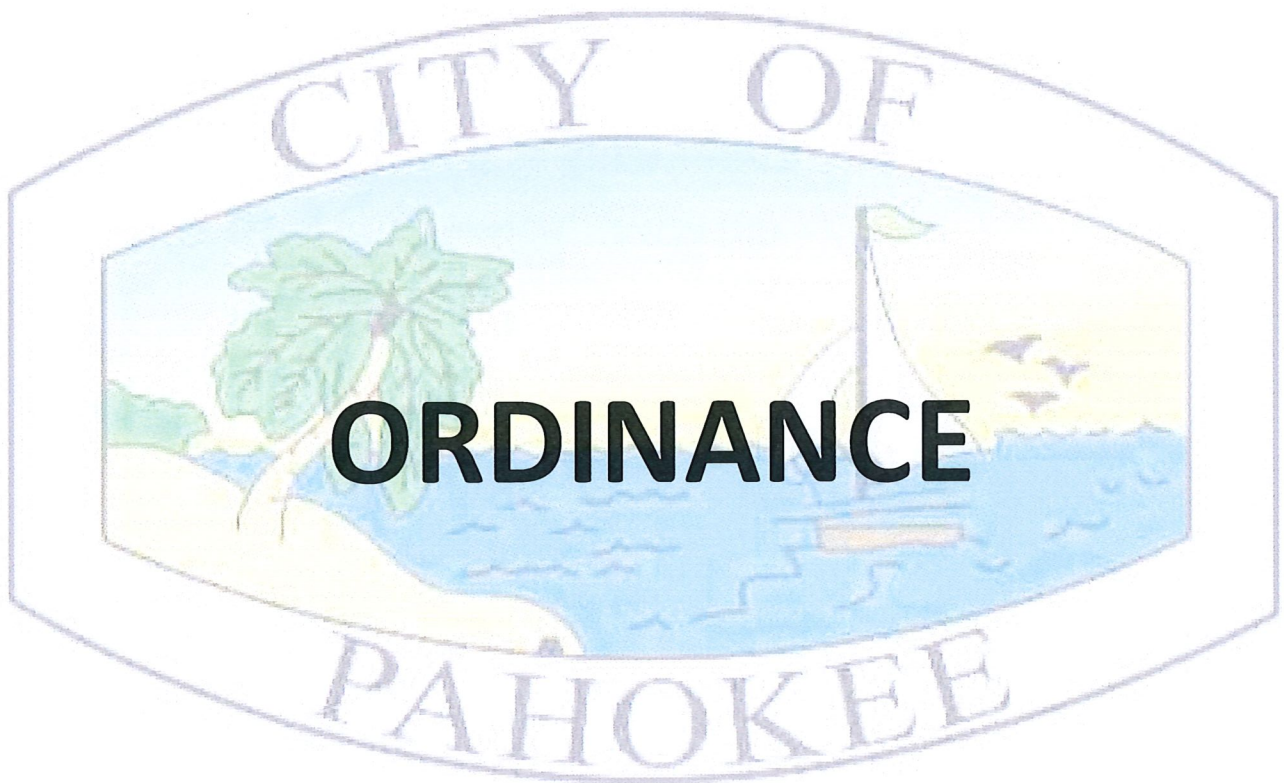
There being no further business to discuss, Mayor Babb adjourns the meeting at 8:31p.m.

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Keith W. Babb, Jr., Mayor

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ATTEST: Nylene Clarke, Interim City Clerk





ORDINANCE NO. 2018 - 03

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, REPEALING SECTION 2-272(6) OF THE CODE OF LAWS AND ORDINANCES OF THE CITY OF PAHOKEE, PROVIDING FOR THE WAIVER OF COMPETITIVE BIDDING FOR PROCUREMENTS WHERE THE FUNDING SOURCE FOR THE PROJECT MAY BE JEOPARDIZED BY THE LENGTH OF THE NORMAL PROCUREMENT PROCESS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND EFFECTIVE DATE.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE THAT:

**Section 1.** Section 2-272(6) of the Code of Laws and Ordinances of the City is hereby repealed.

~~Waivers. The City Commission, upon a super-majority vote (4 out of 5), may waive the provisions of Sec. 2-272(4) when it is determined that to proceed with the normal procurement process will jeopardize the grant or other type of funding for the project, and the City has received approval from the provider of the grant or other source of funding to proceed with an alternative procurement process.~~

**Section 2.** **Severability.** If any section, subsection, clause or provision of this Ordinance is declared unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

**Section 3.** **Repeal of Laws in Conflict.** All sections or parts of sections of the revised Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

**Section 4.** **Inclusion in the Code of Ordinances.** It is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and are made a part of the Code of Ordinances of the City of Pahokee, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

**Section 5. Effective Date.** This Ordinance shall be effective immediately upon passage by the City Commission in second reading.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2018.

PASSED AND ADOPTED in second reading this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

Attest: \_\_\_\_\_  
Nylene Clarke, Interim City Clerk

	First Reading	Second and Final Reading
MAYOR BABB	_____	_____
COMMISSIONER HILL	_____	_____
COMMISSIONER MURVIN	_____	_____
COMMISSIONER WALKER	_____	_____
COMMISSIONER EVERETT	_____	_____

APPROVED AS TO LEGAL SUFFICIENCY

\_\_\_\_\_  
Gary M. Brandenburg, CITY ATTORNEY

ORDINANCE NO. 2018 - 04

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, PROHIBITING THE PARKING OF CERTAIN VEHICLES IN RESIDENTIAL ZONING DISTRICTS, INCLUDING THE CORE DISTRICT; PROVIDING A CONFLICTS CLAUSE, PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND EFFECTIVE DATE.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE THAT:

Section 1. Section 22-21 of the Code of Laws and Ordinances of the City is hereby created to read as follows:

**Sec. 22-21 Parking or Storage of Commercial Vehicles, Trucks, and Similar Vehicles Prohibited in Residential Zoning Districts, including the CORE District**

- A. It shall be unlawful for any agent, operator, owner or person in charge of any bus, pole trailer, semi-trailer, trailer coach, truck in excess of  $\frac{3}{4}$  Ton rated capacity, truck trailer, or industrial equipment, to park, store, or keep such motor vehicle on any public street, avenue, alley, or other thoroughfare, or any right-of-way within any residential zoning district or in the CORE district in the City for a period exceeding one hour in any 24-hour period.
- B. It shall be unlawful for the owner of the property in any residential zoning district or in the CORE zoning district in the City to park on, or cause to be parked on, or allow to be parked on any residential-zoned or CORE-zoned property in the City or in the streets, alleys or parkways abutting the property, any bus, pole trailer, semi-trailer, trailer coach, truck in excess of  $\frac{3}{4}$  Ton rated capacity, truck trailer, or industrial equipment, for a period exceeding one hour in any 24-hour period unless as part of a business that is legally permitted or existing as of the date of adoption of this ordinance.
- C. The restrictions of subsections (A) and (B) above shall not apply to the temporary parking of such vehicles on private property in residential zoning districts or in the CORE zoning district whereon construction is underway. A current and valid building permit issued by the City must be properly displayed on the premises.
- D. The restrictions of subsection (A) and (B) above of one hour in residential zoning districts and the CORE zoning district shall not apply to routine deliveries by tradesmen, or the use of trucks in making service calls, providing such time in excess of one hour is actually in the course of business deliveries or servicing.
- E. The restrictions of subsection (A) and (B) above shall not apply to vehicles which become disabled, and as a result of such emergency are required to be parked within a residential zoning district or a CORE zoning district longer than one hour. Any disabled vehicle, however, shall be removed from the residential zoning district or the CORE zoning district within 24 hours, by a wrecker if necessary, regardless of the nature of the emergency.

**Section 2. Conflict.** All sections or parts of sections of the revised Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

**Section 2. Severability.** If any section, subsection, clause or provision of this Ordinance is declared unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

**Section 4. Inclusion in the Code of Ordinances.** It is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and are made a part of the Code of Ordinances of the City of Pahokee, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

**Section 5. Effective Date.** This Ordinance shall be effective immediately upon passage by the City Commission in second reading.

**PASSED** on first reading this \_\_\_\_ day of \_\_\_\_\_, 2018.

**PASSED AND ADOPTED** in second reading this \_\_\_\_ day of \_\_\_\_\_, 2018.

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

Attest: \_\_\_\_\_  
Nylene Clarke, Interim City Clerk

	First Reading	Second and Final Reading
MAYOR BABB	_____	_____
COMMISSIONER HILL	_____	_____
COMMISSIONER MURVIN	_____	_____
COMMISSIONER WALKER	_____	_____
COMMISSIONER EVERETT	_____	_____

APPROVED AS TO LEGAL SUFFICIENCY

\_\_\_\_\_  
Gary M. Brandenburg, CITY ATTORNEY



**RESOLUTIONS**

**RESOLUTION 2018 - 45**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY (#SL041) FOR \$990,000 FOR INFRASTRUCTURE IMPROVEMENTS TO THE PAHOKEE MARINA.**

**WHEREAS**, the City has needed improvements to the City Marina to enhance economic opportunities for its residents; and

**WHEREAS**, the State of Florida has agreed to assist the City in the funding of:

- A. a linear park with sidewalks, benches, trash receptacles, concrete restroom building conversion, and landscaping; and
- B. a 12' x 125' fishing pier on concrete pilings, structurally connected to the Marina.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, THAT:**

**Section 1.** The DEO Grant, #SL041, is hereby approved.

**Section 2.** The Mayor is hereby authorized and directed to sign the agreement on behalf of the City of Pahokee.

**PASSED AND ADOPTED** this 14<sup>th</sup> day of August, 2018.

ATTESTED:

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

\_\_\_\_\_  
Nylene Clarke, Interim City Clerk

APPROVED AS TO LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Gary M. Brandenburg, City Attorney

Mayor Babb \_\_\_\_\_

Vice Mayor Murvin \_\_\_\_\_

Commissioner Everett \_\_\_\_\_

Commissioner Hill \_\_\_\_\_

Commissioner Walker \_\_\_\_\_

**GRANT AGREEMENT  
STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

**THIS GRANT AGREEMENT NUMBER SL041** (“Agreement”) is made and entered into by and between the State of Florida, Department of Economic Opportunity (“DEO”), and the City of Pahokee, Palm Beach County, Florida (“Grantee”). DEO and Grantee are sometimes referred to herein individually as a “Party” and collectively as “the Parties”.

**WHEREAS**, DEO has the authority to enter into this Agreement and distribute State of Florida funds (“Award Funds”) in the amount and manner set forth in this Agreement and in the following Attachments incorporated herein as an integral part of this Agreement:

- Attachment 1: Scope of Work
- Attachment 2 and Exhibit 1 to Attachment 2: Audit Requirements
- Attachment 3: Audit Compliance Certification

**WHEREAS**, the Agreement and its aforementioned Attachments are hereinafter collectively referred to as the “Agreement”, and if any inconsistencies or conflict between the language of this Agreement and its Attachments arise, then the language of the Attachments shall control, but only to the extent of the conflict or inconsistency;

**WHEREAS**, Grantee hereby represents and warrants that Grantee’s signatory to this Agreement has authority to bind Grantee to this Agreement as of the Effective Date and that Grantee, through its undersigned duly-authorized representative in his or her official capacity, has the authority to request, accept, and expend Award Funds for Grantee’s purposes in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE**, for and in consideration of the covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby agree to perform the duties described herein in this Agreement as follows:

**A. AGREEMENT PERIOD**

This Agreement is effective as of July 1, 2018 (the “Effective Date”) and shall continue until the earlier to occur of (a) June 30, 2019 (the “Expiration Date”) or (b) the date on which either Party terminates this Agreement (the “Termination Date”). The period of time between the Effective Date and the Expiration Date or Termination Date is the “Agreement Period.”

**B. FUNDING**

This Agreement is a cost reimbursement Agreement. DEO shall pay Grantee up to Nine Hundred Ninety Thousand Dollars and Zero Cents (\$990,000.00) in consideration for Grantee’s performance under this Agreement. DEO may provide Grantee an advance of Award Funds under this Agreement. Travel expenses are not authorized under this Agreement. DEO shall not pay Grantee’s costs related to this Agreement incurred outside of the Agreement Period. In conformity with s. 287.0582, F.S., the State of Florida and DEO’s performance and obligation to pay any Award Funds under this Agreement is contingent upon an annual appropriation by the Legislature. DEO shall have final unchallengeable authority as to both the availability of funds and what constitutes an “annual appropriation” of funds. Grantee shall not expend Award Funds for

the purpose of lobbying the Legislature, the judicial branch, or a state agency. Grantee shall not expend Award Funds to pay any costs incurred in connection with any defense against any claim or appeal of the State of Florida or any agency or instrumentality thereof (including DEO); or to pay any costs incurred in connection with the prosecution of any claim or appeal against the State of Florida or any agency or instrumentality thereof (including DEO), which Grantee instituted or in which Grantee has joined as a claimant. Grantee shall either (i) maintain Award Funds in a separate bank account, or (ii) expressly designate in Grantee's business records and accounting system that the Award Funds originated from this Agreement. Grantee shall not commingle Award Funds with any other funds. DEO may refuse to reimburse Grantee for purchases made with commingled funds. Grantee's costs must be in compliance with all laws, rules, and regulations applicable to expenditures of State funds, including the Reference Guide for State Expenditures ([https://www.myfloridacfo.com/aadir/reference\\_guide/Reference\\_Guide\\_For\\_State\\_Expenditures.pdf](https://www.myfloridacfo.com/aadir/reference_guide/Reference_Guide_For_State_Expenditures.pdf))

### **C. ELECTRONIC FUNDS TRANSFER**

Within 30 calendar days of the date the last Party has signed this Agreement, Grantee shall enroll in Electronic Funds Transfer (EFT) from the State's Chief Financial Officer. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at: [http://www.fldfs.com/aadir/direct\\_deposit\\_web/Vendors.html](http://www.fldfs.com/aadir/direct_deposit_web/Vendors.html). Questions should be directed to the EFT Section at (850) 413-5517. Once enrolled, EFT shall make invoice payments.

### **D. MODIFICATION**

If, in DEO's sole and absolute determination, changes to this Agreement are necessitated by law or otherwise, DEO may at any time, with written notice of all such changes to Grantee, modify this Agreement within its original scope and purpose. Grantee shall be responsible for any due diligence necessary to determine the impact of the modification. Any modification of this Agreement requested by Grantee must be in writing and duly signed by all Parties in order to be enforceable.

### **E. AUDITS REQUIREMENTS AND COMPLIANCE**

**1. Section 215.971(1), Florida Statutes ("F.S."): Grantee shall comply with all applicable provisions of s. 215.97, F.S. and Attachment 2 and Exhibit 1 to Attachment 2: Audit Requirements.** Grantee shall perform the deliverables and tasks set forth in Attachment 1, Scope of Work. Grantee may only expend Award Funds for allowable costs resulting from obligations incurred during the Agreement Period. Grantee shall refund to DEO any: (1) balance of unobligated Award Funds which have been advanced or paid to Grantee; or (2) Award Funds paid in excess of the amount to which Grantee is entitled under the terms and conditions of this Agreement and Attachments hereto, upon expiration or termination of this Agreement.

**2. Audit Compliance.** Grantee understands and shall comply with the requirements of s. 20.055(5), F.S.. Grantee agrees to reimburse the State for the reasonable costs of investigation the Inspector General or other authorized State official incurs for investigations of Grantee's compliance with the terms of this or any other agreement between the Grantee and the State which results in the suspension or debarment of Grantee. Grantee shall not be responsible for any costs of investigations that do not result in Grantee's suspension or debarment.

### **F. RECORDS AND INFORMATION RELEASE**



**1. Records Compliance.** DEO is subject to the provisions of chapter 119, F.S., relating to public records. Any document Grantee submits to DEO under this Agreement may constitute public records under the Florida Statutes. Grantee shall cooperate with DEO regarding DEO's efforts to comply with the requirements of chapter 119, F.S.. Grantee shall respond to requests to inspect or copy such records in accordance with chapter 119, F.S. for records made or received by Grantee in connection with this Agreement. Grantee shall immediately notify DEO of the receipt and content of any request by sending an e-mail to [PRRequest@deo.myflorida.com](mailto:PRRequest@deo.myflorida.com) within one business day after receipt of such request. Grantee shall indemnify, defend, and hold DEO harmless from any violation of Florida's public records laws wherein DEO's disclosure or nondisclosure of any public record was predicated upon any act or omission of Grantee. As applicable, Grantee shall comply with Section 501.171, F.S.. DEO may terminate this Agreement if Grantee fails to comply with Florida's public records laws. Grantee shall allow public access to all records made or received by Grantee in connection with this Agreement, unless the records are exempt from s. 24(a) of Article I of the State Constitution or s. 119.07(1), F.S.

**2. Identification of Records.** Grantee shall clearly and conspicuously mark all records submitted to DEO if such records are confidential and exempt from public disclosure. Grantee's failure to clearly mark each record and identify the legal basis for each exemption from the requirements of chapter 119, F.S., prior to delivery of the record to DEO serves as Grantee's waiver of a claim of exemption. Grantee shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for as long as those records are confidential and exempt pursuant to Florida law. If DEO's claim of exemption asserted in response to Grantee's assertion of confidentiality is challenged in any court of law, Grantee shall defend, assume, and be responsible for all fees, costs, and expenses in connection with such challenge.

**3. Keeping and Providing Records.** DEO and the State have an absolute right to view, inspect, or make or request copies of any records arising out of or related to this Agreement. The Grantee has an absolute duty to keep and maintain all records arising out of or related to this Agreement. DEO may request copies of any records made or received in connection with this Agreement, or arising out of Grantee's use of Award Funds, and Grantee shall provide DEO with copies of any records within 10 business days after DEO's request at no cost to DEO. Grantee shall maintain all books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of Award Funds. For avoidance of doubt, Grantee's duties to keep and provide records to DEO includes all records generated in connection with or as a result of this Agreement. Upon expiration or termination of this Agreement, the Grantee shall transfer, at no cost, to DEO all public records in possession of Grantee or keep and maintain public records required by DEO to perform the service. If the Grantee keeps and maintains public records upon completion of this Agreement, the Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DEO, upon request from DEO's custodian of records, in a format that is compatible with the information technology systems of DEO.

**4. Audit Rights.** Representatives of the State of Florida, DEO, the State Chief Financial Officer, the State Auditor General, the Florida Office of Program Policy Analysis and Government Accountability or representatives of the federal government and their duly authorized representatives shall have access to any of Grantee's books, documents, papers, and records, including electronic storage media, as they may relate to this Agreement, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

**5. Single Audit Compliance Certification.** Annually within 60 calendar days of the close of Grantee's fiscal year, Grantee shall electronically submit a completed Audit Compliance Certification (a version of this certification is attached hereto as Attachment 3) to [audit@deo.myflorida.com](mailto:audit@deo.myflorida.com). Grantee's timely submittal of one completed Audit Compliance Certification for each applicable fiscal year will fulfill this requirement for all agreements between DEO and Grantee.

6. **Ensure Compliance.** Grantee shall ensure that any entity which is paid from, or for which Grantee's expenditures will be reimbursed by, Award Funds, is aware of and will comply with the aforementioned audit and record keeping requirements.

7. **Contact Custodian of Public Records for Questions.** IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS by telephone at (850) 245-7140, via e-mail at [PRRequest@deo.myflorida.com](mailto:PRRequest@deo.myflorida.com), or by mail at Department of Economic Opportunity, Public Records Coordinator, 107 East Madison Street, Caldwell Building, Tallahassee, Florida 32399-4128.

#### G. TERMINATION AND FORCE MAJEURE

1. **Termination due to Lack of Funds:** In the event funds to finance this Agreement become unavailable or if federal or state funds upon which this Agreement is dependent are withdrawn or redirected, DEO may terminate this Agreement upon no less than twenty-four (24) hour written notice to Grantee. DEO shall be the final authority as to the availability of funds and will not reallocate funds earmarked for this Agreement to another program thus causing "lack of funds." In the event of termination of this Agreement under this provision, Grantee will be paid for any work satisfactorily completed prior to notification of termination. The lack of funds shall not constitute DEO's default under this Agreement.

2. **Termination for Cause:** DEO may terminate the Agreement if Grantee fails to: (1) deliver the services within the time specified in the Agreement or any extension; (2) maintain adequate progress, thus endangering performance of the Agreement; (3) honor any term of the Agreement; or (4) abide by any statutory, regulatory, or licensing requirement. The rights and remedies of DEO in this clause are in addition to any other rights and remedies provided by law or under the Agreement. Grantee shall not be entitled to recover any cancellation charges or lost profits.

3. **Termination for Convenience:** DEO, by written notice to Grantee, may terminate this Agreement in whole or in part when DEO determines in DEO's sole and absolute discretion that it is in DEO's interest to do so. Grantee shall not provide any deliverable pursuant to Attachment 1: Scope of Work after it receives the notice of termination, except as DEO otherwise specifically instructs Grantee in writing. Grantee shall not be entitled to recover any cancellation charges or lost profits.

4. **Grantee's Responsibilities Upon Termination:** If DEO issues a Notice of Termination to Grantee, except as DEO otherwise specifies in that Notice, Grantee shall: (1) Stop work under this Agreement on the date and to the extent specified in the notice; (2) complete performance of such part of the work DEO does not terminate; (3) take such action as may be necessary, or as DEO may specify, to protect and preserve any property which is in the possession of Grantee and in which DEO has or may acquire an interest; and (4) upon the effective date of termination, Grantee shall transfer, assign, and make available to DEO all property and materials belonging to DEO pursuant to the terms of this Agreement and all Attachments hereto. Grantee shall not receive additional compensation for Grantee's services in connection with such transfers or assignments.

5. **Force Majeure and Notice of Delay from Force Majeure.** Neither Party shall be liable to the other for any delay or failure to perform under this Agreement if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of

public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section, the delay will not result in any additional charge or cost under the Agreement to either Party. In the case of any delay Grantee believes is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section, Grantee shall notify DEO in writing of the delay or potential delay and describe the cause of the delay either: (1) within 10 calendar days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) within five calendar days after the date Grantee first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. THE FOREGOING SHALL CONSTITUTE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section is a condition precedent to such remedy. DEO, in its sole discretion, will determine if the delay is excusable under this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section and will notify Grantee of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against DEO. Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from DEO for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE section, after the causes have ceased to exist, Grantee shall perform at no increased cost, unless DEO determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to DEO or the State, in which case, DEO may terminate the Agreement in whole or in part.

#### **H. BUSINESS WITH PUBLIC ENTITIES**

Grantee is aware of and understands the provisions of s. 287.133(2)(a), F.S., and s. 287.134(2)(a), F.S. As required by s. 287.135(5), Grantee certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S.; (2) engaged in a boycott of Israel; (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S.; (4) engaged in business operations in Cuba or Syria; or (5) engaged in business operations with the government of Venezuela or in any company doing business with the government of Venezuela. DEO may immediately terminate this Agreement if Grantee submits a false certification as to the above, or if Grantee is placed on the Scrutinized Companies that Boycott Israel List, engages in a boycott of Israel, is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has engaged in business operations in Cuba, Syria, or Venezuela.

#### **I. CONTINUING DISCLOSURE OF LEGAL PROCEEDINGS**

Prior to execution of this Agreement, Grantee must disclose in a written statement to DEO's Agreement Manager all prior or on-going civil or criminal litigation, investigations, arbitration or administrative proceedings (collectively "Proceedings") involving Grantee (and each subcontractor). Thereafter, Grantee has a continuing duty to promptly disclose all Proceedings upon occurrence. This duty of disclosure applies to Grantee's or subcontractor's officers and directors when any Proceeding relates to the officer or director's business or financial activities. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such. Grantee shall promptly notify DEO's Agreement Manager of any Proceeding relating to or affecting the Grantee's or subcontractor's business. If the existence of such Proceeding causes the State

concern about Grantee's ability or willingness to perform the Agreement, then upon DEO's request, Grantee shall provide to DEO's Agreement Manager all reasonable assurances that: (i) Grantee will be able to perform the Agreement in accordance with its terms and conditions; and (ii) Grantee and/or its employees, agents, or subcontractor(s) have not and will not engage in conduct in performing services for DEO which is similar in nature to the conduct alleged in such Proceeding.

## J. ADVERTISING AND SPONSORSHIP DISCLOSURE

1. **Limitations on Advertising of Agreement.** DEO does not endorse any Grantee, commodity, or service. Subject to chapter 119, F.S., Grantee shall not publicly disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking Grantee's name and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized distributors, dealers, resellers, or service representatives.

2. **Disclosure of Sponsorship.** As required by Section 286.25, F.S., if Grantee is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Agreement, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (Grantee's name) and the State of Florida, Department of Economic Opportunity." If the sponsorship reference is in written material, the words "State of Florida, Department of Economic Opportunity" shall appear in the same size letters or type as the name of the organization.

## K. RECOUPMENT OF FUNDS

1. **Recoupment.** Notwithstanding anything in this Agreement to the contrary, DEO has an absolute right to recoup Award Funds. DEO may refuse to reimburse Grantee for any cost if DEO determines that such cost was not incurred in compliance with the terms of this Agreement. DEO may demand a return of Award Funds if DEO terminates this Agreement. The application of financial consequences as set forth in the Scope of Work is cumulative to any of DEO's rights to recoup Award Funds. Notwithstanding anything in this Agreement to the contrary, in no event shall the application of any financial consequences or recoupment of Award Funds exceed the amount of Award Funds, plus interest.

2. **Overpayments.** If Grantee's (a) noncompliance with this Agreement or any applicable federal, state, or local law, rule, regulation or ordinance, or (b) Grantee's performance or nonperformance of any term or condition of this Agreement results in (i) an unlawful use of Award Funds; (ii) a use of Award Funds that doesn't comply with the terms of this Agreement; or (iii) a use which constitutes a receipt of Award Funds to which Grantee is not entitled (each such event an "Overpayment"), then Grantee shall return such Overpayment of Award Funds to DEO.

3. **Discovery of Overpayments.** Grantee shall refund any Overpayment of Award Funds to DEO within 30 days of Grantee's discovery of an Overpayment, or receipt of notification from DEO that an Overpayment has occurred. DEO is the final authority as to what may constitute an Overpayment of Award Funds. Refunds should be sent to DEO's Agreement Manager, and made payable to the "Department of Economic Opportunity". Should repayment not be made in a timely manner, DEO may charge interest at the lawful rate of interest on the outstanding balance beginning 30 days after the date of notification or discovery.

4. **Right of Set-Off.** DEO and the State shall have all of its common law, equitable and statutory rights of set-off, including, without limitation, the State's option to withhold for the purposes of set-off any

moneys due to Grantee under this Agreement up to any amounts due and owing to DEO with respect to this Agreement, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audits by the State or its representatives.

#### **L. INSURANCE**

Unless Grantee is a state agency or subdivision as defined in s. 768.28(2), F.S., Grantee shall provide and maintain at all times during this Agreement adequate commercial general liability insurance coverage. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

Grantee, at all times during the Agreement, at Grantee's sole expense, shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with this Agreement, which, as a minimum, shall be: workers' compensation and employer's liability insurance in accordance with chapter 440, F.S., with minimum employer's liability limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policy shall cover all employees engaged in any Agreement work.

Grantee shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with this Agreement, as required by law, and as otherwise necessary and prudent for the Grantee's performance of its operations in the regular course of business. The limits of coverage under each policy maintained by Grantee shall not be interpreted as limiting Grantee's liability and obligations under this Agreement. All insurance policies shall be through insurers licensed and authorized to write policies in Florida, and such policies shall cover all employees engaged in any Agreement work. Grantee shall maintain any other insurance required in the Scope of Work. Upon request, Grantee shall produce evidence of insurance to DEO.

DEO shall not pay for any costs of any insurance or policy deductible, and payment of any insurance costs shall be Grantee's sole responsibility. Providing and maintaining adequate insurance coverage is a material obligation of Grantee, and failure to maintain such coverage may void the Agreement, at DEO's sole and absolute discretion, after DEO's review of Grantee's insurance coverage when Grantee is unable to comply with DEO's requests concerning additional appropriate and necessary insurance coverage. Upon execution of this Agreement, Grantee shall provide DEO written verification of the existence and amount for each type of applicable insurance coverage. Within 30 calendar days of the effective date of the Agreement, Grantee shall furnish DEO proof of applicable insurance coverage by standard ACORD form certificates of insurance. In the event that an insurer cancels any applicable coverage for any reason, Grantee shall immediately notify DEO of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within 15 business days after the cancellation of coverage. Copies of new insurance certificates must be provided to DEO's Agreement Manager with each insurance renewal.

#### **M. CONFIDENTIALITY AND SAFEGUARDING INFORMATION**

Each Party may have access to confidential information made available by the other. The provisions of the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws will govern disclosure of any confidential information received by the State of Florida.

Grantee must implement procedures to ensure the appropriate protection and confidentiality of all data, files, and records involved with this Agreement.

Except as necessary to fulfill the terms of this Agreement and with the permission of DEO, Grantee shall not divulge to third parties any confidential information obtained by Grantee or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Agreement work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or DEO.

Grantee shall not use or disclose any information concerning a recipient of services under this Agreement for any purpose in conformity with state and federal law or regulations except upon written consent of the recipient, or Recipients' responsible parent or guardian when authorized by law, if applicable.

When Grantee has access to DEO's network and/or applications, in order to fulfill Grantee's obligations under this Agreement, Grantee shall abide by all applicable DEO Information Technology Security procedures and policies. Grantee (including its employees, subcontractors, agents, or any other individuals to whom Grantee exposes confidential information obtained under this Agreement), shall not store, or allow to be stored, any confidential information on any portable storage media (*e.g.*, laptops, thumb drives, hard drives, *etc.*) or peripheral device with the capacity to hold information. Failure to strictly comply with this provision shall constitute a breach of Agreement.

Grantee shall immediately notify DEO in writing when Grantee, its employees, agents, or representatives become aware of an inadvertent disclosure of DEO's unsecured confidential information in violation of the terms of this Agreement. Grantee shall report to DEO any Security Incidents of which it becomes aware, including incidents sub-contractors or agents reported to Grantee. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of DEO information in Grantee's possession or electronic interference with DEO operations; provided, however, that random attempts at access shall not be considered a security incident. Grantee shall make a report to DEO not more than seven business days after Grantee learns of such use or disclosure. Grantee's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Grantee has done or shall do to mitigate any detrimental effect of the unauthorized use or disclosure, and (v) what corrective action Grantee has taken or shall take to prevent future similar unauthorized use or disclosure. Grantee shall provide such other information, including a written report, as DEO's Information Security Manager requests.

In the event of a breach of security concerning confidential personal information involved with this Agreement, Grantee shall comply with Section 501.171, F.S., as applicable. When notification to affected persons is required under this section of the statute, Grantee shall provide that notification, but only after receipt of DEO's written approval of the contents of the notice. Defined statutorily, and for purposes of this Agreement, "breach of security" or "breach" means the unauthorized access of data in electronic form containing personal data. Good faith acquisition of personal information by an employee or agent of the Grantee is not a breach, provided the information is not used for a purpose unrelated to the Grantee's obligations under this Agreement or is not subject to further unauthorized use.

## **N. PATENTS, COPYRIGHTS, AND ROYALTIES**

1. All legal title and every right, interest, claim or demand of any kind, in and to any patent, trademark or copyright, or application for the same, or any other intellectual property right to, the work developed or produced under or in connection with this Agreement, is the exclusive property of DEO to be granted to and vested in the Florida Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of the Florida Department of State. Any contribution by the Grantee or its employees, agents or contractors to the creation of such works shall be considered works made for hire by the Grantee for DEO and, upon creation, shall be owned exclusively by DEO. To the extent that any such works may not be considered works made for hire for DEO under applicable

law, Grantee agrees, upon creation of such works, to automatically assign to DEO ownership, including copyright interests and any other intellectual property rights therein, without the necessity of any further consideration.

2. If any discovery or invention arises or is developed in the course or as a result of work or services performed with funds from this Agreement, Grantee shall refer the discovery or invention to DEO who will refer it to the Department of State to determine whether patent protection will be sought in the name of the State of Florida.

3. Where activities supported by this Agreement produce original writings, sound recordings, pictorial reproductions, drawings or other graphic representations and works of any similar nature, DEO has the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to allow others acting on behalf of DEO to do so. Grantee shall give DEO written notice when any books, manuals, films, websites, web elements, electronic information, or other copyrightable materials are produced.

4. Notwithstanding any other provisions herein, in accordance with s. 1004.23, F.S., a State University is authorized in its own name to perform all things necessary to secure letters of patent, copyrights, and trademarks on any works it produces. Within 30 calendar days of same, the president of a State University shall report to the Department of State any such university's action taken to secure or exploit such trademarks, copyrights, or patents in accordance with s. 1004.23(6), F.S.

#### **O. INFORMATION TECHNOLOGY RESOURCE**

Grantee shall obtain prior written approval from the appropriate DEO authority before purchasing any Information Technology Resource (ITR) or conducting any activity that will impact DEO's electronic information technology equipment or software, as both terms are defined in DEO Policy Number 5.01, in any way. ITR includes computer hardware, software, networks, devices, connections, applications, and data. Grantee shall contact the DEO Agreement Manager listed herein in writing for the contact information of the appropriate DEO authority for any such ITR purchase approval.

#### **P. NONEXPENDABLE PROPERTY**

1. For the requirements of this Nonexpendable Property section of the Agreement, "nonexpendable property" is the same as "property" as defined in s. 273.02, F.S., (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and hardback-covered bound books, with a value or cost of \$250 or more).

2. All nonexpendable property, purchased under this Agreement, shall be listed on the property records of Grantee. Grantee shall inventory annually and maintain accounting records for all nonexpendable property purchased and submit an inventory report to DEO with the final expenditure report. The records shall include, at a minimum, the following information: property tag identification number, description of the item(s), physical location, name, make or manufacturer, year, and/or model, manufacturer's serial number(s), date of acquisition, and the current condition of the item.

3. At no time shall Grantee dispose of nonexpendable property purchased under this Agreement without the written permission of and in accordance with instructions from DEO.

4. Immediately upon discovery, Grantee shall notify DEO, in writing, of any property loss with the date and reason(s) for the loss.

5. Grantee shall be responsible for the correct use of all nonexpendable property Grantee purchases or DEO furnishes under this Agreement.

6. A formal Agreement amendment is required prior to the purchase of any item of nonexpendable property not specifically listed in Attachment 1: Scope of Work.

7. Upon the Expiration Date of this Agreement Grantee is authorized to retain ownership of any nonexpendable property purchased under this Agreement; however, Grantee hereby grants to DEO a right of first refusal in all such property prior to disposition of any such property during its depreciable life, in accordance with the depreciation schedule in use by Grantee, Grantee shall provide written notice of any such planned disposition and await DEO's response prior to disposing of the property. "Disposition" as used herein, shall include, but is not limited to, Grantee no longer using the nonexpendable property for the uses authorized herein; the sale, exchange, transfer, trade-in, or disposal of any such nonexpendable property. DEO, in its sole discretion, may require Grantee to refund to DEO the fair market value of the nonexpendable property at the time of disposition rather than taking possession of the nonexpendable property.

#### **Q. REQUIREMENTS APPLICABLE TO THE PURCHASE OF OR IMPROVEMENTS TO REAL PROPERTY**

In accordance with s. 287.05805, F.S., if funding provided under this Agreement is used for the purchase of or improvements to real property, Grantee shall grant DEO a security interest in the property in the amount of the funding provided by this Agreement for the purchase of or improvements to the real property for five years from the date of purchase or the completion of the improvements or as further required by law.

Upon the Expiration Date of the Agreement, Grantee shall be authorized to retain ownership of the improvements to real property set forth in this Agreement in accordance with the following: Grantee is authorized to retain ownership of the improvements to real property so long as: (1) Grantee is not sold, merged or acquired; (2) the real property subject to the improvements is owned by Grantee; and (3) the real property subject to the improvements is used for the purposes provided in this Agreement. If within five years of the termination of this Agreement, Grantee is unable to satisfy the requirements stated in the immediately preceding sentence, Grantee shall notify DEO in writing of the circumstances that will result in the deficiency upon learning of it, but no later than 30 calendar days prior to the deficiency occurring. In such event, DEO shall have the right, within its sole discretion, to demand reimbursement of part or all of the funding provided to Grantee under this Agreement.

#### **R. CONSTRUCTION AND INTERPRETATION**

The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement" means this Agreement together with all attachments and exhibits hereto, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. The use in this Agreement of the term "including" and other words of similar import mean "including, without limitation" and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word "or" is not exclusive and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement, including any Exhibits and Attachments, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. As



appropriate, the use herein of terms importing the singular shall also include the plural, and vice versa. The reference to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and the reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. All references to "\$" shall mean United States dollars. The term "Grantee" includes any person or entity which has been duly authorized to and has the actual authority to act or perform on Grantee's behalf. The term "DEO" includes the State of Florida and any successor office, department, or agency of DEO, and any person or entity which has been duly authorized to and has the actual authority to act or perform on DEO's behalf. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties. Time is of the essence with respect to the performance of all obligations under this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement, and each Party has read and understands this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

#### **S. CONFLICT OF INTEREST**

This Agreement is subject to chapter 112, F.S.. Grantee shall disclose the name of any officer, director, employee, or other agent who is also an employee of the State. Grantee shall also disclose the name of any State employee who owns, directly or indirectly, more than a 5% interest in Grantee or its affiliates

#### **T. GRANTEE AS INDEPENDENT CONTRACTOR**

Grantee is at all times acting and performing as an independent contractor. DEO has no ability to exercise any control or direction over the methods by which Grantee may perform its work and functions, except as provided herein. Nothing in this Agreement may be understood to constitute a partnership or joint venture between the Parties.

#### **U. EMPLOYMENT ELIGIBILITY VERIFICATION – E-VERIFY**

The Governor of Florida's Executive Order 11-116 requires DEO contracts in excess of a nominal value to expressly Grantee to: (1) Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees Grantee hired during the Agreement term; and (2) Include in all subcontracts under this Agreement the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees subcontractor hired during the term of the Subcontract. The Department of Homeland Security's E-Verify system can be found at:

<http://www.uscis.gov/e-verify>

If the Grantee does not have an E-Verify MOU in effect, the Grantee must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Agreement.

#### **V. NOTIFICATION OF INSTANCES OF FRAUD**

Upon discovery, Grantee shall report all known or suspected instances of Grantee, or Grantee's agents, contractors or employees, operational fraud or criminal activities to DEO's Agreement Manager in writing within 24 chronological hours.

## **W. NON-DISCRIMINATION**

Grantee shall not discriminate unlawfully against any individual employed in the performance of this Agreement because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin, ancestry, or age. Grantee shall provide a harassment-free workplace, with any allegation of harassment to be given priority attention and action.

## **X. ASSIGNMENTS**

Grantee shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of DEO, which consent may be withheld in DEO's sole and absolute discretion. DEO is at all times entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida. Any attempted assignment of this Agreement or any of the rights hereunder by Grantee in violation of this provision shall be void *ab initio*.

## **Y. ENTIRE AGREEMENT; SEVERABILITY**

This Agreement, and the attachments and exhibits hereto, embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. If a court of competent jurisdiction voids or holds unenforceable any provision of this Agreement, then that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. If any inconsistencies or conflict between the language of this Agreement and its Attachments arise, then the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

## **Z. WAIVER; GOVERNING LAW; ATTORNEYS' FEES, DISPUTE RESOLUTION**

1. **Waiver.** No waiver by DEO of any of provision herein shall be effective unless explicitly set forth in writing and signed by DEO. No waiver by DEO may be construed as a waiver of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure by DEO to exercise, or delay in exercising, any right, remedy, power or privilege under this Agreement may be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies set forth herein are cumulative and not exclusive.

2. **Governing Law.** The laws of the State of Florida shall govern the construction, enforcement, and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The Parties expressly consent to exclusive jurisdiction and venue in any state court located in Leon County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense. **IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.**

3. **Attorneys' Fees, Expenses.** Except as set forth otherwise herein, each of the Parties shall pay its own attorneys' fees and costs in connection with the execution and delivery of this Agreement and the transactions contemplated hereby.

4. DEO shall decide disputes concerning the performance of the Agreement, and DEO shall serve written notice of same to Grantee. DEO's decision shall be final and conclusive unless within 21 calendar days from the date of receipt, Grantee files with DEO a petition for administrative hearing. DEO's final order on the petition shall be final, subject to any right of Grantee to judicial review pursuant to chapter 120.68, F.S. Exhaustion of administrative remedies is an absolute condition precedent to Grantee's ability to pursue any other form of dispute resolution; provided however, that the Parties may employ the alternative dispute resolution procedures outlined in chapter 120, F.S.

## AA. INDEMNIFICATION

If Grantee is a state agency or subdivision, as defined in s. 768.28(2), F.S., pursuant to s. 768.28(19), F.S., neither Party indemnifies nor insures or assumes any liability for the other Party for the other Party's negligence.

1. Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify, defend, and hold harmless the State and DEO, and their officers, agents, and employees for that portion of any loss or damages the negligent act or omission of DEO or the State proximately caused.

2. Further, Grantee shall fully indemnify, defend, and hold harmless the State and DEO from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to DEO's misuse or modification of Grantee's products or DEO's operation or use of Grantee's products in a manner not contemplated by this Agreement. If any product is the subject of an infringement suit, or in Grantee's opinion is likely to become the subject of such a suit, Grantee may, at Grantee's sole expense, procure for DEO the right to continue using the product or to modify it to become non-infringing. If Grantee is not reasonably able to modify or otherwise secure for DEO the right to continue using the product, Grantee shall remove the product and refund DEO the amounts paid in excess of a reasonable fee, as determined by DEO in its sole and absolute discretion, for past use. DEO shall not be liable for any royalties.

3. Grantee's obligations under the two immediately preceding paragraphs above, with respect to any legal action are contingent upon the State or DEO giving Grantee (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense, and (3) assistance in defending the action at Grantee's sole expense. Grantee shall not be liable for any cost, expense, or compromise incurred or made by the State or DEO in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.

4. The State and DEO may, in addition to other remedies available to them at law or equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of Grantee or its affiliates to the State against any payments due Grantee under any Agreement with the State.

**BB. CONTACT INFORMATION FOR GRANTEE AND DEO CONTACTS**

**Grantee's Payee: Grantee's Agreement Manager:**

City of Pahokee	Chandler Williamson, City Manager
207 Begonia Drive	207 Begonia Drive
Pahokee, FL 33476	Pahokee, FL 33476
Phone:561-925-5534	Phone: 561-924-5534 ext 2000
	Fax: 561-924-8140
	CWilliamson@cityofpahokee.com

**DEO's Agreement Manager:**

Demetris Thomas, FCCM
107 E Madison Street
Tallahassee Florida 32399
Phone: 850-245-7393
Fax:850-245-7470
Demetris.Thomas@deo.myflorida.com

**CC. NOTICES**

The Parties' respective contact information is set forth in the immediately preceding paragraph, and may be subject to change at the Parties' discretion. If the contact information changes, the Party making such change will notify the other Party in writing. Where the term "written notice" is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted via email, if the sender on the same day sends a confirming copy of such notice by certified or registered mail; (iii) the next business day following the day on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

*[Rest of page left intentionally blank; Attachments to follow after signature page]*

IN WITNESS THEREOF, and in consideration of the mutual covenants set forth above and in all attachments hereto, the Parties, through their duly-authorized representatives, sign this Agreement and represent and warrant that they understand the Agreement and Attachments' terms and conditions as of the Effective Date.

**DEPARTMENT OF ECONOMIC OPPORTUNITY**

**CITY OF PAHOKEE**

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

Title \_\_\_\_\_  
Chris Peary  
Chief of Staff

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

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

**OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

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

Approved Date: \_\_\_\_\_

## ATTACHMENT 1 SCOPE OF WORK

**1. PROJECT DESCRIPTION:** The 2018-2019 General Appropriations Act, line 2233A appropriated \$990,000 to the City of Pahokee (“Grantee”) for infrastructure enhancements to the Pahokee Marina Improvements Project (the “Project”).

This Project will ensure continued sustainability of the tourists, environmentalists, campers, and fishermen that frequent the City. The improvements will facilitate safe access to and from the Marina, with ample lighting and parking for those visiting the Marina and Campground. These improvements will be used in rebranding the city and enhancing and fostering other business opportunities. The goal is to have a secure fishing pier and campground facility that reflects the Lake Okeechobee and fishing industry history of the City.

This Project will include permitting, geotechnical exploration, bathymetric and topographic surveys and Design preparation for the site improvements. The improvements shall include a linear park with sidewalks, benches, trash receptacles, a concrete restroom building conversion with landscaping, and a 12' by 125' T Fishing Pier supported by concrete piles and structurally connected to the existing Marina. The concrete restroom building conversion may be used for a bait and tackle area, a bicycle rental area, or a possible boat rental area.

**2. GRANTEE’S RESPONSIBILITIES:** Grantee shall complete the following tasks for the pre-construction and construction phases at the Marina and Campground as follows:

**2.1** Follow City procurement policies and procedures in obtaining contractors to renovate the Marina and Campground site.

**2.2** Provide copies of all subcontractor agreements to DEO’s Agreement Manager.

**2.3** In performing all work utilizing the grant funds allocated to the project, Grantee shall ensure all contractors fully comply with all applicable local, state, and federal laws, rules, and regulations.

**2.4** Plans should be prepared in accordance with Federal, State, and local statutes and be approved by County and/or State officials.

**2.5** Grantee must ensure that all plans are permitted and meet local and State building codes.

**2.6** Bids solicitations are reviewed by Grantor prior to advertisement to ensure all advertisements/awards meet the associated criteria. Advertisement are made in accordance with local and State guidelines. When applicable, Grantee shall include public meetings for bid.

**2.7 Design and Engineering Phase**

**2.7.1** Acquire and submit to DEO’s Agreement manager all permits;

**2.7.2** Perform drainage calculations;

**2.7.3** Perform utilities clearance;

**2.7.4** Perform land survey;

**2.7.5** Perform geotechnical survey; and

**2.7.6** Complete and submit the final architectural structural and mechanical drawings(the “engineering drawings”) plans for the Marina upgrades which includes the building, site and Fishing Pier to DEO’s Agreement manager.

**2.8 Construction Phase:** Grantee shall complete the following construction activities for the building, site and Fishing Pier as follows:

**2.8.1** Purchase and install construction material for fishing pier;

**2.8.2** Purchase and install construction material for Marina Dock;

**2.8.3** Pour concrete for the construction of the parking lot;

**2.8.4** Perform upgrades to the restrooms;

**2.8.5** Install landscaping;

**2.8.6** Perform site mobilization;

**2.8.7** Perform erosion control;

- 2.8.8 Install a turbidity barrier;
- 2.8.9 Perform clearing and grubbing of the site;
- 2.8.10 Perform thermoplastic striping;
- 2.8.11 Perform excavation work;
- 2.8.12 Perform pile driving activities;
- 2.8.13 Install concrete deck and railings;
- 2.8.14 Install yard drain/ditch bottom inlet) structure;
- 2.8.15 Install sanitary / water connections;
- 2.8.16 Install electrical for the Marina Dock
- 2.8.17 Install sidewalks (4" thick);
- 2.8.18 Install an irrigation system;
- 2.8.19 Install storm water, sewage, and pier piping using 24" pipe; and
- 2.8.20 Install embankment.
- 2.8.21 Grantee shall complete a timely and periodic construction site inspections.
- 2.9 Close-out activities include the assembly of final construction documentation and manuals.
- 2.10 In performing under this Agreement, Grantee shall comply with all applicable laws, rules, and regulations, including but not limited to any applicable requirements of Chapter 255, F.S..

3. **DEO'S RESPONSIBILITIES:** DEO shall monitor progress, review reports, conduct site visits as determined necessary by DEO, in DEO's sole and absolute discretion, and process payments to Grantee.

4. **DELIVERABLES:** Grantee agrees to provide the following services as specified:

<b>Deliverable – Design, Engineering, and Construction</b>		
<b>Tasks 1</b>	<b>Minimum Level of Service</b>	<b>Financial Consequences</b>
Grantee shall complete all services for design and engineering, as detailed in Section 2.6. of the Scope of Work.	<p>At a minimum, Grantee shall complete one task as specified in Section 2.6.</p> <p>As evidence of completion, the Grantee shall submit to DEO's Agreement Manager the following:</p> <ul style="list-style-type: none"> <li>• Copies of all documents as required in Section 2.6.</li> <li>• A statement from professional engineer and/ or architect certifying the work was performed as required, and</li> <li>• Complete invoice package and reports as defined in Sections 5 and 6 of the Scope of Work.</li> </ul>	Failure to complete one task as specified and submit required evidence and documentation of completion as required to DEO'S Agreement Manager shall result in nonpayment.
<b>Tasks 2</b>	<b>Performance Measures</b>	<b>Financial Consequences</b>
Grantee shall complete all services for Construction, as detailed in Section 2.7. of the Scope of Work.	Grantee may be allowed reimbursement upon 20%, 40%,	Failure to complete the minimum performance measures as

	<p>60%, 80%, and 100% completion of this deliverable, as evidenced by submission of the following:</p> <p>As evidence of completion, the Grantee shall submit to DEO's Agreement Manager the following:</p> <ul style="list-style-type: none"> <li>• Dated photographs – before and after completion</li> <li>• Report of construction details.</li> <li>• A statement from professional engineer and/or architect certifying the work was performed as required.</li> <li>• Updated construction budget (if applicable).</li> <li>• Complete invoice package and reports as defined in Sections 5 and 6 of the Scope of Work.</li> </ul>	<p>specified shall result in non-payment.</p> <p>DEO shall withhold 20% of the total Agreement amount until Grantee provides proof to DEO, and DEO accepts that the project is 100% complete.</p>
<b>Total Award Not To Exceed - \$990,000</b>		

**5. REPORTING:**

**5.1 Quarterly:** Grantee shall provide a quarterly report listing all progress relating to the Deliverables in Section 4. Quarterly reports are due to DEO within 30 calendar days after the end of each quarter, until submission of the final invoice package. The ending dates for each quarter of the program year are September 30, December 31, March 31, and June 30. The quarterly report shall include a summary of project progress, indicating percentage of completion of each Deliverable, the Minority and Service-Disabled Veteran Business Enterprise Report, and all additional reports which are required pursuant to this Agreement, including but not limited to, reports documenting the positive return on investment to the State that results from Grantee's project and its use of Award Funds. The summary shall also include any issues or events occurring which affect the ability of the Grantee to meet the terms of this Agreement.

**5.2 Minority and Service-Disabled Veteran Business Enterprise Report.** Quarterly, Grantee shall provide a Minority and Service-Disabled Veteran Business Enterprise Report for each invoice period summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors and material suppliers for that period and the project to date. Grantee shall include the names, addresses, and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant. DEO's Minority Coordinator can be reached at (850) 245-7471 to answer concerns and questions.

**5.3 Close-out Report:** No later than 60 calendar days after the Agreement ends or is terminated, Grantee shall provide copies of all paid invoices to document completed work.

**6. INVOICE SUBMITTAL AND PAYMENT SCHEDULE:** DEO shall pay Grantee in accordance with the following schedule in the amount identified per deliverable in Section 4 above. The deliverable amount



specified does not establish the value of the deliverable. In accordance with the **Funding Requirements of s. 215.971(1), F.S.** section of this Agreement, Grantee and its subcontractors may only expend funding under this Agreement for allowable costs resulting from obligations incurred during the Agreement period.

**6.1** Grantee shall provide one invoice per task for all services rendered during the applicable period. Grantee shall submit invoices as set forth below to be eligible to receive and retain payment for the performance of duties and completion of deliverables set forth above. Grantee shall submit all documentation necessary to support Grantee's expenditures. DEO may request any information from Grantee that DEO deems necessary to verify that Grantee has performed the services for which payment is requested. Grantee's submission of each invoice package is Grantee's certification that it has performed the services and incurred the costs in compliance with all applicable laws and the terms of this Agreement. Grantee will provide invoices in accordance with the requirements of the Reference Guide for State Expenditures available at: [http://www.myfloridacfo.com/aadir/reference\\_guide/](http://www.myfloridacfo.com/aadir/reference_guide/). Invoices must be legible and must clearly reflect the performance for which payment is sought. Payment does not become due under this Agreement until DEO accepts and approves the invoiced deliverable(s) and any required report(s). At DEO's option, Grantee may submit invoices electronically. Grantee shall submit its final invoice for payment to DEO no later than 60 days after this Agreement ends and DEO may, at DEO's sole and absolute discretion, refuse to honor any requests for payment submitted after this deadline.

**6.2** Invoices must contain the Grantee's name, address, federal employer identification number or other applicable Grantee identification number, the Agreement number, the invoice number, and the invoice period. Grantee shall submit the following documents with the itemized invoice:

**6.2.1** A cover letter signed by the Grantee's Agreement Manager certifying that the costs being claimed in the invoice package: (1) are specifically for the project represented to the State in the budget appropriation; (2) are for one or more of the components as stated in Section 4, Deliverables, of this Scope of Work; (3) have been paid; and (4) were incurred during the Agreement period.

**6.2.2** Grantee's invoices shall include the date, period in which work was performed, amount of reimbursement, and work completed to date;

**6.2.3** A certification by a licensed engineer using AIA forms G702 and G703, or their substantive equivalents, certifying that the project, or a quantifiable portion of the project, is complete.

**6.2.4** Before and after photographs of the completed work;

**6.2.5** A copy of timesheets and payroll of staff related to the project; if applicable

**6.2.6** A copy of all supporting documentation for vendor payments;

**6.2.7** A copy of the cancelled check(s) specific to the project; and

**6.2.8** A copy of the bank statement that includes the cancelled check.

**6.3** The State may require any other information from Grantee that the State deems necessary to verify that the services have been rendered under the Agreement.

**6.4** All documentation necessary to support payment requests must be submitted with Grantee's invoice for DEO's review.

**7. RETURN ON INVESTMENT:** Grantee is required to provide, on or before July 31, 2018, an initial report identifying actual returns on investment by fiscal year for state funding previously received (if applicable), as well as projected positive returns the state will receive by providing Grantee funding through this Agreement.

7.1 Beginning at the end of the first full quarter following execution of this Agreement, Grantee shall provide quarterly update reports directly to DEO's Agreement Manager documenting the positive return on investment to the state that results from the Grantee's project and its use of monies provided under this Agreement.

7.2 Quarterly update reports shall be provided to DEO's Agreement Manager within 30 calendar days after the end of each quarter thereafter until Grantee is instructed that no further reports are needed.

#### 8. **Advance Payment:**

Grantee is allowed to request an advance amount of Agreement funding to ensure timely payment of costs. This advance shall not exceed the expected cash needs of the Grantee within the initial three months. Approval of an advance may be subject to prior approval by the Department of Financial Services, to the extent required by law. Any advance payment under this Agreement is subject to section 216.181(16), F.S. To ensure compliance with this directive:

- a) Reconciliation of the advance will insure an overpayment of the grant is not made and will be conducted when three quarters of the grant has been paid.
- b) The Grantee's performance and compliance to the advance expenditure requirement during this Agreement will be taken into consideration for any advances requested in future Agreements.
- c) Grantee must maintain a separate interest-bearing account in a United States (US) banking institution for funds provided under this Contract, and remit interest earned on the account to DEO within 30 days of expiration or termination of the Agreement, or apply interest earned against DEO's obligation to pay under this the Agreement.

All payments subsequent to the advance payment shall be made upon presentation of an invoice documenting expenditures and completeness.

**9. FINANCIAL CONSEQUENCES FOR FAILURE TO TIMELY AND SATISFACTORILY PERFORM:** Failure to complete all deliverables in accordance with the requirements of this Agreement, and most particularly the deliverables specified above in Section 4, Deliverables, will result in DEO's assessment of the specified financial consequences. If appropriate, should the Parties agree to a corrective action plan, the plan shall specify additional financial consequences to be applied after the effective date of the corrective action plan. This provision for financial consequences shall in no manner affect DEO's right to terminate the Agreement as provided elsewhere in the Agreement.

*- End of Attachment 1 (Scope of Work) -*

## Attachment 2 AUDIT REQUIREMENTS

The administration of resources awarded by DEO to the recipient (herein otherwise referred to as "Grantee") may be subject to audits and/or monitoring by DEO as described in this Attachment 2.

**MONITORING.** In addition to reviews of audits conducted in accordance with 2 CFR part 200 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR Part 200, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by DEO. In the event DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

### **AUDITS.**

**PART I: FEDERALLY FUNDED.** This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR Part 200, as revised.

1. In the event that the recipient expends \$750,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, as revised. EXHIBIT 1 to this Attachment indicates Federal resources awarded through DEO by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from DEO. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart F of 2 CFR Part 200, as revised.

3. If the recipient expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, is not required. In the event that the recipient expends less than \$750,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the recipient resources obtained from other than Federal entities).

4. Title 2 CFR 200, entitled Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, also known as the Super Circular, supersedes and consolidates the requirements of OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102 and A-133 and is effective for Federal awards or increments of awards issued on or after December 26, 2014. Please refer to 2 CFR 200 for revised definitions, reporting requirements and auditing thresholds referenced in this attachment and agreement accordingly.

**PART II: STATE FUNDED.** This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending September 30, 2004 or thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97,

Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through DEO by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

4. Additional information regarding the Florida Single Audit Act can be found at:  
<http://www.myflorida.com/audgen/pages/flsaa.htm>

### **PART III: OTHER AUDIT REQUIREMENTS.**

*(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

N/A

### **PART IV: REPORT SUBMISSION.**

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, as revised, and required by Part I of this agreement shall be submitted, when required by Section .512, 2 CFR Part 200, as revised, by or on behalf of the recipient directly to each of the following:

A. DEO at each of the following addresses:

Electronic copies (preferred):  
[Audit@deo.myflorida.com](mailto:Audit@deo.myflorida.com)

or

Paper (hard copy):  
Department Economic Opportunity  
MSC # 130, Caldwell Building  
107 East Madison Street  
Tallahassee, FL 32399-4126

B. The Federal Audit Clearinghouse designated in 2 CFR Part 200, as revised (the number of copies required by Section .512, 2 CFR Part 200, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street

Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Section .512, 2 CFR Part 200, as revised.

2. Pursuant to Section .512, 2 CFR Part 200, as revised, the recipient shall submit a copy of the reporting package described in Section .512, 2 CFR Part 200, as revised, and any management letter issued by the auditor, to DEO at each of the following addresses:

Electronic copies (preferred):	or	Paper (hard copy):
<a href="mailto:Audit@deo.myflorida.com">Audit@deo.myflorida.com</a>		Department Economic Opportunity MSC # 130, Caldwell Building 107 East Madison Street Tallahassee, FL. 32399-4126

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

- A. DEO at each of the following addresses:

Electronic copies (preferred):	or	Paper (hard copy):
<a href="mailto:Audit@deo.myflorida.com">Audit@deo.myflorida.com</a>		Department Economic Opportunity MSC # 130, Caldwell Building 107 East Madison Street Tallahassee, FL 32399-4126

- B. The Auditor General's Office at the following address:

Auditor General  
Local Government Audits/342  
Claude Pepper Building, Room 401  
111 West Madison Street  
Tallahassee, FL 32399-1450

Email Address: [flaudgen\\_localgovt@aud.state.fl.us](mailto:flaudgen_localgovt@aud.state.fl.us)

4. Copies of reports or the management letter required by Part III of this agreement shall be submitted by or on behalf of the recipient directly to:

- A. DEO at each of the following addresses:

N/A

5. Any reports, management letter, or other information required to be submitted to DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR Part 200, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR Part 200 or Chapters 10.550 (local governmental entities) or 10.650 (non-profit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

**PART V: RECORD RETENTION.** The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

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**EXHIBIT 1 to Attachment 2**

**STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT  
CONSIST OF THE FOLLOWING:**

**SUBJECT TO SECTION 215.97, FLORIDA STATUTES:**

State Project

State Awarding Agency: Florida Department of Economic Opportunity  
Catalog of State Financial Assistance Number: 40.038  
Catalog of State Financial Assistance Title: Community Development Projects  
Total State Award Amount: \$990,000.00

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED**

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED  
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

1. Grantee shall comply with the program requirements described in the Catalog of State Financial Assistance (CSFA) located at <https://apps.fldfs.com/fsaa/catalog.aspx> and the State Projects Compliance Supplement located at <https://apps.fldfs.com/fsaa/compliance.aspx>.
2. The services and purposes for which the funds are to be used are identified in Attachment 1, Scope of Work, of this Agreement.

NOTE: Title 2 CFR 200.331, as revised, and section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

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Attachment 3

AUDIT COMPLIANCE CERTIFICATION

Grantee Name: \_\_\_\_\_

FEIN: \_\_\_\_\_

Grantee's Fiscal Year: \_\_\_\_\_

Contact Person Name and Phone Number: \_\_\_\_\_

Contact Person Email Address: \_\_\_\_\_

- 1. Did Grantee expend state financial assistance, during its fiscal year, that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and the Department of Economic Opportunity (DEO)?  Yes  No

If the above answer is yes, also answer the following before proceeding to item 2:

Did Grantee expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year?  Yes  No

**If yes, Grantee certifies that it will timely comply with all applicable state single or project-specific audit requirements of section 215.97, Florida Statutes, and the applicable rules of the Department of Financial Services and the Auditor General.**

- 2. Did Grantee expend federal awards, during its fiscal year that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and DEO?  Yes  No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did Grantee expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year?  Yes  No

**If yes, Grantee certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR Part 200, Subpart F, as revised.**

**By signing below, I certify, on behalf of Grantee, that the above representations for items 1 and 2 are true and correct.**

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative



**RESOLUTION 2018 - 46**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF PAHOKEE AND THALLE CONSTRUCTION COMPANY.**

**WHEREAS**, City is the owner of certain real property in the City of Pahokee, with a PCN of 48-36-42-24-01-000-0950, located on Bacom Point Road, in Pahokee, Florida, and which is depicted and described on Exhibit "A", attached hereto (the "Premises"); and

**WHEREAS**, City is willing to lease the Premises to Tenant for operation of the staging area for the reconstruction of the Herbert Hoover Dike.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, THAT:**

**Section 1.** The lease agreement is hereby approved.

**Section 2.** The Mayor is hereby authorized and directed to sign the lease agreement on behalf of the City of Pahokee.

**PASSED AND ADOPTED** this 14<sup>th</sup> day of August, 2018.

ATTESTED:

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

\_\_\_\_\_  
Nylene Clarke, Interim City Clerk

APPROVED AS TO LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Gary M. Brandenburg, City Attorney

Mayor Babb \_\_\_\_\_  
Vice Mayor Murvin \_\_\_\_\_  
Commissioner Everett \_\_\_\_\_  
Commissioner Hill \_\_\_\_\_  
Commissioner Walker \_\_\_\_\_

**LEASE AGREEMENT**

**between**

**CITY OF PAHOKEE**

**A POLITICAL SUBDIVISION OF THE**

**STATE OF FLORIDA**

**(City)**

**And**

**THALLE CONSTRUCTION COMPANY,  
a Corporation organized under the  
laws of New York State, authorized to  
do business in the State of Florida**

**(Tenant)**

**LEASE AGREEMENT**

**THIS LEASE** made and entered into, by and between **CITY OF PAHOKEE**, a political subdivision of the State of Florida hereinafter referred to as “City” and **THALLE CONSTRUCTION COMPANY**, a corporation organized under the laws of New York State, authorized to do business in the State of Florida, hereinafter referred to as “Tenant”.

**WITNESSETH:**

**WHEREAS**, City is the owner of certain real property in the City of Pahokee, with a PCN of 48-36-42-24-01-000-0950, located on Bacom Point Road, in Pahokee, Florida, and which is depicted and described on Exhibit “A”, attached hereto (the “Premises”); and

**WHEREAS**, City is willing to lease the Premises to Tenant for operation of the staging area for the reconstruction of the Herbert Hoover Dike.

**NOW THEREFORE**, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I  
RECITALS**

The foregoing recitals are true and correct and are incorporated herein and made a part hereof by this reference.

**ARTICLE II  
DEFINITIONS**

**“Effective Date”** shall have the meaning as described in Section 3.02 of this Lease.

**ARTICLE III  
BASIC LEASE PROVISIONS**

**Section 3.01 Premises.**

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Tenant to be observed and performed, the City demises and leases to the Tenant, and Tenant rents from City, the Premises.

**Section 3.02 Length of Term and Effective Date.**

The term of this Lease shall commence upon the Effective Date of August 14<sup>th</sup>, 2018, and shall extend for a period of three (3) years (the "Term"), unless sooner terminated pursuant to the provisions of this Lease.

**ARTICLE IV  
RENT**

**Section 4.01 Annual Rent.**

Tenant shall pay City a net Rent of Eight Thousand Five Hundred (\$8,500.00) Dollars (the "Rent"), payable without notice on the Effective Date and each yearly anniversary of the Effective Date. Rent shall be made payable to the City of Pahokee and shall be delivered to the City Finance Department, 207 Begonia Drive, Pahokee, Florida 33476. This Lease shall be what is commonly referred to as "triple net" to City, it being understood by the parties that City shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership or operation of the Premises, including without limitation those relating to taxes, if any, insurance, Repair, Maintenance, use, care, or operation.

**Section 4.02 Additional Rent.**

Any and all sums of money or charges required to be paid by Tenant under this Lease other than the Rent shall be considered "Additional Rent", whether or not the same is specifically so designated and City shall have the same rights to enforce due and timely payment by Tenant of all Additional Rent as are available to City with regards to Rent.

**Section 4.03 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Real and Personal Property Taxes.**

Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against City. Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Tenant's leasehold interest in the Premises, Tenant's Alterations or personal property located on the Premises.

**Section 4.04 Unpaid Fees, Holdover.**

In the event Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after same shall become due and payable, interest at the rate of one and one-half percent (1<sup>1</sup>/<sub>2</sub> %) per month (or the highest rated permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by City. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, City shall not be prevented from terminating this Lease for default in the payment of rentals, fees, charges, and payments due to City pursuant to this Lease or from enforcing any other provisions contained herein or implied by law. In the event Tenant shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Lease, Tenant shall be liable to City for any and all damages, and in addition thereto, Tenant shall also be strictly liable to pay to City during the entire period of such holdover, double the actual fair market rental value of the Premises.

**Section 4.05 Accord and Satisfaction.**

In the event Tenant pays any amount that is less than the amount stipulated to be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The City may accept any check or payment without prejudice to City's right to recover the balance due or to pursue any other remedy available to City pursuant to this Lease or under the law.

**ARTICLE V**  
**CONDITION OF LEASED PREMISES, ALTERATIONS**

**Section 5.01 Acceptance of Premises by Tenant.**

Tenant certifies that Tenant has inspected the Premises and accepts same "As Is", in its existing condition, together with all defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Tenant further acknowledges that the City has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements or equipment located thereon, or the suitability of the Premises or any improvements for Tenant's intended use of the Premises. No Repair work, alterations or remodeling of the Premises is required to be done by City as a condition of this Lease.

**Section 5.02 Alterations**

Tenant shall not make any improvements, additions, modifications or alterations to the Premises (hereinafter collectively referred to as "Alterations") other than performing Maintenance or Repair responsibilities as set forth in Article VIII of this Lease, without the prior written consent of City in each instance, which may be withheld, granted, or granted subject to conditions as determined by City in its discretion. Tenant shall submit detailed plans and specifications for all such Alterations to City for City's written approval prior to commencing work on same. Tenant agrees and acknowledges that all work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Tenant, and not for the benefit of City, such work being nevertheless subject to each and every provision of this Lease.

All work done by Tenant shall be done by a licensed and insured contractor in a good and workmanlike manner and shall be diligently prosecuted to completion strictly in accordance with the approved plans, specifications, and permits (if applicable). Tenant shall also require contractors to furnish satisfactory evidence of statutory Workers' Compensation & Employers Liability insurance, comprehensive General Liability insurance, comprehensive Business Automobile Liability insurance, and physical damage insurance on a Builder's Risk form with the interest of City endorsed thereon, in such amounts and in such manner as City may reasonably require. City may require additional insurance, and/or a performance bond, in such amount as City reasonably determines to be necessary, as a condition of its consent to any Alterations.

Upon giving its approval for any work or Alterations, City may specify whether the Alteration is to be removed by Tenant, at Tenant's sole cost and expense, upon the termination or expiration of this Lease.

**Section 5.03 No Liens**

Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by City to subject the estate of City to liability under the Construction Lien Law of the State of Florida, it being expressly understood that City's estate shall not be subject to such liability. Tenant shall notify any and all parties or entities performing work or providing materials relating to any Alterations made by Tenant of this provision of this Lease. If so requested by City, Tenant shall file a notice satisfactory to City in the Public Records of Palm Beach City, Florida stating that City's interest shall not be subject to liens for improvements made by Tenant. In the event that a construction lien is filed against the Tenant's Premises or other City property in connection with any work performed by or on behalf of Tenant. Tenant shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that Tenant fails to satisfy or transfer such claim within said 10 day period. City may do so and thereafter charge Tenant, and Tenant shall promptly pay to City upon demand, as Additional Rent, all costs incurred by City in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Tenant agrees to indemnify, defend, and save City harmless from and against any damage or loss incurred by City as a result of any such construction lien.

**ARTICLE VI  
USE OF PREMISES**

**Section 6.01 Use of Premises.**

Tenant shall use and occupy the Premises solely and exclusively for the operation of a staging area for work to be performed under the contract with ACOE on the Herbert Hoover Dike. Tenant shall not use, permit, or suffer the use of the Premises for any other use, business, or purpose whatsoever without the prior written consent of City, which consent may be granted or withheld in City's sole discretion.

**Section 6.02 Waste or Nuisance.**

Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing which may result in damage or depreciation of value of the Premises or which may affect City's fee interest in the Premises or which results in an unsightly condition. Tenant shall be solely responsible for the handling and disposal of Hazardous Materials (as defined in Section 6.07), including obtaining appropriate disposal containers. Tenant will keep refuse in proper fireproof containers on the interior of the Premises until removed to the dumpster(s). Tenant will keep the access to the Premises, the parking areas and other contiguous areas to the Premises free and clear of obstruction. Tenant, at

its sole cost and expense, will keep the Premises free of rodents, vermin and other pests.

**Section 6.03 Governmental Regulations.**

Tenant shall, at Tenant's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all City, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Tenant or Tenant's use of the Premises, or the Premises generally. Tenant shall indemnify, defend and save City harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Tenant's failure to perform its obligations in this Section.

**Section 6.04 Non-Discrimination.**

Tenant shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability or genetic information with respect to any activity occurring on the Premises or conducted pursuant to this Lease.

**Section 6.05 Surrender of Premises.**

Upon termination or expiration of this Lease, Tenant, at its sole cost and expense, shall remove Tenant's personal property and equipment from the Premises. Tenant agrees to grade the property level and sod or seed the Premises, and maintain the sod or seed until it is fully established and acceptable to the City.

**Section 6.06 Hazardous Materials.**

Tenant and City hereby acknowledge that City has occupied the Premises and that Tenant has inspected the Premises and to the best of both parties' knowledge there is not currently located in, on, upon, over, or under the Premises any Hazardous Materials. Tenant takes the property "As Is".

Tenant shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Tenant's operations, on the Premises or any adjacent land in violation of Environmental Laws. Furthermore, Tenant shall not cause or permit the Release of Hazardous Materials upon the Premises or upon adjacent lands in violation of Environmental Laws and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum



product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Release shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statues, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, in violation of Environmental Laws, whether by Tenant or any third party, shall be reported to City immediately upon the knowledge thereof by Tenant. Tenant shall be solely responsible for the entire cost of the Environmental Remediation as a result of any Release of Hazardous Materials in violation of Environmental Laws disposed upon the Premises or emanating from the Premises onto adjacent lands, as a result of the use and occupancy of the Premises by Tenant, or Tenant's agents, licensees, invitees, subcontractors or employees.

Tenant hereby agrees to indemnify, defend and hold harmless City from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by City, including reasonable attorney's fees and costs at trial and on appeal, which may arise directly, indirectly or proximately as a result of any violation or the Release of any Hazardous Materials upon the Premises or violation of Environmental Laws. Tenant's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Tenant, it shall not be deemed to eliminate or diminish any statutory or common law liability of Tenant.

In the event of any Release of Hazardous Materials upon the Premises in violation of Environmental Laws occurs during this Lease, Tenant shall be fully responsible for all Environmental Remediation.

Tenant acknowledges the City would not have entered into this Lease without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive the expiration or termination of this Lease.

## **ARTICLE VII MAINTENANCE AND OPERATING REPAIR BY TENANT**

### **Section 7.01 Maintenance and Repair Responsibilities of Tenant.**

Except as otherwise expressly provided herein, Tenant shall be solely responsible for all costs of, and the performance of, the Maintenance and Repair and operation of the Premises, as required to keep the Premises in good condition at all times, on a year-round basis.

All signage shall be subject to the advance approval of City in each instance. Tenant shall submit proposed plans designating the size, placement, style and content of the sign to City for approval. City shall respond to Tenant within seventy two (72) business hours with approval or denial. If denied, City shall provide specific recommendations to address the issue(s) resulting in denial. Tenant shall not post building signage until same has been approved by City. Tenant's name shall not be listed on the monument or marquis signs.

**Section 7.02 Repair and Maintenance Performance Standards.**

All Maintenance and Repairs performed by Tenant shall be performed in a good and workmanlike fashion.

**Section 7.03 ADA Compliance Responsibilities.**

Tenant has the obligation to implement reasonable operating accommodations to achieve ADA compliance to the extent that modifications to the Premises are required by law.

**Section 7.04 Rights of City Regarding Maintenance and Repair.**

The City shall have the right, but not the obligation to inspect the Premises at reasonable times, upon reasonable request, to observe whether the Tenant is performing its obligations pursuant to this Lease, if the City has reason to believe that an emergency situation exists at the Premises. If, in the City's reasonable opinion, the Tenant has not performed pursuant to the terms set forth in this Lease, the City shall provide written notice to the Tenant identifying the specific deficiencies, and the Tenant shall have thirty (30) days from the date of such notice during which to commence a cure to correct or remedy the deficiencies and sixty (60) days from the date of such notice to correct or remedy the deficiencies. If Tenant fails to commence a cure within thirty (30) days of the notice, or to correct an identified deficiency within sixty (60) days of the notice, then such failure will be considered a default under this Agreement and City may proceed pursuant to Article XII (Financial Guarantee) and/or Article XVII (Default).

**Section 7.05 Reporting of Accidents Required Prior to Maintenance and Repair.**

Tenant shall notify City each time there is an accident, fall, injury or incident at the Premises requiring a response by Palm Beach Sheriff's Office or for which, to Tenant's actual knowledge, medical care was sought (collectively an "Accident"). Tenant shall provide City with a complete description of the accident promptly, and as soon thereafter as practicable, but in no event later than one (1) business day following the Accident.

**ARTICLE VIII  
UTILITIES**

Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing utility services to the Premises, including, without limitation, construction and connection charges and shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided including, without limitation, telephone, water, sewer, gas, electricity, trash collection and removal or any other utility used or consumed on the Premises. In no event shall City be liable for an interruption or failure in the supply of any such utility to the Premises.

**ARTICLE IX  
TENANT IMPROVEMENTS**

Tenant will make improvements to the property by clearing, grubbing and grading the lot, providing a stabilized driveway connecting and extending from State Road 715 to the west (back) property line, install a chain link fence along the east, north and west sides of the property with access gates, and seed or sod the lot at the termination of the lease, whichever is desired by City. Tenant will be allowed to make said improvements to the City-owned parcel throughout the lease period. The City will own all improvements at the termination of the lease.

**ARTICLE X  
INSURANCE**

Unless otherwise specified in this Lease, Tenant shall maintain, at its sole expense, in full force and effect at all times during the life of this Lease or the performance of work hereunder, insurance limits, coverages or endorsements required herein. Tenant hereby agrees the requirements contained herein, as well as City's review or acceptance of insurance, is not intended to and shall not in any manner limit nor qualify Tenant's liabilities and obligations under this Lease.

**Section 10.01 Commercial General Liability.**

Tenant shall maintain: Commercial General Liability with limits of liability not less than \$1,000,000 Each Occurrence including coverage for, but not limited to, Premises/ Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability with a limit not less than \$100,000; and Medical Payments (when available) with a limit not less than \$5,000. Tenant shall ensure such coverage is provided on a primary basis.

**Section 10.02 Business Auto Liability.**

Tenant shall maintain Business Automobile Liability with limits of liability not less than \$500,000 Each Occurrence for owned, non-owned, and hired automobiles. In the event Tenant has no owned automobiles, this requirement shall be to maintain only Hired & Non-Owned Auto Liability. This amended coverage may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Liability. Tenant shall ensure such coverage is provided on a primary basis.

**Section 10.03 Workers' Compensation & Employers Liability.**

Tenant shall maintain Workers' Compensation & Employers Liability in accordance with Chapter 440 Florida Statutes and applicable Federal Acts, if required by Florida law. Tenant shall ensure such coverage is provided on a primary basis.

**Section 10.04 Additional Insured Endorsement.**

Tenant shall cause each liability insurance policy required to be maintained by Tenant to be endorsed to add the City as an Additional Insured on, except for Workers' Compensation and Business Auto Liability. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be used to endorse the Commercial General Liability policy. The standard Additional Insured endorsement offered by the insurer shall be used to endorse the other policies, when required. Tenant shall ensure the Additional Insured endorsements provide coverage on a primary basis. The Additional Insured endorsement shall read "City of Pahokee, 207 Begonia Drive, Pahokee, Florida 33476".

**Section 10.05 Certificate of Insurance.**

Tenant shall provide the City with a certificate of insurance evidencing limits, coverages and endorsements required herein. In the event coverage is cancelled or not renewed during the life of this Lease, Tenant shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Tenant fail to maintain the insurance required herein, the City shall have the right, but not the obligation, to purchase or maintain said insurance, and Tenant shall promptly pay as Additional Rent, upon demand from City, all premiums and expenses incurred by City.

**Section 10.06 Waiver of Subrogation.**

Tenant hereby agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not allow a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Tenant enter into such an agreement on a pre-loss basis.

**Section 10.07 Premiums and Proceeds.**

Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any condition, provision or limitation of the property, flood, or wind insurance policies. Tenant shall be responsible for all premiums, including increases, for all insurance policies required by this Lease. Proceeds from the policies shall first be used to restore the Premises.

**Section 10.08 Deductibles, Coinsurance, & Self-Insured Retention.**

Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy terms.

**Section 10.09 No Representation of Coverage Adequacy.**

The limits, coverages or endorsements identified herein primarily transfer risk and minimize liability for the City, and Tenant agrees not to rely upon such requirements when assessing risk or determining appropriate types or limits of coverage to protect Tenant against any loss exposures, whether as a result of this Lease or otherwise.

**ARTICLE XI  
INDEMNIFICATION**

Tenant shall indemnify, defend and save harmless the City from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Lease for any personal injury, loss of life, and/or damage to property sustained in or about the Premises, by reason, during, or as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees, invitees, and any subtenant, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event City shall be made a party to any litigation commenced against Tenant or by Tenant against any third party, then Tenant shall protect and hold City harmless and pay

all costs and reasonable attorney's fees incurred by City in connection with such litigation, and any appeals thereof. Tenant recognizes the broad nature of this indemnification provision and specifically acknowledges that City would not have entered into this Lease without Tenant's agreement to indemnify City and further acknowledges the receipt of good and valuable separate consideration provided by City in support hereof in accordance with the laws of the State of Florida. This provision shall survive expiration or termination of this Lease.

## **ARTICLE XII ASSIGNMENT AND SUBLETTING**

Tenant may not assign, mortgage, pledge or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises, without prior written consent of City, which may be granted or withheld at City's sole and absolute discretion. Any assignment, mortgage, pledge, encumbrance or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Lease. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

## **ARTICLE XIII DEFAULT**

### **Section 13.01 Default by Tenant.**

The occurrence of any one or more of the following shall constitute an Event of Default by Tenant under this Lease: (i) Tenant's failure to pay any sum due hereunder within fifteen (15) days after the same shall become due; (ii) Tenant's failure to perform or observe any of the agreements, covenants or conditions contained in the Lease on Tenant's part to be performed or observed if such failure continues for more than thirty (30) days after written notice from City; (iii) Tenant's vacating the Premises for a period of thirty (30) days or abandoning same; (iv) Tenant's leasehold estate being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, City shall have the right to pursue such remedies as may be available to City under the law, including, without limitation, the right to give Tenant notice that City intends to terminate this Lease upon a specified date not less than three (3) days after the date notice is received by Tenant, in which event this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If,

however, the default is cured within the three (3) day period and the City is so notified, this Lease will continue.

**Section 13.02 Default by City.**

City shall not be in default unless City fails to perform obligations required of City within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to City, specifying wherein City has filed to perform such obligations; provided, however, that if the nature of City's obligations is such that more than thirty (30) days are required for performance, then City shall not be in default if City commences performance within such thirty-day period and thereafter diligently pursues the same to completion.

**ARTICLE XIV  
QUIET ENJOYMENT**

Upon payment by the Tenant of the Annual Rent, Additional Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by City or any other person or persons lawfully or equitably claiming by, through or under the City, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XV  
MISCELLANEOUS**

**Section 15.01 Entire Agreement.**

This Lease and any Exhibits attached hereto constitute all agreements, conditions and understandings between City and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Lease shall be binding upon City or Tenant unless reduced to writing and signed by them.

**Section 15.02 Notices.**

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return- Receipt Requested. The effective date of

any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the City at:

City of Pahokee  
207 Begonia Drive  
Pahokee, FL 33476  
Telephone: (561) 924-5534

(b) If to the Tenant at:

Thalle Construction Company  
900 NC Hwy North  
Hillsborough, NC 27278  
Telephone: (919) 241-1490

Any party may from time to time change the address at which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

**Section 15.03 Disclosure of Beneficial Interest.**

Tenant represents that simultaneously with Tenant's execution of this Lease, Tenant has executed and delivered to City, the Tenant's Disclosure of Beneficial Interests attached hereto as Exhibit "B", attached hereto and made a part hereof, (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Tenant. Tenant warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Tenant after the date of execution of the Disclosure until the Effective Date of the Lease, Tenant shall immediately, and in every instance, provide written notification of such change to the City pursuant to Section 21.02 of this Lease.



**Section 15.04 Severability.**

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 15.05 Broker's Commission.**

Tenant represents and warrants that Tenant has not dealt with any real estate salesperson, agent, finder or broker in connection with this Lease and further agrees to indemnify, defend and hold harmless City from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Tenant. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

**Section 15.06 Recording.**

Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of City, which may be granted or withheld at City's sole discretion.

**Section 15.07 Waiver of Jury Trial.**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS, BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, IN CONNECTION WITH THIS LEASE.

**Section 15.08 Governing Law and Venue.**

This Lease shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida.

**Section 15.09 Radon.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

**Section 15.10 Time of Essence.**

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

**Section 15.11 Waiver, Accord and Satisfaction.**

The waiver by City of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by City to or of any act by Tenant requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent similar act by Tenant.

**Section 15.12 Non-exclusivity of Remedies.**

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

**Section 15.13 Construction.**

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease and the same shall remain in full force and effect.

**Section 15.14 Incorporation by Reference.**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference.

**Section 15.15 Survival.**

Notwithstanding any early termination of this Lease, Tenant shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Tenant hereunder arising prior to the date of such termination.

**Section 56.16 No Third Party Beneficiary.**

No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizens of the City or employees of City or Tenant.

**Section 15.17 Office of the Inspector General**

Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreement, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction

**Section 15.18 Effective Date of Lease.**

This Lease shall be effective upon execution by all parties and is expressly contingent upon approval by the Board ("Effective Date").

REMAINDER OF THISPAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

WITNESS:

*Matthew Diesselhorst*  
Witness Signature

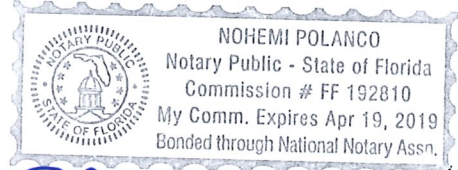
Matthew Diesselhorst  
Print Witness Name

*[Signature]*  
Witness Signature

Law D. Fucipell  
Print Witness Name

THALLE CONSTRUCTION COMPANY, a Corporation organized under the laws of New York State, authorized to do business in the State of Florida,

By: *[Signature]* 8-7-18  
Augusto Grandos



*Noemi Polanco*  
Notary 8/7/18

ATTEST:

INTERIM CITY CLERK

By: \_\_\_\_\_  
Nylene Clarke

CITY OF PAHOKEE, a political Subdivision of the State of Florida

By: \_\_\_\_\_  
Keith W. Babb, Mayor

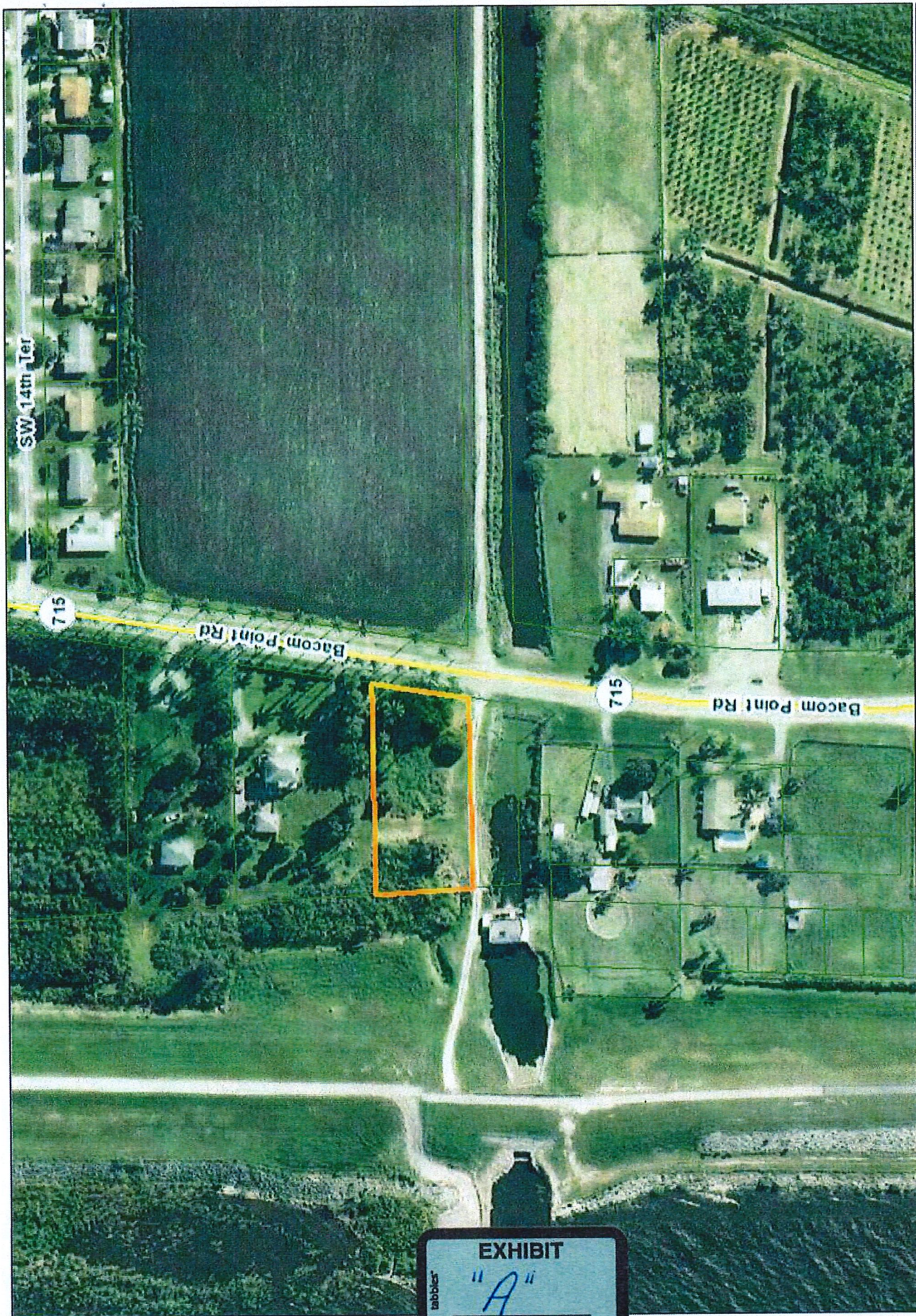
APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Gary Brandenburg, City Attorney

**SCHEDULE OF EXHIBITS**

EXHIBIT "A" - THE PREMISES

EXHIBIT "B" - TENANT'S DISCLOSURE OF BENEFICIAL INTERESTS



SW 14th Ter

715

Bacom Point Rd

715

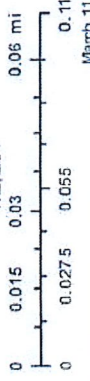
Bacom Point Rd

tabbles  
EXHIBIT  
"A"



48364224010000950

1:2,257



March 11, 2014

created by: PEC Property Appraiser

**THALLE CONSTRUCTION CO., INC.**

900 NC 86 North  
Hillsborough, NC 27278

Phone: (919) 245 1490

Fax: (919) 245-1516

TO: City of Pahokee, Florida  
207 Begonia drive  
Pahokee, Florida 33476

**LETTER OF TRANSMITTAL**

DATE	August 7, 2018	JOB NO	13-971
ATTENTION:	Nylene Clarke		
RE:	HERBERT HOOVER DIKE REHABILITATION STRUCTURE REPLACEMENT, S-273 (C-10) AND S-275 (C-12) RECONSTRUCTION, Palm Beach County, FLORIDA		

WE ARE SENDING YOU  ATTACHED  UNDER SEPARATE COVER VIA

Shop Drawings  
Copy of Letter  
Change Order

Prints  
Plans  
Samples

Specifications  
Material Certifications  
Performance Bond

RFP Proposal 2014-02

THE FOLLOWING ITEMS:

COPIES	DATE	NO.	DESCRIPTION
1	08/07/18		RFP Proposal Original
7	08/07/18		RFP Proposal Copies

THESE ARE TRANSMITTED AS CHECKED BELOW:

For Approval  
For Your Use  
As Requested  
For Review and Comment  
For Bids Due

Approved as Submitted  
Approved as Noted  
Returned for Corrections  
PRINTS RETURNED AFTER LOAN TO US  
8/14/2018

Resubmit \_\_\_ copies for approval

REMARKS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COPY TO \_\_\_\_\_

SIGNED: 

## Section 1 Letter of Transmittal

City Of Pahokee, Florida  
207 Begonia Drive  
Pahokee, Florida 33476  
Attention; Nylene Clarke

Dear Ms. Clarke:

Thalle Construction Company is pleased to respond to the City of Pahokee's Request for Proposal to lease or Develop Surplus Property. Our company has been awarded a U.S. Army Corp of Engineer project to remove and reconstruct several structures at the Herbert Hoover Dike. We are interested in leasing the property listed as Item 8 (Bacom Point Road) (Parcel Number 48-36-42-24-01-000-0950) for the construction duration.

In the attached Response Package please find the following attachments, which will serve as Exhibit "B" to the Lease Agreement:

- Section 1 - Letter of Transmittal
- Section 2 - Proposal Payment Schedule
- Section 3 - Executive Summary
- Section 4 - Financial Proposal
- Section 5 - Experience of Respondent
- Section 6 - Financial Qualifications of Respondent
- Section 7 - Respondent's Operations Staff
- Section 8 - Respondent's Sales and Marketing Plan – Or Special Aspects of Respondent's Proposal That May Benefit City
- Section 9 - Respondent's Operation Plan
- Section 10 - Respondent's Capital Improvement Plan
- Section 11 - Respondent's Start-Up Plan
- Section 12 - Local Business

We believe that our proposal provides the City of Pahokee a unique opportunity to generate a positive cash flow, eliminating any maintenance cost currently expended on the parcel while maintaining ownership of the property. The future value of the property should also be expected to increase as result of the site improvements that occur during the lease period.

Please contact our office if you require additional information

Sincerely,



Chris Haverstrom  
Project Executive



Section 2 PROPOSED PAYMENT SCHEDULE

Period	Monthly	Quarterly	Semi Annually	Annually
Column1	Column2	Column3	Column4	Column5
1				\$ 8,500.00
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				\$ 8,500.00
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				\$ 8,500.00
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
<b>Total</b>	\$ -	\$ -	\$ -	\$ 25,500.00

### **Section 3     Executive Summary**

As part of the Herbert Hoover Dike rehabilitation projects of culverts S-10 and S-12 Thalle Construction is establishing a business presence in the City of Pahokee.

Thalle is interested in leasing a city owned parcel adjacent to one of the projects. In return for the rights to use the parcel as noted in this document, we propose and the city will receive equitable lease terms, and derive the benefit of all the site improvements while retaining ownership of the parcel.

Thalle Construction Company proposes to lease from the City of Pahokee, Florida a vacant lot wholly owned by the city, located at 207 Bacom Point Road. The property is further identified as Parcel Number 48-36-42-24-01-000-0950 as recorded in Book 25321, Page 895 of the Palm Beach County Property Appraiser and as shown on Exhibit "A" to RFP 2013-01, item 8.

The aforementioned parcel is bounded on the south by East Beach Water Control District and to west the Herbert Hoover Dike and the east State Road 715 and the north by parcel number 48-36-42-24-01-000-0890. The property measures 249 feet along the south property line, 124 feet along the west property line, 275 feet along the north property line and 124 feet along the east property line fronting State Road 715. The area of the parcel is approximately 32, 488 square feet or 0.75 acre.

Thalle Construction Company has entered into a contract with the U.S. Army Corps of Engineers to reconstruct Structure S-273 (C-10) and proposes to use the parcel to provide additional access directly from a construction entrance on Route 715 to Structure S-273 over the course of the construction project. During the lease period the property will be used for access and egress to Structure S-273, laydown of materials, minor storage facility, equipment storage and parking

#### **Section 4 Financial Proposal**

In consideration for leasing the property for the expressed use stated in Section 3, for a period of not less than thirty-six (36) months, beginning August 1<sup>4th</sup>, 2018, and with the right to extend said lease on a monthly basis from the end of the initial 36 month period to the completion of construction but not exceeding six (6) months, Thalle Construction Company proposes the following consideration:

- Thalle Construction will pay to the City of Pahokee, Florida the sum of \$8500.00 annually with no escalation for the term of the lease.
- Thalle Construction will make improvements to the property by clearing, grubbing and grading the lot, providing a stabilized driveway connecting and extending from State Road 715 to the west (back) property line, install a chain link fence along the east, north and west sides of the property with access gates, seed or sod the lot at the termination of the lease. Thalle Construction will be allowed to make said improvements to the city owned parcel throughout the lease period and be exempt from obtaining City permits and inspections. The City will take ownership of all improvements at the termination of the lease.

## Section 5 Experience of Respondent

### History



More than half a century of diversified, innovative, and reliable performance has made **Thalle Construction Company** one of the most respected contractors in the United States, from highways to high profile corporate sites, **Thalle** is an industry leader with an impeccable reputation in both public and private sectors.

**Thalle** traces its history back to America's post-World War II expansion era. In 1947, Guido Pacchiana left one of the Northeast's largest road contractors to start **Thalle** with his brother Anselmo Pacchiana and Joseph Thalle. The company grew quickly to become a formidable force in construction throughout the Middle Atlantic States and deep into New England.



As years progressed, **Thalle** diversified from landscaping to sewer and interceptor projects. By the late 1960's Guido's son, George Pacchiana, joined the management team and led **Thalle** to various niche projects, including tunneling, difficult site work, and highway projects.

The 1970's public works projects gave way to the 1980's real estate development boom. **Thalle** performed extensive site work for numerous private developers and large corporations, leading them into the construction materials industry. **Thalle** owns and operates quarries, portable asphalt plants, and crushers.

In the 1990's under the leadership of Gregg Pacchiana, George's son, **Thalle** expanded its operations into the southeast. Initially pursuing utility work in the region, today **Thalle** offers a wide range of construction and construction material services including dams, landfills, site work, communication technology, and roller compacted concrete.

August 7, 2018

**Thalle's** competitiveness throughout the southeast led to a relocation of its corporate headquarters from New York to North Carolina in 1999. Throughout its history as a privately held company, **Thalle Construction** has prided itself on providing its clients quality workmanship on time and within budget.

**Thalle Construction Company, Inc.**

*Established 1947*

900 NC 86 North

Hillsborough, NC 27278

T 919.245.1490 F 919.241.1659

[www.thalle.com](http://www.thalle.com)

**PROJECT REFERENCES**

**New Ragged Mountain Dam  
Charlottesville, VA**

Owner: Rivanna Water & Sewer Authority  
Doug March, P.E., Senior Civil Engineer  
Phone 434-977-2970 x201  
Fax 434-295-1146

Engineer:  
Schnabel Engineering  
Randall P. Bass, PE, Principal, 770-781-8008, F/ 770-781-8003

**Upstream Lock Monoliths, Kentucky Lock Addition Project - Contract No. W912P5-10-C-0002  
Grand Rivers, KY**

Owner/Engineer:  
US Army Corps of Engineers, Nashville  
Tony Ellis, On-Site Project Manager  
270 -362-2163, [george.a.ellis@usace.army.mil](mailto:george.a.ellis@usace.army.mil)

**6. Financial Qualifications of Respondent**

Not applicable to this proposal.

**7. Respondent's Operation Staff**

Not applicable to this proposal.

**8. Respondent's Sales and Marketing Plan – Or Special Aspects of Respondent's Proposal that May Benefit the City**

Not applicable to this proposal.



**9. Respondent's Operation Plan**

Our proposal provides the City of Pahokee with a revenue stream without any offsetting cost, therefore providing a positive cash flow with no risk associated to the City.

**10. Respondent's Capital Improvement Plan**

The following improvements will be made to the property:

1. Parcel will be cleared and grubbed of all exotic vegetation, specimen trees in good condition will be saved and protected
2. A stabilized entrance will be installed from SR 715 accessing the property
3. A chain link fence will be installed along the east, west and north property lines
4. The property will be graded, leveled and sodded

At the termination of the lease all improvements become the property of the City, therefore turning an unimproved city lot into an improved city lot that has been cleared, grubbed and leveled with a stabilized access drive installed, chain link fence along three sides of the perimeter and a manicured seeded/sod lawn with an estimate value of \$5000.00

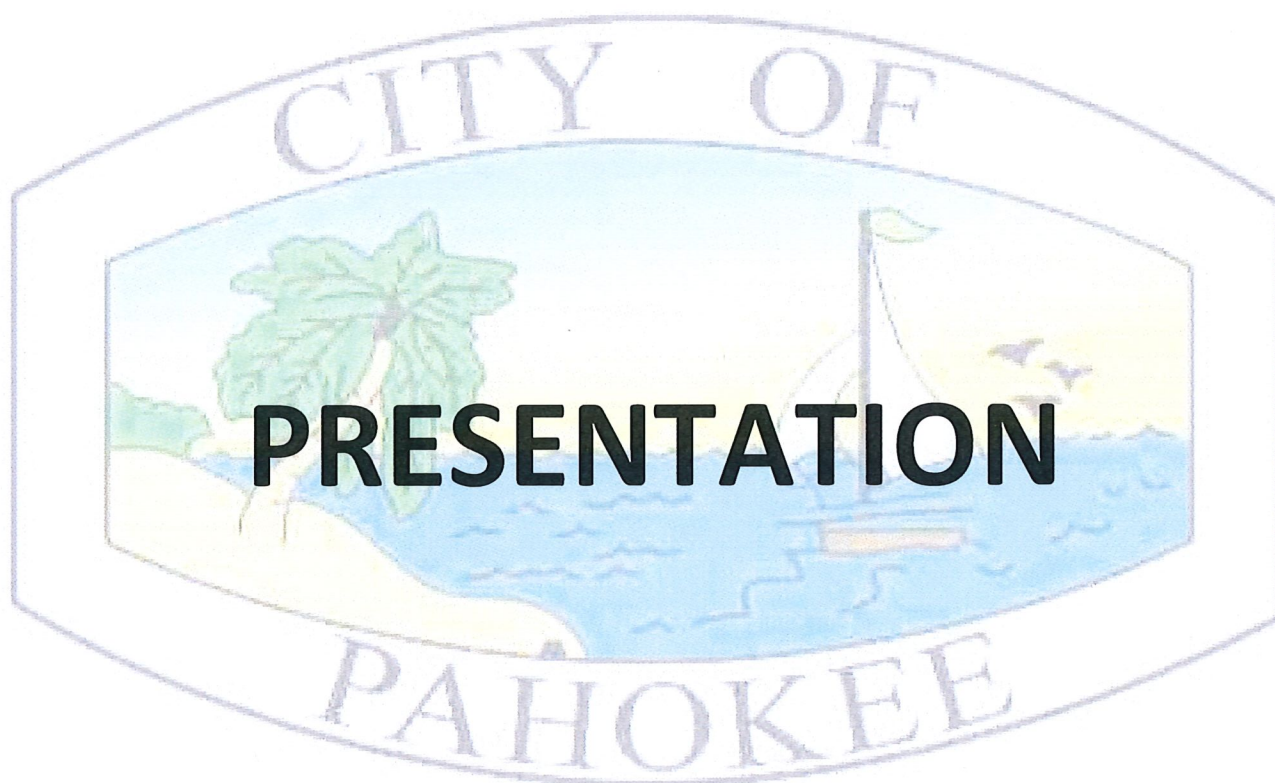
See attachment "A"

**11. Respondent's Start-Up Plan**

Not applicable to this proposal.

**12. Local Business**

Not applicable to this proposal.



**PRESENTATION**

# Mayor's Gold Nail & Hammer Award



PRESENTED TO:

**EDUARDO BERNAL**

1221 BACOM POINT RD, PAHOKEE, FL 33476

In recognition of Home Renovations & Beautification

Presented this 14<sup>th</sup> day of August 2018

*Mayor Keith W. Babb, Jr.*

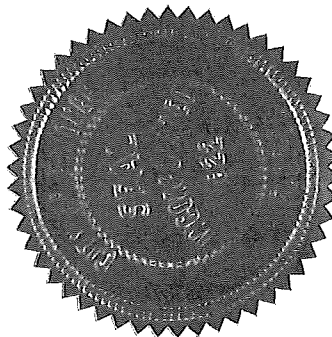
Mayor Keith W. Babb, Jr.

*Commissioner Benny L. Everett, III*

Commissioner Benny L. Everett, III

*Commissioner Diane L. Walker*

Commissioner Diane L. Walker



*Vice Mayor Clara Murvin*

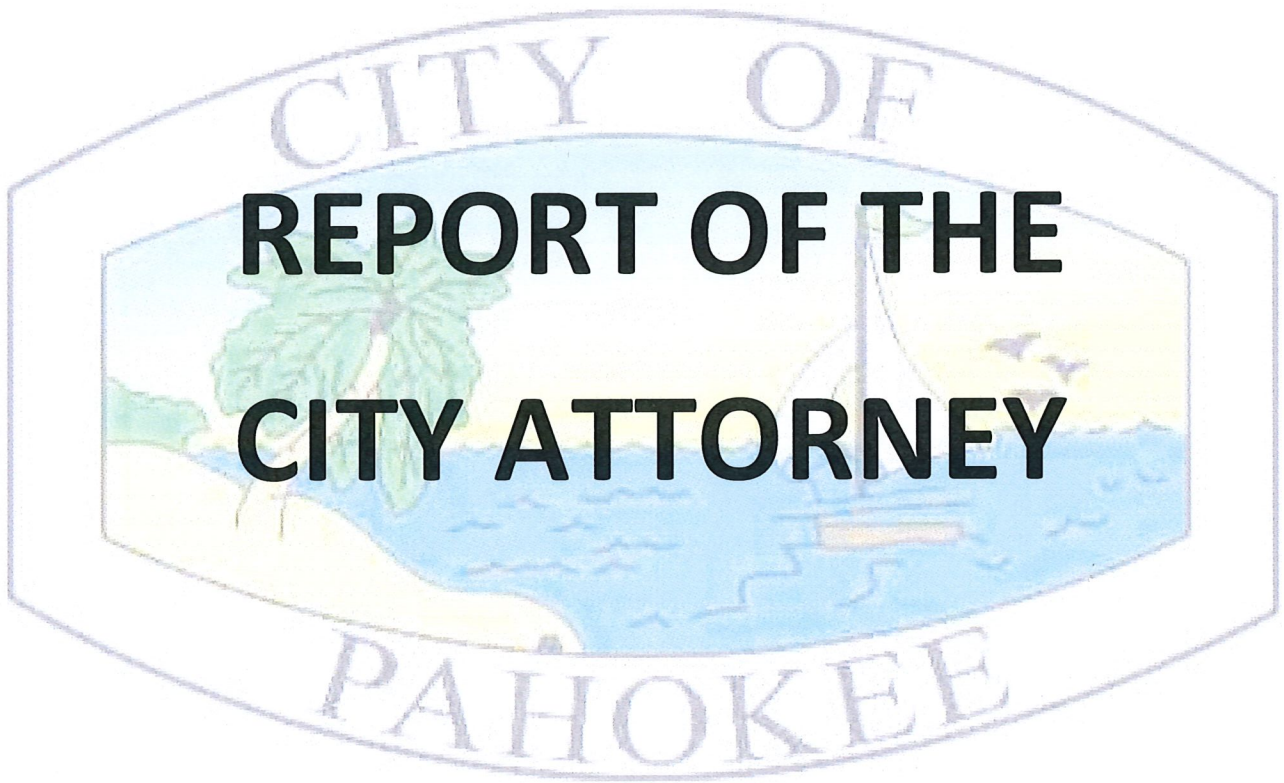
Vice Mayor Clara Murvin

*Commissioner Felisia C. Hill*

Commissioner Felisia C. Hill

*Chandler F. Williamson, City Manager*

Chandler F. Williamson, City Manager



**REPORT OF THE  
CITY ATTORNEY**

Failure of the CITY to comply with the requirements of this article shall be a material breach of this Contract. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CITY acknowledges that it has familiarized itself with the requirements of Chapter 119, Florida Statutes, and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

11. **ARTICLE 33** is hereby added as follows:

**ARTICLE 33 - SCRUTINIZED COMPANIES**

- A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CITY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.
- B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CITY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by CITY, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice

- 12. All references to **AGENCY** are hereby replaced with **CITY**.
- 13. **Exhibit A-1** is hereby replaced in its entirety with **Exhibit A-2**.
- 14. **Exhibit B-1** is hereby replaced in its entirety with **Exhibit B-2**.
- 15. **Exhibit C** is hereby deleted.
- 16. All other provisions of the Contract and prior amendments thereto not modified in this Second Amendment remain unchanged and in full force and effect.



Failure of the CITY to comply with the requirements of this article shall be a material breach of this Contract. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CITY acknowledges that it has familiarized itself with the requirements of Chapter 119, Florida Statutes, and other requirements of state law applicable to public records not specifically set forth herein.

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