

***PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY
BOARD OF DIRECTORS MEETING
April 3, 2024***

GENERAL COUNSEL'S REPORT

Presenter -

Douglas Manson, General Counsel

Recommended Action -

Status Update. This item is presented for the Board's information.

1. Resolution for FDEP Easement on Phase 2B Regional Interconnect
2. Response to FRS Letter on Executive Director Compensation

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF RETIREMENT**

PEACE RIVER/MANASOTA
REGIONAL WATER SUPPLY
AUTHORITY, and MIKE COATES,

Petitioners,

v.

Case No. _____

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF RETIREMENT

Respondent.

_____ /

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioners, PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY (the Authority) and MIKE COATES (Mr. Coates), by and through the undersigned counsel and pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.) and Rule 28-106.201 Florida Administrative Code (F.A.C.), file this Petition for Formal Administrative Hearing (Petition) to contest final agency action taken by Respondent, the Department of Management Services, Division of Retirement, in its February 28, 2024 letter and state in support:

THE PARTIES

1. The Authority is a political subdivision of the State of Florida that exists pursuant to Sections 163.01, 189.031, 189.0311, and 373.713, F.S., and the Second Interlocal Agreement Creating the Peace River/Manasota Regional Water Supply Authority. The Authority has a Board of Directors, and its member governments include Charlotte, DeSoto, Manatee, and Sarasota counties. The Authority is a regional water supply authority that is approved by the Secretary of the Florida Department of Environmental Protection. It hires and employs various employees that advance its regional water supply responsibilities and obligations, including an Executive Director.

2. For the purposes of this proceeding, the Authority's address is Peace River/Manasota Regional Water Supply Authority, c/o Douglas Manson, Manson Bolves Donaldson Tanner, P.A., 109 N. Brush Street, Suite 300, Tampa, Florida, 33602. The telephone number for the undersigned is 813-514-4700.

3. Mr. Coates is the Authority's Executive Director, its employee, a member of the Florida Retirement System (FRS), and the recipient of an annual salary along with the compensation payment at issue.

4. For the purposes of this proceeding, Mr. Coates' address is Mike Coates, c/o Douglas Manson, Manson Bolves Donaldson Tanner, P.A., 109 N. Brush Street, Suite 300, Tampa, Florida, 33602. The telephone number for the undersigned is 813-514-4700.

5. The affected state agency is the Department of Management Services (DMS), located at 4050 Esplanade Way, Tallahassee, Florida 32399, telephone number 850-907-6500. DMS is a subdivision of the executive branch of the State of Florida, the business arm of Florida's government, the state agency delegated to administer FRS, and governed by Chapter 120, F.S. The Division of Retirement (Division) is part of DMS and manages retirement plans and programs under FRS. It is located at 3189 S. Blair Stone Road, Tallahassee, Florida, 32301, telephone number 850-907-6500.

FACTS AND BACKGROUND

6. FRS is a retirement program for state or local government employees that is administered pursuant to Chapter 121, F.S. All state agencies participate, while local governments

may participate if certain criteria are met. The Authority participates in FRS and is recognized by the Division as an employer¹, specifically Agency 51109.

7. In January 2024, the Authority submitted to the Division a compensation payment on behalf of its Executive Director, Mr. Coates.

8. Shortly thereafter, Division staff contacted the Authority with questions regarding the Authority's submittal.

9. On or about January 24, 2024, Authority staff responded via email to the Division and provided additional materials regarding the compensation payment for its Executive Director.

10. Division staff responded the same day and requested a copy of the Authority's written policy on this subject.

11. Within the hour, the Authority provided the Division with a copy of the executed employment contract between Mr. Coates and its Board of Directors. The contract specifically contemplates a compensation payment, in addition to the Executive Director's annual salary, that is "the maximum allowable pursuant to applicable Internal Revenue Service regulations into an eligible deferred compensation plan" The employment contract between the Authority and Mr. Coates is attached and incorporated as Exhibit 1.

12. On or about January 25, 2024, Division staff responded via email and requested an explanation, on Authority letterhead, of the intent of the payment to Mr. Coates, the difference between the executed employment contract and implementation, and how the payment correlated to Internal Revenue Service limits.

¹ Section 121.021(10), F.S., defines "employer" as: "any agency branch, department, institution, university institution of higher education, or board of the state, or any county agency, branch, department, board, district, school board, municipality, metropolitan planning organization, or special district of the state which participates in the system for the benefit of certain employees"

13. Authority staff responded and requested to meet with the Division via Teams to further discuss the increased compensation payment. In its email, Authority staff also raised that the Division's Retirement Compliance Audit Unit recently completed an audit which concluded that the Authority was in full compliance with FRS retirement eligibility and payroll contributions. As Mr. Coates was hired as Executive Director on or about August 4, 2021, his employment contract was reviewed as part of the audit, and this was not the first time the Authority had made an increased compensation payment to the Division on Mr. Coates' behalf.

14. The Division did not meet with the Authority and reiterated its position for a written explanation on Authority letterhead via email on or about January 30, 2024.

15. Following approval from its Board of Directors on or about February 7, 2024, the Authority submitted the requested written explanation to the Division on or about February 12, 2024. Within the letter, the Authority explained the intent of the payment as a contractual obligation to provide compensation payments in accordance with the Internal Revenue Service's 457b-Government plan to Mr. Coates to fulfill his statutory employee-elective salary reduction, deferral, deferred compensation, or tax-shelter annuity program that is authorized by the Internal Revenue Service. The Authority's letter to Division staff is attached and incorporated as Exhibit 2.

The Definition and Types of Compensation

16. Section 121.021(22), F.S., defines "compensation" as "the monthly salary paid a member by his or her employer for work performed from that employment."

17. Section 121.021(22)(c), F.S., discusses contributions to a member's compensation or gross compensation. It describes the difference between employee-elected salary reductions and salary reduction payments made by an employer. The statute states in full:

For the purposes under this chapter, the member's compensation or gross compensation contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or gross compensation which the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter. Any public funds otherwise paid by an employer into an employee's salary reduction, deferred compensation, or tax-sheltered annuity program on or after July 1, 1990 (the date as of which all employers were notified in writing by the division to cease making contributions to the System Trust Fund based on such amounts), shall be considered a fringe benefit and shall not be treated as compensation for retirement purposes under this chapter. However, if an employer was notified in writing by the division to cease making such contributions as of a different date, that employer shall be subject to the requirements of sad written notice.

18. Section 121.021(22)(c), F.S., recognizes a clear difference between employee-elected salary reductions and reduction payments made by an employer: the first is compensation, while the latter is a "fringe benefit²."

19. As an employee of the Authority, and recognized by contract, the Executive Director is a member of FRS and eligible to receive compensation from the employer as part of his employment. In addition to an annual salary, the Authority's Board of Directors when it hired Mr. Coates agreed to provide an additional compensation payment that allows the Executive Director to maximize his salary reduction, deferrals, deferred compensation, or tax-shelter annuity programs as authorized by the Internal Revenue Services. See Exhibit 1. This additional compensation payment is an employee-elected payment and not a payment made by an employer.

² Chapter 121, F.S., does not define the term "fringe benefit." The Internal Revenue Service defines a "fringe benefit" as a "form of pay for the performance of services. For example, you (the employer) provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work." Internal Revenue Service, Publication 15-B (2024), Employer's Tax Guide to Fringe Benefits.

NOTICE OF AGENCY ACTION

20. The Authority and Mr. Coates received notice of the Division’s final agency action on February 28, 2024, by receipt of the Division’s response letter via email. Within the letter, the Division determined that the Authority’s payment on behalf of the Executive Director was a “fringe benefit” under Section 121.021(22)(c), F.S., and shall not be treated as compensation. The Division further directed the Authority to “back out any fringe benefits erroneously reported for retirement for [the Executive Director].” The Division’s letter to the Authority is attached and incorporated as Exhibit 3.

21. In accordance with Rule 28-106.111, F.A.C, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of the written notice of the decision. Therefore, this Petition is timely filed.

THE AUTHORITY’S SUBSTANTIAL INTERESTS

22. The Authority’s substantial interests are adversely affected by the Division’s agency action because it is the employer who made the compensation payment on behalf of its employee, the Executive Director. The Authority has been making similar compensation payments annually on behalf of the Executive Director since the beginning of his employment on or about August 4, 2021, and prior payments have not been questioned by the Division. In fact, the Division’s August 19, 2022 audit may have reviewed the Executive Director’s contract and ultimately found the Authority in compliance and that its practices were consistent with Section 121.193, F.S., and the applicable standards as defined by the Institute of Internal Auditor’s *International Standards for the Professional Practice of Internal Auditing*. Further, the direction within the Division’s letter to “back out” any alleged erroneous reported fringe benefits

substantially affects the Authority's contractual obligations to its Executive Director and its future compliance position with the Division.

23. Mr. Coates' substantial interests are adversely affected by the Division's agency action because he is the FRS member and employee who is the ultimate recipient of the compensation payment at issue. Mr. Coates has received previous compensation payments from the Authority since he was hired as Executive Director, on or about August 4, 2021. Mr. Coates will be directly and negatively affected if the Authority is required to "back out" these compensation payments as erroneously reported fringe benefits as currently required by the Division's final agency action.

DISPUTED ISSUES OF FACT AND LAW

24. Whether the January 2024 compensation payment made by the Authority on behalf of its current Executive Director is an employee-elected salary reduction.

25. Whether the January 2024 compensation payment made by the Authority on behalf of its current Executive Director is an erroneously reported fringe benefit.

26. Whether the prior compensation payments made by the Authority on behalf of its current Executive Director were an employee-elected salary reduction.

27. Whether the prior compensation payments made by the Authority on behalf of its current Executive Director were an erroneously reported fringe benefit.

28. Whether the Authority has a written policy that covers the employee-elected salary reduction compensation payments made on behalf of its employees, including its Executive Director.

29. Whether the January 2024 compensation payment made by the Authority on behalf of its current Executive Director qualifies as compensation in accordance with Section 121.021(22)(c), F.S.

30. Whether the 2023 compensation payment made by the Authority on behalf of its current Executive Director qualifies as compensation in accordance with Section 121.021(22)(c), F.S.

31. Whether the 2022 compensation payment made by the Authority on behalf of its current Executive Director qualifies as compensation in accordance with Section 121.021(22)(c), F.S.

32. Whether the Authority is required to back out the January 2024 compensation payment made on behalf of the current Executive Director from the FRS system.

33. Whether the Authority is required to back out any prior compensation payments made on behalf of the current Executive Director from the FRS system.

34. The Authority reserves the right to amend this Petition to include any additional actions by the Division and to further challenge any agency statements that may constitute an unadopted rule-policy or an invalid exercise of delegated authority.

CONCISE STATEMENT OF ULTIMATE FACTS WARRANTING REVERSAL

35. The Division's February 28, 2024 letter does not comport with Section 121.021(22), F.S., because it wrongfully determines that the January 2024 compensation payment to Mr. Coates is an erroneously submitted fringe benefit instead of an employee-elected salary reduction.

36. The Division's February 28, 2024 letter wrongfully determined that prior payments made to Mr. Coates as the current Executive Director were erroneously submitted fringe benefits instead of annual employee-elected salary reduction in accordance with the statute.

37. The Division's February 28, 2024 letter fails to acknowledge that the January 2024 compensation payment and prior compensation payments to Mr. Coates, as the current Executive Director, are Mr. Coates, as an employee and member of FRS, maximizing his salary reduction payments in accordance with Internal Revenue Service regulations.

APPLICABLE STATUTES AND RULES

38. The statutes and rules that are generally applicable in this proceeding are Chapters 120 and 121, F.S., and Chapters 28-106 and 60S, F.A.C.

RELIEF SOUGHT BY THE PETITIONERS

WHEREFORE, the Authority and Mr. Coates, for the reasons stated herein, request that:

39. This Petition be forward to the Division of Administrative Hearings for the assignment of an administrative law judge and the scheduling of a final hearing;

A. That the administrative law judge conducts a formal administrative proceeding pursuant to Sections 120.569 and 120.57, F.S.,

B. That the administrative law judge issue a recommended order reversing in its entirety the Division's February 28, 2024 agency action and directing DMS to issue a Final Order reversing the Division's final agency action;

C. That the administrative law judge grant the Authority and Mr. Coates any such other relief as may be just and proper; and

D. That DMS issue a Final Order holding that the Division's February 28, 2024, agency action is reversed in its entirety.

Respectfully submitted on this 19th day of March 2024.

MANSON BOLVES DONALDSON TANNER, P.A.

Douglas Manson

Douglas Manson

Florida Bar No. 542687

dmanson@mansonbolves.com

Laura S. Olympio

Florida Bar No. 117942

lolympio@mansonbolves.com

109 North Brush Street, Suite 300

Tampa, Florida 33602

Ph: (813) 514-4700/ Fax: (813) 514-4701

*Attorneys for Peace River/Manasota Regional Water
Authority*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed by electronic mail with the Agency Clerk in the Office of General Counsel of the Division of Management Services, 4050 Esplanade Way, Suite 160, Tallahassee, Florida, 32399 (AgencyClerk@dms.myflorida.com) and copies have been served via electronic mail to: Kirsten Larson, General Counsel of the Division of Management, (kristen.larson@dms.myflorida.com) and Kathy Gould, Director of Retirement, (Kathy.Gould@dms.myflorida.com), this 19th day of March 2024.

/s/ Douglas Manson
Douglas Manson

EMPLOYMENT AGREEMENT FOR EXECUTIVE DIRECTOR

THIS AGREEMENT made and entered into this 4th day of August, 2021, by and between **PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY**, a political subdivision of the State of Florida, hereinafter referred to as (“Employer” or “Authority”), and **MIKE COATES**, hereinafter referred to as (“Employee”).

SECTION 1. EMPLOYMENT

The Employer hereby employs, engages, and hires the Employee as the Executive Director of the Peace River/Manasota Regional Water Supply Authority. Employee shall be responsible for the administration of all departments responsible to the Board of Directors (“Board”) and for the proper administration of all affairs as directed by the Board. Further, the Employee shall have all of the authority, duties and responsibilities necessary to perform as Executive Director of the Authority.

SECTION 2. BEST EFFORTS OF EMPLOYEE

Employee agrees that he will at all times faithfully, industriously, and to the best of his abilities, experience, and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of Employer.

SECTION 3. TERM OF EMPLOYMENT

The term of this Agreement shall be deemed to have commenced on August 4, 2021 and shall be a continuing Agreement provided that neither party submits a notice of termination.

SECTION 4. COMPENSATION OF EMPLOYEE

Employer agrees to pay Employee for his services rendered for the time period beginning on August 5, 2021 and ending on September 30, 2022 an annual salary of One Hundred and Seventy Thousand Dollars (\$170,000.00), payable at the same time other Authority employees of the Employer are paid.

On October 1, 2022, Employer agrees to increase salary of Employee as the Board may determine that is desirable to do so on the basis of an annual salary review which will begin on August 1, 2022 and each year following. All personnel policies and benefits including, but not limited to, holidays, annual leave, and sick leave, as provided in the Authority's Personnel Policy shall be applicable to Employee. If there are any conflicts between this Agreement and the Authority's Personnel Policy, the provisions of this Agreement shall govern.

SECTION 5. ANNUAL LEAVE

Employee shall have annual leave in the amount of twelve (12) hours per pay period. Employee may be compensated for any portion of accrued annual leave he has not been able to use during a calendar year without regard to any prerequisite conditions or maximum amounts as may be contained in the Personnel Policies.

SECTION 6. SICK LEAVE

Employee shall accrue sick leave as set forth in the Employer's Personnel Policy Manual. Upon separation from Employer for any reason, the Employee shall be paid for accrued sick leave at the rate of One Hundred Percent (100%) up to 1,040 hours of sick leave.

SECTION 7. EMPLOYEE'S RETIREMENT

Employer shall make full contributions on the Employee's behalf to the Florida Retirement System or lifetime monthly Annuity program as provided in Section 121.055, Florida Statutes. Employee shall be designated a member of the Senior Management Service Class. In addition to the contributions set out above, Authority shall pay Employee annually (in addition to the base salary set out in paragraph 4) the maximum allowable amount pursuant to applicable Internal Revenue Service (IRS) regulations into an eligible deferred compensation plan on Employee's behalf. The Account shall be administered, and the Employee shall have the right to all funds in this account.

SECTION 8. PROFESSIONAL DEVELOPMENT

Employer agrees to budget and pay reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, for occasions adequate to continue professional development of Employee and for occasions adequate to pursue necessary official and other functions for the Employer.

SECTION 9. HEALTH CARE INSURANCE

Employer agrees to pay the full cost of Employee's and Employee's dependents premium for providing health care insurance for the Employee and his family.

SECTION 10. TERMINATION

The employment of Employee shall be at the will of the Employer, and Employee's employment shall be subject to termination by Employer at any time, with or without cause. In the event Employee's services under this Agreement are terminated by Employer during such

time that Employee is willing and able to perform the duties of Executive Director or death of Employee, then and in that event, Employer agrees to pay Employee a lump sum cash payment equivalent to ninety (90) calendar days, as of the date of termination, all accumulated annual leave, and accumulated sick leave, provided however, that in the event this Agreement is terminated by Employer for breach of this Agreement or because the Employee's conviction of any illegal act, Employer shall have no obligation to pay the aggregate sum designated in this paragraph. In addition, for the lesser of ninety (90) calendar days after the date of termination or the time the Employee secures health care insurance through attainment of comparable employment, the Authority shall maintain and pay for health, medical and disability insurance in such amounts and on such terms as have been received by the Employee and the Employee's dependents at the time of such termination; however, no other or additional benefits shall accrue during this ninety (90) calendar day period.

SECTION 11. INDEMNIFICATION

The Employer shall defend, save harmless and indemnify the Employee against any actions, in tort or if he is named in his official capacity as Executive Director as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in the manner exhibiting wanton and willful disregard of human rights, safety, or property. The Employer shall not be liable in tort for the acts or omissions of the Employee committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Employer shall have the right to settle and compromise claims brought against Employee in his official capacity. Nothing herein shall be

construed as a waiver by the Authority of any defense of sovereign immunity, or as any increase in the limits of its liability provided for in Section 768.28, Florida Statutes.

SECTION 12. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Florida. The venue for any litigation resulting out of this Agreement shall be in Sarasota County, Florida.

SECTION 13. EXTENT OF AGREEMENT

A. This Agreement represents the entire and integrated agreement between the Authority and Employee and supersedes all prior negotiations, representations, or agreement either written or oral.

B. This Agreement may only be amended, supplemented, modified, changed, or canceled by a duly executed written instrument.

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

EXECUTIVE DIRECTOR



Mike Coates

PEACE RIVER/MANASOTA REGIONAL
WATER SUPPLY AUTHORITY


Alan Maio, Chair

BOARD APPROVED

APPROVED AS TO FORM:


Douglas Manson, General Counsel

AUG - 4 2021

Peace River Manasota
Regional Water Supply Authority

PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY

Hon. Elton A. Langford
DeSoto County

Hon. Joseph Tiseo
Charlotte County

Hon. Michael A. Moran
Sarasota County

Hon. Jason Bearden
Manatee County

Mike Coates, P.G., Executive Director

February 7, 2024

Hobart Lawrence
Benefits Administrator
Florida Division of Retirement
3189 S. Blair Stone Rd.
Tallahassee, FL 32301-6812

Re: Agency 51109, Clarification of Executive Director Contract, Section 7

Mr. Lawrence:

Pursuant to your request, this letter is the official policy of the Peace River Manasota Regional Water Supply Authority's ("Authority") administration and implementation of the salary payment required under Section 7 of the Employment Agreement for Executive Director dated August 4, 2021 ("Employment Agreement").

The intent and implementation of Section 7 of the Employment Agreement is that this is an annual lump sum salary payment to the Executive Director, Mike Coates, in addition to the base salary that is listed under Section 4 of the Employment Agreement. It is part of the Executive Directors salary he elected through his Employment Agreement to have paid in a lump sum amount one time per year into a deferred compensation plan. The Employment Agreement sets the amount of this lump sum salary payment using the maximum allowable contribution per IRS guidelines for a 457b plan, including any and all allowable catch-up provisions.

The above implementation and application of Section 7 of the Employment Agreement was also reviewed as part of an audit by the Office of Inspector General, Retirement Compliance Audit Unit under Section 121.193, Florida Statutes, by Ms. Chereda Kelly in July 2022. The audit period was from July 2003 through May 2022 and the results indicated compliance with applicable statutes, rules, and coverage agreements.

Regarding your request for clarification on how the payment amount would correlate to the IRS maximum amount, the IRS regulations provide those contributing to a 457b plan that is maintained by a state or local government, who are over the age of 50 are permitted to contribute additional amounts under the "catch up" provisions. These catch up contributions may either be (a) the elective deferral amount that is annually updated by the IRS or (b) by calculating the basic annual limit plus the amount of basic limit not used in prior years and this provision is only applicable for the 3 years prior to the year of the declared normal retirement age (IRS Publication 4484). Specifically for 2024, as Mr. Coates is within the year of his declared normal retirement age, which

makes the calculation of the contribution under (b) above inapplicable, the amount of the additional lump sum salary payment is calculated under (a), which is a total of \$30,500 (\$23,000 normal 457b annual contribution limit plus \$7,500 age-based contribution).

We hope this policy statement provides sufficient clarification of the intent and method used by the Authority to have the lump sum salary payment directed by Mr. Coates in Section 7 of his Employment Agreement to be placed into a deferred compensation plan so that it is treated as compensation for retirement purposes.

BOARD APPROVED

FEB - 7 2024

**Peace River Manasota
Regional Water Supply Authority**

Best Regards,



Board of Directors Chairman

Attachments:

Agency 51109, Employer Audit Summary

Employment Agreement for Executive Director dated August 4, 2021



Office of Inspector General
4030 Esplanade Way, Ste 250
Tallahassee, FL 32399-0950
850-488-5285

Ron DeSantis, Governor
Pedro Allende, Secretary

August 19, 2022

Mr. Mike Coates
Executive Director
Peace River Manasota Regional Water Supply
9415 Town Center Parkway
Lakewood Ranch, Florida 34202

Dear Mr. Mike Coates:

As authorized under section 121.193, Florida Statutes, the Retirement Compliance Audit Unit has completed an audit of the Peace River Manasota Regional Water Supply (Agency) to determine if the operations related to retirement coverage comply with the Florida Statutes and associated rules. The results of this audit are based on specific sample selections made during the audit. We appreciate the assistance provided by Ann Lee during the audit.

The objectives of this audit were to determine the accuracy of reports submitted to the Division of Retirement (Retirement) and to assess the degree of compliance with applicable statutes, rules, and coverage agreements by your agency.

The scope of this audit consisted of reviewing and analyzing retirement transactions reported by your agency from July 2003 to May 2022.

The methodology included:

- Reviewing agency retirement transactions for a sample of workers' compensation wages and retiree wages from July 2003 to May 2022;
- Reviewing the agency's May 2022 payroll records; and
- Reviewing personnel files and earnings records for a sample of unreported employees for May 2022.

Audits by nature do not include a review of all records and actions and therefore, cannot be relied upon to identify all instances of noncompliance.

This audit was conducted in accordance with section 121.193, Florida Statutes, and is consistent with the applicable standards as defined in the *International Standards for the Professional Practice of Internal Auditing*, issued by the Institute of Internal Auditors.

Results

Based on the documentation reviewed and the test results from the samples selected, compliance with applicable statutes, rules, and coverage agreements is indicated in the following areas:

THIS REPORT MAY CONTAIN INFORMATION THAT IS EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. DO NOT RELEASE WITHOUT PRIOR COORDINATION WITH THE OFFICE OF INSPECTOR GENERAL.

Exhibit 2

Mr. Mike Coates, Executive Director
August 19, 2022
Page 2 of 2

- Employees are reported from beginning of employment.
- Employees are paid biweekly and wages are reported when paid.
- Lump sum annual leave payments are reported according to Retirement instructions.
- Accumulated sick leave payments are correctly excluded from Florida Retirement System (FRS) coverage.
- Employees receiving workers' compensation indemnity payments are reported according to Retirement instructions.

Summary

The conclusions in the audit are based on results from a limited scope. No concerns were noted during the course of this audit. Your agency may be contacted by our office in the future regarding a broader scoped review.

If you have questions concerning retirement eligibility and retirement payroll reporting, please call Retirement, at 850-907-6540 or toll free at 877-377-1266. The *Florida Retirement System Employer Handbook* is available online at Retirement's website: <http://frs.myflorida.com>.

Sincerely,

Chereda Kelly

Chereda Kelly, Retirement Compliance Auditor

cc: Ms. Ann Lee
Ms. Kathy Gould
Ms. Joyce Morgan
Ms. Kelly Recio
Ms. Lindy Still

**EMPLOYMENT AGREEMENT FOR
EXECUTIVE DIRECTOR**

THIS AGREEMENT made and entered into this 4th day of August, 2021, by and between **PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY**, a political subdivision of the State of Florida, hereinafter referred to as (“Employer” or “Authority”), and **MIKE COATES**, hereinafter referred to as (“Employee”).

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SECTION 2. BEST EFFORTS OF EMPLOYEE

Employee agrees that he will at all times faithfully, industriously, and to the best of his abilities, experience, and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of Employer.

SECTION 3. TERM OF EMPLOYMENT

The term of this Agreement shall be deemed to have commenced on August 4, 2021 and shall be a continuing Agreement provided that neither party submits a notice of termination.

SECTION 4. COMPENSATION OF EMPLOYEE

Employer agrees to pay Employee for his services rendered for the time period beginning on August 5, 2021 and ending on September 30, 2022 an annual salary of One Hundred and Seventy Thousand Dollars (\$170,000.00), payable at the same time other Authority employees of the Employer are paid.

On October 1, 2022, Employer agrees to increase salary of Employee as the Board may determine that is desirable to do so on the basis of an annual salary review which will begin on August 1, 2022 and each year following. All personnel policies and benefits including, but not limited to, holidays, annual leave, and sick leave, as provided in the Authority's Personnel Policy shall be applicable to Employee. If there are any conflicts between this Agreement and the Authority's Personnel Policy, the provisions of this Agreement shall govern.

SECTION 5. ANNUAL LEAVE

Employee shall have annual leave in the amount of twelve (12) hours per pay period. Employee may be compensated for any portion of accrued annual leave he has not been able to use during a calendar year without regard to any prerequisite conditions or maximum amounts as may be contained in the Personnel Policies.

SECTION 6. SICK LEAVE

Employee shall accrue sick leave as set forth in the Employer's Personnel Policy Manual. Upon separation from Employer for any reason, the Employee shall be paid for accrued sick leave at the rate of One Hundred Percent (100%) up to 1,040 hours of sick leave.

SECTION 7. EMPLOYEE'S RETIREMENT

Employer shall make full contributions on the Employee's behalf to the Florida Retirement System or lifetime monthly Annuity program as provided in Section 121.055, Florida Statutes. Employee shall be designated a member of the Senior Management Service Class. In addition to the contributions set out above, Authority shall pay Employee annually (in addition to the base salary set out in paragraph 4) the maximum allowable amount pursuant to applicable Internal Revenue Service (IRS) regulations into an eligible deferred compensation plan on Employee's behalf. The Account shall be administered, and the Employee shall have the right to all funds in this account.

SECTION 8. PROFESSIONAL DEVELOPMENT

Employer agrees to budget and pay reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, for occasions adequate to continue professional development of Employee and for occasions adequate to pursue necessary official and other functions for the Employer.

SECTION 9. HEALTH CARE INSURANCE

Employer agrees to pay the full cost of Employee's and Employee's dependents premium for providing health care insurance for the Employee and his family.

SECTION 10. TERMINATION

The employment of Employee shall be at the will of the Employer, and Employee's employment shall be subject to termination by Employer at any time, with or without cause. In the event Employee's services under this Agreement are terminated by Employer during such

time that Employee is willing and able to perform the duties of Executive Director or death of Employee, then and in that event, Employer agrees to pay Employee a lump sum cash payment equivalent to ninety (90) calendar days, as of the date of termination, all accumulated annual leave, and accumulated sick leave, provided however, that in the event this Agreement is terminated by Employer for breach of this Agreement or because the Employee's conviction of any illegal act, Employer shall have no obligation to pay the aggregate sum designated in this paragraph. In addition, for the lesser of ninety (90) calendar days after the date of termination or the time the Employee secures health care insurance through attainment of comparable employment, the Authority shall maintain and pay for health, medical and disability insurance in such amounts and on such terms as have been received by the Employee and the Employee's dependents at the time of such termination; however, no other or additional benefits shall accrue during this ninety (90) calendar day period.

SECTION 11. INDEMNIFICATION

The Employer shall defend, save harmless and indemnify the Employee against any actions, in tort or if he is named in his official capacity as Executive Director as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in the manner exhibiting wanton and willful disregard of human rights, safety, or property. The Employer shall not be liable in tort for the acts or omissions of the Employee committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Employer shall have the right to settle and compromise claims brought against Employee in his official capacity. Nothing herein shall be

construed as a waiver by the Authority of any defense of sovereign immunity, or as any increase in the limits of its liability provided for in Section 768.28, Florida Statutes.

SECTION 12. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Florida. The venue for any litigation resulting out of this Agreement shall be in Sarasota County, Florida.

SECTION 13. EXTENT OF AGREEMENT

A. This Agreement represents the entire and integrated agreement between the Authority and Employee and supersedes all prior negotiations, representations, or agreement either written or oral.

B. This Agreement may only be amended, supplemented, modified, changed, or canceled by a duly executed written instrument.

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

EXECUTIVE DIRECTOR



Mike Coates

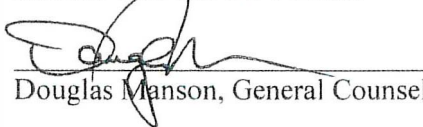
PEACE RIVER/MANASOTA REGIONAL
WATER SUPPLY AUTHORITY



Alan Maio, Chair

BOARD APPROVED

APPROVED AS TO FORM:



Douglas Manson, General Counsel

AUG - 4 2021

**Peace River Manasota
Regional Water Supply Authority**



Bureau of Enrollment and Contributions
Contributions Section
P.O. Box 9000
Tallahassee, FL 32315-9000
Tel: 850-907-6540 | Fax: 850-410-2194 | Toll-Free: 844-377-1266

Ron DeSantis, Governor
Pedro Allende, Secretary

February 28, 2024

MR ELTON LANGFORD, CHAIRMAN
PEACE RIVER MANASOTA REGIONAL
WATER SUPPLY AUTHORITY
9415 TOWN CENTER PKWY
LAKEWOOD RANCH FL 34202

Re: Employer Payment to Deferred Compensation

Dear Chairman Langford:

This is in response to your Feb. 7, 2024, letter, sent at the request of the Division of Retirement, to clarify the policy related to the deferred compensation payment made on behalf of the Peace River Manasota Water Supply Authority's (Authority) Executive Director.

Your letter states that the payment is made annually in addition to the base salary, into a deferred compensation plan. The Employment Agreement for Executive Director, Section 7. EMPLOYEE'S RETIREMENT states that in addition to the base salary, the Authority shall pay "... the maximum allowable amount pursuant to applicable Internal Revenue Service (IRS) regulations into an eligible deferred compensation plan on the Employee's behalf."

In accordance with subparagraph 121.021(22)(c), Florida Statutes, which states in part:

"Any public funds otherwise paid by an employer into an employee's salary reduction, deferred compensation, or tax-sheltered annuity program on or after July 1, 1990, (the date as of which all employers were notified in writing by the division to cease making contributions to the System Trust Fund based on such amounts), shall be considered a fringe benefit and shall not be treated as compensation for retirement purposes under this chapter."

As such, this payment shall be considered a fringe benefit. Your agency should make credit adjustments to back out fringe benefit payments erroneously reported for retirement for Mike Coates (current Executive Director) and any former executive director for which these payments were reported.

If you have any questions, please contact the Division of Retirement. The Florida Statutes are available online at <http://www.leg.state.fl.us/Statutes>.

Sincerely,

Hobart Lawrance
Benefits Administrator

cc: Mike Coates
Ann Lee

Exhibit 3