

## **WATER SERVICE AGREEMENT**

THIS WATER SERVICE AGREEMENT (this "Agreement") dated \_\_\_\_\_, 2024 by and between the **CITY OF COCOA**, a Florida municipal corporation (hereinafter, "COCOA"); and the **CITY OF CAPE CANAVERAL**, a Florida municipal corporation (hereinafter, "CAPE CANAVERAL"), providing for the operation and maintenance of a water distribution system throughout CAPE CANAVERAL and establishing certain conditions and agreements in regard to the operation of said water supply system.

### **RECITALS**

WHEREAS, COCOA presently operates a water works supply and transmission system within central Brevard County, Florida, for purposes of furnishing water to its customers; and,

WHEREAS, COCOA is authorized by Florida law to operate a water system outside of COCOA's corporate limits; and,

WHEREAS, COCOA and CAPE CANAVERAL previously entered into a prior water services agreement under which COCOA supplies and transmits potable water to CAPE CANAVERAL and its residents for a term of thirty (30) years, which prior agreement terminated on May 11, 2024 (the "Prior Agreement"); and

WHEREAS, COCOA's water supply and distribution system located within CAPE CANAVERAL benefits and serves water customers located within and outside the municipal limits of CAPE CANAVERAL; and

WHEREAS, COCOA and CAPE CANAVERAL desire to enter into this new Agreement under which water will continue to be supplied by COCOA to CAPE

CANAVERAL consumers;

WHEREAS, COCOA and CAPE CANAVERAL understand and agree that COCOA's water supply and distribution system located within CAPE CANAVERAL will continue to benefit and serve water customers located outside the municipal limits of CAPE CANAVERAL; and

WHEREAS, this Agreement shall be considered an Interlocal Agreement pursuant to Chapter 163.01, Florida Statutes.

NOW THEREFORE, in consideration of the mutual promises herein contained, it is agreed as follows:

**Section 1. INCORPORATION OF RECITALS.** The forgoing recitals are true and accurate and are incorporated herein by reference. The Prior Agreement is hereby terminated by mutual agreement of COCOA and CAPE CANAVERAL.

**Section 2. REPRESENTATION OF COCOA.** COCOA makes the following representation to CAPE CANAVERAL:

a. COCOA is duly organized and in good standing under the laws of the State of Florida and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Agreement.

b. COCOA has the power, authority, and legal rights to enter into and perform the obligations set forth in this Agreement, and the execution, delivery and performance hereof by COCOA (i) has been duly authorized by the City Council of the City of COCOA; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of COCOA, except as otherwise provided herein.

**Section 3. REPRESENTATION OF CAPE CANAVERAL.** CAPE CANAVERAL makes the following representations to COCOA:

a. CAPE CANAVERAL is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Agreement.

b. CAPE CANAVERAL has the power, authority, and legal right to enter into and perform the obligations set forth in this Agreement, and the execution, delivery and performance hereof by CAPE CANAVERAL (i) has been duly authorized by the City Council of the City of CAPE CANAVERAL; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of CAPE CANAVERAL, except as otherwise provided for herein.

**Section 4. GRANT OF AUTHORITY.** Subject to the terms and conditions of this Agreement and applicable law, CAPE CANAVERAL hereby grants to COCOA, its successors and assigns, the exclusive right and privilege to operate a potable water distribution system within the municipal boundaries of CAPE CANAVERAL, and to sell and distribute potable water through said system within CAPE CANAVERAL. For these purposes, COCOA shall establish, construct, erect, maintain and operate a potable water distribution system, including mains, pipes, valves, meters and fire hydrants upon, along and under the streets, alleys, public utility and drainage easements, and rights of way of CAPE CANAVERAL in such places and in such manner as COCOA may, from time to time, require in order to provide water service to the water customers located within CAPE CANAVERAL, subject to the systematic rules and regulations adopted by COCOA. The right to use and occupy said streets, alleys, public utility and drainage easements, and

rights of way of CAPE CANAVERAL shall not be exclusive and CAPE CANAVERAL reserves the right, within its sole discretion, to grant a similar use of said streets, alleys, public utility and drainage easements, and rights of way to any person or corporation at any time during the term of this Agreement so long as said similar use does not unreasonably interfere with the rights herein granted.

**Section 5. GRANT OF EASEMENT; EASEMENT RESTRICTIONS.**

a. For purposes of allowing COCOA to operate, maintain, repair, replace, enlarge or extend the potable water distribution system, CAPE CANAVERAL grants to COCOA a right of way and easement for all water pipes, water mains, water tanks, valves, fire hydrants, fittings, meters, backflow prevention devices, and all appurtenances thereto (“water distribution facilities”) presently owned by COCOA and located on or under all streets, avenues, alleys, lanes, and bridges in CAPE CANAVERAL or that may be hereafter annexed by CAPE CANAVERAL, and a right of way and easement for such additional water distribution facilities as may hereafter be installed by COCOA, on or under all streets, avenues, alleys, lanes, and bridges in CAPE CANAVERAL or that may be hereafter annexed by CAPE CANAVERAL. This grant of easement shall also extend to all existing water distribution facilities presently owned by COCOA and located on or under parks and other public places owned or under the control of CAPE CANAVERAL for the limited purpose of providing potable water service to said parks and other public places, and for such additional water distribution facilities as may hereinafter be installed by COCOA on or under said parks and other public places upon prior written consent of the City Manager or City Council of CAPE CANAVERAL. The purposes for which COCOA may use these easements are for maintenance, repair, installation, improvement, and

operation of the water distribution facilities for the benefit of customers located within and outside the municipal limits of CAPE CANAVERAL subject to the terms and conditions of this Agreement.

b. This grant of easement shall, however, be subject to all applicable land use, zoning, right-of-way and other applicable regulations adopted by CAPE CANAVERAL unless otherwise set forth herein. In addition, this grant of easement shall be subject to COCOA's and CAPE CANAVERAL's commitment to avoid interference and conflicts with each other's utility and public infrastructure and improvements that may be installed within the subject easement area as set forth in §337.403, Florida Statutes and other applicable law. Further, for the installation of new facilities this grant of easement shall also be subject to CAPE CANAVERAL's right to regulate the time and/or location of any excavations to preserve effective traffic flow, prevent hazardous road conditions, or minimize noise impacts.

c. COCOA shall be required to place its water distribution pipes underground as reasonably practical, rather than above ground.

d. This grant of easement shall continue for so long as this Agreement remains in full force and effect, except that the easement shall continue after termination of this Agreement to the extent necessary to supply water customers of COCOA located outside of the municipal limits of CAPE CANAVERAL and such surviving easement shall be subject to the benefits and obligations set forth in this Agreement. If the easement continues after termination of this Agreement for the primary purpose of allowing COCOA to supply water customers outside of the municipal limits of CAPE CANAVERAL, COCOA

and CAPE CANAVERAL agree to negotiate, in good faith, a post-termination transition agreement, as set forth in Section 22 below.

**Section 6. DURATION AND EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement shall be the date the last party hereto signs this Agreement and when it is recorded in the public records of Brevard County, Florida, as required by Section 163.01(11), Florida Statutes (the “Effective Date”). The term of the Agreement shall begin on the Effective Date and expire on \_\_\_\_\_, 2054. The Prior Agreement shall hereby be deemed terminated and no longer in full force and effect.

**Section 7. RESTORATION AND REPAIR.** Prior to COCOA performing any planned construction activity, on, under or upon the streets, alleys, public utility and drainage easements, rights of way, parks and other public places of CAPE CANAVERAL for any water distribution facilities, COCOA agrees that it will obtain a permit for said work from CAPE CANAVERAL. CAPE CANAVERAL agrees that it will not unreasonably withhold such permits and promptly issue said permits to COCOA without charge so long as COCOA is providing potable water to customers within the municipal boundaries of CAPE CANAVERAL during the term of this Agreement. In emergency situations, COCOA will perform said temporary repairs as may be required prior to obtaining said permit, provided said permit shall be applied for as soon as possible thereafter. As a condition of said permit, COCOA agrees that it shall promptly and at its sole expense repair and restore any street, sidewalk or other public facility of CAPE CANAVERAL that may be disturbed, damaged or removed by COCOA pursuant to the exercise of the rights granted hereunder to a condition substantially equal to or better than that existing prior to any work being performed.

**Section 8. PERMITS; OBLIGATIONS TO ASSIST IN OBTAINING PERMITS.**

a. COCOA shall be required to obtain all permits necessary to operate and maintain its water distribution system.

b. Upon request by COCOA, CAPE CANAVERAL will cooperate and provide non-financial assistance to COCOA's efforts to obtain any and all permits necessary or convenient to the acquisition, alteration, replacement, expansion, or operation of the water distribution facilities, provided that said water distribution facilities are located within the municipal boundaries of CAPE CANAVERAL, or such cooperation and support will benefit consumers within CAPE CANAVERAL. For the purpose of this Agreement, the term "permits" shall mean all licenses, permits, or other approvals from any government or governmental agency, whether federal, state, regional or local, necessary or convenient to the acquisition, construction, transfer, operation or expansion of the water distribution facilities, including but not limited to any general water use permits, temporary water use permits, individual water use permits or transfer of a water use permit issued by the St. Johns River Water Management District, the Florida Department of Environmental Protection, the United States Army Corps of Engineers, and all successor agencies.

c. In emergency situations, COCOA shall submit after-the-fact permits no later than thirty (30) days after the conclusion of each occurrence, excluding those occurrences resulting from natural disasters or other acts of God.

**Section 9. WATER CONSERVATION.** CAPE CANAVERAL will, at its discretion, cooperate and support COCOA with implementation of water conservation plans and will consider municipal ordinances relating to adopting codes for using cross-

connection prevention devices, ultra-low flow water fixtures, and moisture sensing devices for irrigation systems and for the use of xeriscape landscaping alternatives. CAPE CANAVERAL understands and agrees that notwithstanding anything to the contrary in this Agreement, COCOA may, in its sole discretion, discontinue water services to any customer pursuant to COCOA's systematic rules and regulations in an effort to enforce compliance with water conservation plans.

**Section 10. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.**

COCOA shall, at all times during the term of this Agreement, be subject to all lawful exercise of police power by CAPE CANAVERAL and to such reasonable regulations as CAPE CANAVERAL shall hereinafter by Resolution or Ordinance adopt, provided that the terms of same being applied to COCOA shall not be inconsistent with the terms of this Agreement, and shall not be inconsistent with COCOA's rights and obligations to provide water to its customers under applicable law.

**Section 11. LIABILITY OF COCOA/INDEMNIFICATION.** To the extent permitted by law, COCOA shall indemnify and hold harmless CAPE CANAVERAL and its officers and employees from and against any and all losses, obligations, fines, penalties, claims, suits, judgments, demands, personal injuries (including death), property and other damages, expenses (including without limitation attorneys' fees and costs) ("Claim") to the extent caused by the negligent act or omission of COCOA or any other person, contractor or entity acting under COCOA's control or direction in connection with the water services contemplated by this Agreement (other than COCOA's billing and collection of fees, taxes and other charges lawfully imposed by CAPE CANAVERAL that appear on COCOA's utility billing system for which CAPE CANAVERAL shall remain fully liable).



CAPE CANAVERAL shall notify COCOA within two business days of any Claim made against CAPE CANAVERAL covered by the terms of this paragraph and COCOA shall have the right to defend, settle or compromise said Claim in its sole discretion. Nothing herein shall be read to waive or limit any defense of sovereign immunity by COCOA or CAPE CANAVERAL as provided in Section 768.28, Florida Statutes, or under common law. COCOA shall have no obligation to indemnify CAPE CANAVERAL under this Agreement for any negligent act or omission of CAPE CANAVERAL and its officers and employees or any other person, contractor or entity acting under CAPE CANAVERAL's control or direction, nor shall COCOA have any obligation to indemnify CAPE CANAVERAL for any amounts paid in settlement of any action, suit or proceeding without COCOA's prior written consent and nor shall the obligation to indemnify be assignable to any third party.

**Section 12. SERVICE STANDARDS.** COCOA shall operate and maintain its water supply and distribution system and render efficient service in accordance with all applicable statutes, rules and regulations of the United States Environmental Protection Agency, Florida Department of Environmental Protection, the St. Johns River Water Management District, and applicable local government agencies and particularly in accordance with the following provisions:

a. Pressure. COCOA shall endeavor to deliver water in such quantities, as will maintain at the fire hydrants, the minimum requirements of the Code of Standards of the Insurance Service Office (ISO) and National Fire Protection Association (NFPA). However, COCOA does not guarantee that the supply of water to be distributed within CAPE CANAVERAL shall be at all times constant or maintained at the pressure

specified above, and it is understood that water pressure below the minimum requirements stated above due to undersized water distribution facilities, or the temporary cessation of delivery of water, or drop in water pressure at any time caused by, or in anticipation of, an act of God, fires, strikes, casualties, accidents, necessary maintenance work, breakdowns, damage to machinery or lines, civil or military authority or by riot or other cause beyond the control of COCOA shall not constitute a breach of the provisions hereof, or impose liability upon COCOA to CAPE CANAVERAL, or to its inhabitants, or water consumers therein. "Planned" water outages for more than twenty-five (25) hours shall result in a courtesy telephone call to the City Manager of CAPE CANAVERAL followed by written notification to CAPE CANAVERAL as outlined in Section 20.

b. Potability. Water delivered hereunder shall be good and potable in accordance with the standards of the Florida Department of Environmental Protection or successor agency, and be substantially equal to that furnished by COCOA to other customers of its water system.

c. Meters. All water delivered to customers hereunder by COCOA (except water delivered to fire hydrants using a fire hydrant connection) shall be measured by meters of standard make and sufficient size. Said meters shall be provided and maintained by COCOA in accordance with industry standards and COCOA policies.

**Section 13. EXTENSIONS TO THE SYSTEM.** COCOA agrees that it will make extensions to the water mains and its distribution system provided for hereunder to serve new developments or customers within CAPE CANAVERAL as such customers may require provided however that the cost of said extensions or modifications shall be borne

by the developer or customer requiring the same in accordance with COCOA's then applicable service extension policy.

**Section 14. HYDRANTS.** COCOA agrees that it will maintain and replace, as needed, all existing public fire hydrants located within CAPE CANAVERAL as of the date of this Agreement. COCOA shall routinely flow test all fire hydrants on a periodic basis based on the fire industry standards followed by COCOA in its testing of its own fire hydrants located within the city limits of COCOA. In regard to maintenance of any and all fire hydrants serviced by COCOA, COCOA will expedite repair service to any fire hydrant taken out of service. The CAPE CANAVERAL Fire Department shall be notified immediately of any hydrant taken out of service. Until said hydrant is placed back in service after repair and during the time the hydrant is out of service, a notice shall be placed or prominently indicated on the hydrant that it is out of service. New hydrants will be installed in conjunction with extensions for new development or redevelopment as required by CAPE CANAVERAL at the expense of the developer or CAPE CANAVERAL, as the case may be. In the event that CAPE CANAVERAL shall require additional hydrants on existing lines, COCOA agrees that it will install the same provided that the mains are adequate to support fire stream requirements at the location requested and provided that CAPE CANAVERAL agrees to reimburse COCOA for the actual cost of installing the new hydrants.

**Section 15. RATES AND CHARGES FOR WATER SERVICE WITHIN CAPE CANAVERAL.**

a. The rates and charges to all customers or users within CAPE CANAVERAL for water service shall be those rates and charges including, but not limited to, service charges, gallonage charges, ready-to-serve charges, reconnection charges,

late fees, hydrant charges, impact fees and connection fees as COCOA shall, from time to time, establish by law, at its discretion, during the term of this Agreement.

b. COCOA's water service rates consist of a monthly service charge and a gallonage charge as metered. Customers located within the city limits of COCOA are charged the inside city rate. Customers located outside the city limits of COCOA, such as CAPE CANAVERAL customers, are charged the outside city rate. This paragraph shall be limited to the water service rates adopted by COCOA (monthly service charge and gallonage charge) and is not intended to apply to any fees imposed by CAPE CANAVERAL or other COCOA charges and fees.

c. Anything in this section to the contrary notwithstanding, COCOA agrees that at all times during this Agreement, rates and charges will be established by COCOA in accordance with applicable State and federal laws regulating the allowable rates to be charged by COCOA's water system (whether now in effect or adopted in the future) as said laws may be amended from time to time during the term of this Agreement.

d. In addition to provisions in Chapter 180, Florida Statutes, as may be amended, COCOA agrees to provide prior written courtesy notice to the City Manager of CAPE CANAVERAL of any public meeting or hearing at which COCOA will consider final approval of any adjustment to COCOA's water service rates affecting customers within the municipal boundaries of CAPE CANAVERAL.

**Section 16. REGULATION OF WATER SYSTEM.**

a. COCOA is authorized and empowered to make any and all reasonable rules and regulations governing the use of the water distribution system, including, but not limited to: (i) the time and manner of payment for water furnished,

including, but not limited to, connection and cut-off charges, and cash deposits to insure payment of charges; (ii) restricting the hours and days on which consumers in CAPE CANAVERAL may use the water distribution system for conservation purposes; (iii) take such actions as are necessary in order for the water distribution system to comply with all applicable local, county, regional and federal regulations as may be in effect from time to time; (iv) curtail, suspend or terminate the right of a consumer to use the water distribution system for failure to pay charges when due, or otherwise failing to comply with such regulations. In the event service is curtailed, suspended or terminated to a particular user, said user will have to pay such reconnection fees as established by COCOA from time to time as a condition to the restoration of service.

b. The rules and regulations of the Florida Department of Environmental Protection require water providers to establish and implement a cross-connection control program utilizing backflow protection at or for service connections in order to protect the water system from contamination caused by cross-connections on customers' premises. Pursuant to such required program, during the term of this Agreement COCOA, as a water provider, will require many of the water customers within CAPE CANAVERAL to upgrade current facilities to install backflow prevention devices or other appropriate cross-connection controls on potable water systems. CAPE CANAVERAL agrees to cooperate in the implementation of the cross-connection controls program within CAPE CANAVERAL, including but not limited to the education of water customers and to the extent permitted by law (including but not limited to the ordinances, rules, regulations and guidelines of COCOA), the withholding of certificates of occupancy from water customers without proper backflow prevention devices when notified by a

COCOA representative that improper or no backflow prevention devices were in place at the time of COCOA's inspection of the connection to COCOA's water distribution system.

**Section 17. TAXATION OF IMPROVEMENTS.** All rights, privileges and easements granted to COCOA herein, as well as the water distribution facilities presently owned by COCOA or hereafter acquired, shall be considered as public property of COCOA, used for public purposes, and shall, to the extent permitted by law, be exempt from all taxation, either ad valorem, personal, excise, license, specific or otherwise, by CAPE CANAVERAL.

**Section 18. IMPROVEMENTS BY CAPE CANAVERAL.** It is understood that CAPE CANAVERAL may, from time to time, construct, improve and repair the streets, curbs, gutters, sidewalks, bike paths, storm sewers, reclaimed distribution systems, sanitary sewers and other similar improvements located within CAPE CANAVERAL. In the event it is necessary to relocate any portion of the water distribution facilities within CAPE CANAVERAL because of these improvements, then CAPE CANAVERAL will pay all costs necessary to relocate the water distribution facilities. In the event the water distribution facilities are damaged by a CAPE CANAVERAL employee or independent contractor employed by CAPE CANAVERAL, then CAPE CANAVERAL will pay all costs necessary to repair the damage to the water distribution facilities, provided, however, that if the damage is caused by an independent contractor, CAPE CANAVERAL shall stand subrogated to all rights and remedies of COCOA for the collection from the party legally responsible for the damage of all sums CAPE CANAVERAL is required to pay to COCOA hereunder.

**Section 19. PUBLIC RECORDS.** The Parties understand and agree that COCOA and CAPE CANAVERAL are public entities subject to the Florida Public Records Law. To the extent this Agreement constitutes the “provision of services” to CAPE CANAVERAL within the scope of Section 119.0701(2), Florida Statutes, COCOA shall: (1) Keep and maintain public records required by CAPE CANAVERAL to perform the services of this Agreement; (2) Upon request from CAPE CANAVERAL, provide CAPE CANAVERAL with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law; (3) Ensure that public records are exempt or confidential and exempt from public records disclosure requirements that are not disclosed except as authorized by law; and (4) Upon completion of the Agreement, COCOA shall keep and maintain public records required by law and shall meet all applicable requirements for retaining public records.

As required by §119.0701(2)(a), Florida Statutes:

**IF COCOA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CAPE CANAVERAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AS FOLLOWS: City Clerk, City of CAPE CANAVERAL, 100 Polk Avenue, CAPE CANAVERAL, Florida 32920, Telephone: 321-868-1220, ext. 206, Email: [CityClerk@cityofcapecanaverall.org](mailto:CityClerk@cityofcapecanaverall.org)**

**IF CAPE CANAVERAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO COCOA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AS FOLLOWS: City Clerk, City of COCOA, 65 Stone Street, COCOA, Florida 32922, Telephone: 321-433-8488, Email: [marsenault@cocoafl.gov](mailto:marsenault@cocoafl.gov)**

**Section 20. NOTICES.** All notices required pursuant to this Agreement shall be in writing, and shall be made by: (1) personal delivery; (2) nationally recognized, next day courier service; (3) first class registered or certified mail, postage paid; (4) facimile;



or (5) electronic mails to the party's address specified in this Agreement. A notice shall be deemed received and effective upon actual receipt by the party, or if the notice is mailed, on the fifth (5<sup>th</sup>) business day after such notice is deposited in the mail or with a courier service or upon receipt, whichever occurs first. All notices shall be addressed as follows:

To COCOA:                      City of COCOA  
   City Manager  
   65 Stone Street  
   COCOA, Florida 32922

   With a copy to:  
   Utilities Director  
   351 Shearer Boulevard  
   Cocoa, Florida 32922

To CAPE CANAVERAL:      City of CAPE CANAVERAL  
   City Manager  
   100 Polk Avenue  
   CAPE CANAVERAL, Florida 32920

   With a copy to:  
   Public Works Director  
   601 Thurm Boulevard  
   Cape Canaveral, Florida 32920

Notice shall be provided to the above-named addresses unless directed otherwise in writing to the other party.

**Section 21. PUBLIC SERVICE TAX.** CAPE CANAVERAL reserves the right to impose on the customers within the municipal boundaries of CAPE CANAVERAL, at its discretion, a public service tax to the extent allowed and in accordance with Florida law, provided such tax shall not be considered a water service rate increase, shall be at no cost to COCOA and shall be borne solely by the customers within the municipal boundaries of CAPE CANAVERAL. The public service tax may be adopted by the CAPE

CANAVERAL City Council by ordinance, and COCOA agrees, on behalf of CAPE CANAVERAL, to begin invoicing such tax to customers within the municipal boundaries of CAPE CANAVERAL on the commencement date set forth in the ordinance, which will be no sooner than ninety (90) days after the adoption of the ordinance to allow sufficient time to modify COCOA's billing system to accommodate the public service tax. The public service tax shall be a cost of service and the tax shall be a pass-through cost to customers receiving water service within the municipal boundaries of CAPE CANAVERAL. The public service tax authorized by law and hereunder shall be collected by COCOA on utility invoice of other fees and charges incurred from the purchaser of water at the time of the payment for such service. COCOA shall collect and remit said public service tax collected from customers receiving water service within the municipal boundaries of CAPE CANAVERAL to CAPE CANAVERAL. CAPE CANAVERAL agrees that, in exchange for COCOA collecting the public service tax on behalf of CAPE CANAVERAL, COCOA shall have the right to impose and retain a billing processing fee equal to an amount set forth in a separate utility billing service agreement between COCOA and CAPE CANAVERAL. CAPE CANAVERAL agrees to indemnify and hold harmless COCOA and its officers and employees from and against any and all Claims, and to pay COCOA's attorneys' fees and costs, to the extent arising out of, related to or resulting from a challenge to said public service tax. Nothing herein shall be read to waive any defense of sovereign immunity by CAPE CANAVERAL as provided in Section 768.28, Florida Statutes or under common law.

**Section 22. FACILITIES AFTER EXPIRATION OR TERMINATION**

a. In addition to serving customers within the boundaries of CAPE CANAVERAL, the water distribution system of COCOA located within CAPE CANAVERAL serves other parts of central Brevard County outside the boundaries of CAPE CANAVERAL including Port Canaveral, NASA, Cocoa Beach, Rockledge, and other areas outside City of CAPE CANAVERAL including customers within the unincorporated areas of Brevard County. The Parties understand and agree that COCOA's water distribution system within the boundaries of CAPE CANAVERAL is interdependent with COCOA's water distribution system to such other communities and that both CAPE CANAVERAL and COCOA have benefited from an interdependent water distribution system, including but not limited to shared costs and increased water quality, pressure and reliability (from looped facilities and additional flowage). Nothing in this Agreement is intended to interfere with COCOA's provision of water services to customers located outside the boundaries of the City of CAPE CANAVERAL. In the event this Agreement is terminated or expires without renewal of a new water service agreement and CAPE CANAVERAL becomes responsible for providing potable water to customers within the boundaries of CAPE CANAVERAL, then COCOA and CAPE CANAVERAL agree to negotiate, in good faith, a post-termination transition agreement, as set forth in this Section 22.

b. Option to Purchase. CAPE CANAVERAL reserves the right, as provided by law, that upon the expiration of this Agreement CAPE CANAVERAL may purchase from COCOA the water distribution system of COCOA located within CAPE CANAVERAL at a valuation to be fixed by mutual agreement or arbitration, and pursuant to a post-termination transition agreement as set forth in this Section 22, provided that

CAPE CANAVERAL notify COCOA in writing of its exercise of such option at least nine (9) months prior to expiration of this Agreement.

c. Upon expiration of this Agreement (except to the extent CAPE CANAVERAL purchases the water distribution system of COCOA located within CAPE CANAVERAL as set forth above) or upon termination of this Agreement, COCOA in its sole discretion may (i) abandon in place any portion of its water distribution facilities located within CAPE CANAVERAL; or (ii) remove any portion of its water distribution facilities located within CAPE CANAVERAL within six (6) months of the expiration or termination of this Agreement; or (iii) allow any portion of its water distribution facilities located within CAPE CANAVERAL to remain in place, provided such facilities are not used to provide potable water service to CAPE CANAVERAL customers; or (iv) any combination of the preceding choices.

d. Prior to termination or expiration of this Agreement (without renewal), COCOA and CAPE CANAVERAL agree to negotiate and enter into a post-termination transition agreement. Negotiations shall commence within five (5) business days of the written request and be conducted expeditiously and in good faith. The transition agreement will set forth mutually acceptable terms and conditions for the orderly and expeditious transition of the portion of COCOA's potable water distribution system dedicated solely to providing potable water to customers within the municipal boundaries of CAPE CANAVERAL from COCOA to another water utility which will be determined and selected by CAPE CANAVERAL at its discretion. Said transition agreement shall (i) identify those portions of the water distribution system dedicated to serving only customers within the boundaries of CAPE CANAVERAL and provide for conveyance of

such facilities to CAPE CANAVERAL at a valuation to be fixed by agreement or arbitration; and (ii) identify those portions of the water distribution system reasonably or practically necessary to provide potable water services to customers located outside the boundaries of CAPE CANAVERAL including within the area known as Port Canaveral, Cocoa Beach, the other areas adjacent to the City of CAPE CANAVERAL and also to customers within the unincorporated areas of Brevard County, and provide for conveyance of such easements/right-of-way use licenses to COCOA at a valuation to be fixed by agreement or by arbitration. During this transition period, COCOA agrees to continue to deliver and sell potable water within CAPE CANAVERAL and CAPE CANAVERAL agrees to continue to authorize COCOA to so deliver and sell potable water within CAPE CANAVERAL under the terms and conditions of this Agreement unless otherwise provided in the transition agreement.

e. Nothing herein shall require COCOA to sell, and COCOA shall retain ownership and control of, the water distribution facilities located within CAPE CANAVERAL used or intended to be used for the purpose of supplying water customers located outside of the boundaries of CAPE CANAVERAL and the easements granted to COCOA for such purpose shall survive expiration and termination of this Agreement, subject to the terms of the transition agreement.

**Section 23. DEFAULT AND REMEDY.** CAPE CANAVERAL and COCOA recognize that the safe and dependable delivery of water within the municipal boundaries of CAPE CANAVERAL and other parts of central Brevard County serves a vital public interest. Therefore, any violation of the material provisions of this Agreement or failure

promptly to perform any of the material requirements thereof, shall be cause for the termination of this Agreement. However, before termination is sought, the complaining party shall provide the defending party at least thirty (30) days to cure the violation after written notice to the defending party. The time to cure shall be extended by the complaining party for not more than ninety (90) additional days if the defending party is diligently engaged in good faith efforts to cure such violation, failure, or default and the cure cannot be reasonably achieved within thirty (30) days. The procedure for termination shall be as follows: First, the complaining party shall notify the defending party in writing of the alleged violation(s) constituting the ground(s) for termination and provide the time by which the defending party must correct such violation(s). Second, if within the time designated by the complaining party, the defending party fails to remedy and/or put an end to the alleged violation, the governing body of the complaining party, after a public hearing on no less than fifteen (15) days' notice, may, in its discretion, terminate this Agreement if it determines that the violation existed and the defending party failed to remedy same within the time required. The decision to terminate this Agreement by a governing body shall be subject to the requirement that the Parties negotiate and enter into a post-termination transition agreement as set forth in Section 22 of this Agreement. The Parties agree that a breach of this Agreement by one party that prevents the provision of water to customers in CAPE CANAVERAL and/or other parts of central Brevard County creating a health safety emergency may give rise to an irreparable injury to the other party for which damages may not be adequate compensation, and consequently, that the other party may be entitled, in addition to all other remedies available to it at law or equity, to injunctive and other equitable relief to prevent such breach and to secure the specific

performance of the Agreement without proving actual damages or posting bond or other security.

**Section 24. COCOA'S CONDEMNATION POWERS.** Nothing herein is intended to limit or restrict COCOA's authority to obtain private property within the boundaries of CAPE CANAVERAL or elsewhere for the purpose of installing or maintaining the water distribution facilities or system servicing COCOA's customers. CAPE CANAVERAL agrees to provide non-financial assistance to COCOA related to COCOA's efforts to condemn private property within the boundaries of CAPE CANAVERAL to the extent necessary or convenient to the acquisition, alteration, replacement, expansion, or operation of the water distribution facilities and systems, provided that said water distribution facilities and systems are located within the boundaries of CAPE CANAVERAL, or such cooperation and support will benefit consumers within CAPE CANAVERAL.

**Section 25. SAFETY AND EMERGENCY ALERTS.** If at any time during the term of this Agreement COCOA determines that it is necessary to issue any safety or emergency alert regarding its water distribution facilities or system servicing customers within the municipal boundaries of CAPE CANAVERAL (e.g., boil water alert; water contamination notice), COCOA agrees to promptly provide said notice to CAPE CANAVERAL as required by law and COCOA's policies.

**Section 26. MISCELLANEOUS PROVISIONS**

a. Consents and Approvals. Unless expressly provided otherwise, where this Agreement requires approval by CAPE CANAVERAL then the City Manager of the City of CAPE CANAVERAL or his designee is authorized to grant or deny such

requests and where this Agreement requires approval by COCOA then the City Manager of the City of COCOA or his designee is authorized to grant or deny such requests.

b. Severability . If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

c. Entirety. This Agreement represents the entire understanding of the Parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the Parties thereto.

d. Amendments. This Agreement may be amended from time to time to meet future conditions not presently anticipated, provided that COCOA shall not be called upon to amend this Agreement upon which any revenue bonds or certificates are outstanding and unpaid in a manner that will injure or impair the security of such revenue bonds or certificates, nor be violative of any of the covenants of COCOA in its proceedings from the issuance of such revenue bonds or certificates. Any amendments to this Agreement shall be in writing and signed by both Parties and will require the approval of the governing bodies of CAPE CANAVERAL and of COCOA.

e. Successors and Assigns. This Agreement may be assigned, in whole, by any party hereto without the consent of the other party. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.



f. Applicable Law. The laws of the State of Florida shall govern the validity, interpretation, construction and performance of this Agreement. Venue for any suit involving this Agreement shall be in Brevard County, Florida.

g. Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting the waiver. If any representation, warranty or covenant contained in this Agreement is breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other breach of this Agreement.

h. Headings. The headings provided in this Agreement are for convenience only and shall not be used in interpreting or construing this Agreement.

i. Attorney's Fees. Unless otherwise expressly stated elsewhere in this Agreement, the Parties agree to bear their own attorney's fees and legal expenses arising out of this Agreement.

j. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of anyone that is not a Party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity other than the Parties any right, remedy, or claim under or by reason of this Agreement or any provisions

or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties.

k. Duty to Cooperate. The Parties will work together in good faith to implement the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands and seals.

**CITY OF COCOA**, a Florida municipal corporation

**CITY OF CAPE CANAVERAL**, a Florida municipal corporation

By: \_\_\_\_\_  
Michael C. Blake, Mayor

By: Wes Morrison  
Wes Morrison, Mayor

[City Seal]

[City Seal]

ATTEST: \_\_\_\_\_  
Monica Arsenault  
City Clerk

ATTEST: Mia Gogorth  
Mia Gogorth  
City Clerk

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

Date: July 16, 2024