

Prepared by and Return to:

City of Cocoa
Attention: Utilities Director
65 Stone Street
Cocoa, Florida 32920

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF COCOA AND THE CITY OF ROCKLEDGE**

(Pluckebaum/Marlin Manor Project)

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into on this ____ day of _____, 2020, by and between the **CITY OF COCOA**, a Florida municipal corporation, whose address is 65 Stone Street, Cocoa, Florida 32922 (hereafter referred to as the "Cocoa") and the **CITY OF ROCKLEDGE**, a Florida municipal corporation, whose address is 1600 Huntington Lane, Rockledge, Florida 32955 (hereafter referred to as the "Rockledge").

W I T N E S S E T H:

WHEREAS, Rockledge provides roadway and other public infrastructure improvements within Rockledge, Florida; and

WHEREAS, Cocoa provides water utility services within the jurisdictional limits of Rockledge; and

WHEREAS, Rockledge plans to construct force main improvements within and along Pluckebaum Road ("Rockledge Pluckebaum Project"); and

WHEREAS, during Rockledge's construction of the Pluckebaum Project, Cocoa desires to simultaneously remove and replace existing water utility infrastructure within and along Pluckebaum Road and within Marlin Manor ("Cocoa Utilities Project"); and

WHEREAS, Rockledge desires to cooperate with Cocoa to install the force mains along Pluckebaum Road in conjunction with the Cocoa Utilities Project; and

WHEREAS, Cocoa's work regarding the Cocoa Utilities Project will be performed in conjunction with the Rockledge Pluckebaum Project to promote efficiency, to prevent unnecessary duplication of effort, and to reduce further inconvenience to the citizens of Rockledge, Brevard County; and

WHEREAS, Rockledge desires Cocoa's assistance in coordinating the construction of the Rockledge Pluckebaum Project in conjunction with the Cocoa's Utilities Project; and

WHEREAS, this Agreement is authorized pursuant to the provisions of Chapters 163 and 166, Florida Statutes and other applicable law; and

WHEREAS, the parties hereto have determined that this Agreement is in furtherance of intergovernmental cooperation and the public health, safety and welfare.

NOW THEREFORE, in consideration of the premises herein, the parties hereby agree as follows:

Section 1. **Recitals.** The above recitals are hereby deemed true and correct and are hereby incorporated herein by this reference.

Section 2. **Purpose.** The purpose of this Agreement is for Cocoa and Rockledge to cooperate and coordinate together the design, permitting, bidding, and installation of the Rockledge Pluckebaum Road Project and Cocoa Marlin Manor Utilities Project.

Section 3. **Project.** Cocoa and Rockledge agree to cooperate and coordinate the permitting, bidding, and installation of the Rockledge Pluckebaum Project and Cocoa Utilities

Project (hereinafter together referred to as the "Joint Project"). The following terms and conditions are further assented to and agreed by the parties with respect to the Joint Project:

3.1 Plans and Permits. Rockledge is responsible for preparing all necessary engineering plans for the design of the Pluckebaum Project and Cocoa is responsible for preparing all necessary engineering plans for the design of the Cocoa Utilities Project, but the plans for the removal and replacement of Cocoa's utilities (water mains) shall be consistent with the City of Cocoa's Utilities Handbook and the most current version of the Cocoa's Technical Provisions and Standard Details Manual. The plans for the removal and replacement of Rockledge's utilities (force mains) shall be consistent with the City of Rockledge's Utilities Handbook and the most current version of the Rockledge's Technical Provisions and Standard Details Manual. The Parties anticipate the following permits may be required to complete the Joint Project: FDEP General Permit Construct PWS Components, FDEP General Permit Construct Sanitary Sewer Components and Rockledge ROW Permit.

3.2 Construction Management. Cocoa shall be responsible for competitive bidding and contracting with the Contractor required to construct the Joint Project in accordance with applicable law and Cocoa's approved competitive bidding process. Cocoa shall provide Rockledge written notice of any such competitive bidding and Rockledge shall have the right to provide comments to Cocoa regarding any competitive bid under this Agreement before any bid is awarded to a Contractor by Cocoa, provided such comments are timely and provided within the award schedule established by Cocoa. Further, because there are two engineers of record for the Joint Project, Rockledge and

Cocoa shall both be responsible for the construction management of the Joint Project and Cocoa shall ensure that its Contractor provides Rockledge with periodic inspection and status reports as reasonably requested by Rockledge. Cocoa shall keep Rockledge apprised of the construction of the Joint Project. Cocoa and Rockledge shall cooperate with each other with respect to the construction management of the Joint Project, and Rockledge shall have the right to participate in all Joint Project progress meetings. Upon completion of the Joint Project to the satisfaction of both parties, Cocoa shall transfer, or have its Contractor transfer, to Rockledge, by bill of sale, title to the force main free and clear of all liens and encumbrances and provide Rockledge "as-built" drawings of said utilities infrastructure certified by the professional engineer registered in the State of Florida who was responsible for the Rockledge portion of the Joint Project.

3.3 Construction Contracts. All contracts and subcontracts for the construction of Cocoa's water main under this Agreement must include hold harmless and indemnification provisions to protect Cocoa and Rockledge in a form acceptable to the parties. The construction Contractors and subcontractors must provide insurance certificates and endorsements of acceptable levels and qualities of insurance, naming Cocoa and Rockledge as an additional named insured, and evidence of said hold harmless and indemnity prior to commencement of work. Cocoa must submit draft contract language containing this language to Rockledge and its City Attorney to review and allow Rockledge at least seven (7) days to review and comment on the same. If Rockledge submits comments, Cocoa shall use all reasonable efforts to incorporate Rockledge's comments into the contracts and subcontracts, as applicable. The

construction contract language requirements set forth in this section will be set forth in the bid documents prepared by Cocoa so that all bidders are apprised of this requirement prior to submitting a bid for the Joint Project.

3.4 Joint Project Costs; Cocoa and Rockledge Cost-Sharing; Change Orders. Each party will be responsible for the costs associated with the design, permitting, and installation (materials and labor) of their respective work. However, the parties anticipate that they will be able to identify common costs associated with the Joint Project during the construction phase of the Joint Project that can be equally shared by the parties. As such, the parties will endeavor, to the maximum extent practical and feasible during this Joint Project, to identify such common costs by mutual agreement, and said costs shall be reduced in writing that will be signed by the City Managers of Rockledge and Cocoa ("Shared Cost Memo"). The Shared Cost Memo will be developed during the bidding phase and finalized upon receiving the construction bids. Rockledge and Cocoa agree to split and pay the costs described on the Shared Cost Memo equally (50%) each. Any proposed change orders for the Joint Project must be reviewed and approved by Cocoa and Rockledge in writing. Additionally, with respect to change orders, in the event the Joint Project Contractor seeks additional compensation for delays, time extensions, or some other valid reason, any such request will be handled as a contract amendment between Cocoa and the Contractor via the change order process. If the requested change order requested by the Contractor is specific to a portion of the Joint Project solely related to either Rockledge or Cocoa's scope of work, then only the party whose scope of work is affected will pay for the change order. If the requested change order is

related to the common costs of the Joint Project, then Rockledge and Cocoa agree to share the costs of the change order.

3.5 Payment by Cocoa. Prior to Cocoa issuing a Notice to Proceed with the construction of the Joint Project, Cocoa shall deliver a written notice to Rockledge itemizing Rockledge's share of the Joint Project costs as set forth in Section 3.4 of this Agreement. Upon delivery of the invoice, Rockledge will have five (5) business days in which to accept the invoice or identify and notify Cocoa of any discrepancies. Discrepancies will be worked out by the parties expeditiously so as not to unreasonably delay the Joint Project schedule. Within thirty (30) days from the date that Rockledge accepts the invoice, Rockledge will issue payment to Cocoa for its share of the Joint Project costs stated in the accepted invoice. Cocoa will retain Rockledge's payment in escrow and shall only use said payment to Rockledge's Joint Project costs after receiving written authorization for each pay request. During the Construction phase of the Joint Project, Rockledge and Cocoa will jointly review any progress payment requests made by the Contractor and jointly sign off on the requests prior to Cocoa making payment to Contractor. Any Rockledge funds not expended by Cocoa due to any additional Joint Project costs savings or changes in scope, if any, will be returned to Rockledge within sixty (60) days of the Joint Project deemed complete by the parties. Cocoa shall be responsible for paying all Contractors in full. Rockledge will likewise pay for its share of the Joint Project costs.

Section 4. Duty to Act in Good Faith. Rockledge and Cocoa agree to proceed in good faith consistent with the terms of this Agreement. Each Party shall proceed with the design, permitting and installation of the Joint Project as rapidly as is practical and feasible.

Section 5. Implementation and Other Documents. To the extent that additional documents are required to be prepared and executed in order to effectuate this Agreement, the Rockledge City Manager and Cocoa City Manager are authorized to prepare or have prepared said documents and execute the same. Further, the parties agree to cooperate and execute such other instruments and documents as may be required to effectuate this Agreement including, but not limited to, any permit applications required by any governing agency.

Section 6. Employee Status. Each party shall be responsible for their own employees, contractors and agents. Persons employed by Rockledge in the performance of services and functions pursuant to this Agreement shall not be deemed to be the employees or agents of Cocoa. Persons employed by Cocoa in the performance of services and functions pursuant to this Agreement shall not be deemed to be the employees or agents of Rockledge.

Section 7. Indemnification; Attorney's Fees; Sovereign Immunity. Neither party to this Agreement, its officers, employees or agents shall be deemed to assume any liability for the acts, omissions or negligence of the other party, its officers, employee, contractors or agents, except as provided by this Agreement. Each party shall bear their own attorney's fees, costs and expenses related to any litigation, suit, dispute, controversy, mediation, or proceeding appellate proceedings against the other party, arising out of, based on, or related to, this Agreement. The parties intend to avail themselves of the benefits of section 768.28, Florida Statutes, and any other statute and common law governing sovereign immunity to the fullest

extent possible and nothing herein shall be construed as a waiver of sovereign immunity by the parties.

Section 8. Notices.

(a) Whenever either party desires to give notice to the other party, notice shall be sent to:

For ROCKLEDGE:

Jim Elmore or designee
Director
Rockledge Wastewater Treatment
& Water Reclamation Facility
1700 Jack Oates Blvd.
Rockledge, FL 32955
321.221.7540 (phone)
jelmore@cityofrockledge.org

With copy to the City Attorney:

Joseph E. Miniclier
1037 Pathfinder Way
Ste. 150
Rockledge, Florida 32955
(321)639-0505 (phone)
jminiclier@cityofrockledge.org

For COCOA:

Jack Walsh
Utilities Director
351 Shearer Blvd
Cocoa, Florida 32922
(321) 433-8701 (phone)
jwalsh@cocoafll.org

With copy to the City Attorney:

Anthony A. Garganese
Garganese, Weiss, D'Agresta & Salzman, P.A.
111 N. Orange Avenue, Suite 2000
Orlando, Florida 32802
(407) 425-9566 (Phone)
agarganese@orlandolaw.net

(b) Either of parties may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission if by email, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.

Section 9. Counterparts. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

Section 10. Term; Entire Agreement. The term of this Agreement commences on the Effective Date set forth in Section 18 of this Agreement and shall remain in effect until the Joint Project has been completed to the satisfaction of both parties. The term of this Agreement may also be terminated or extended by mutual written agreement of the parties. Either party may terminate this Agreement without cause. The parties shall meet upon thirty (30) days written notice and attempt to determine the expenses and cost attributable to each party. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and neither this Agreement nor any portion of it may be altered, modified, waived, deleted or amended except by a written instrument equal in dignity herewith and executed by

the parties to be bound thereby. This Agreement supercedes all oral agreements and negotiations between the parties relating to the subject matter of this Agreement.

Section 11. Binding Effect; Waiver; Time Extensions. This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties. No failure by a party to exercise any right, power, or privilege under this Agreement is a waiver of that or any other right, power, privilege under this Agreement. The parties may agree, in writing, to extend or change any of the deadlines specified in this Agreement.

Section 12. Public Records. The parties shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, which have been made or received in conjunction with this Agreement.

Section 13. Conflict of Interest. Both parties agree that they will not commit any act in the performance of its obligations pursuant to this Agreement that would create a conflict of interest, as defined by Chapter 112, Florida Statutes.

Section 14. Force Majeure. In the event that performance of this Agreement by any party is prevented or interrupted by a Force Majeure Event, said party shall not be liable for such nonperformance, but only for the duration or to the extent of said Force Majeure Event and only if said party is not directly or indirectly responsible therefor. Any party claiming to be relieved of any duty pursuant to this Section shall give prompt written notice thereof to the other party. The parties agree, however, to remedy with all reasonable dispatch the cause or causes preventing a party from carrying out this Agreement. For purposes of this Section, the phrase "Force Majeure Event" shall mean an event not the fault of, and beyond the reasonable control of, the party claiming excuse which makes it impossible or extremely impracticable for such party to perform

obligations imposed on it by this Agreement, by virtue of its effect on the physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an "act of God" such as a hurricane, tornado, hail storm, drought, earthquake, flood, climatic event, earth movement, or similar catastrophic event; (b) an act of the public enemy, terrorism, sabotage, civil disturbance or similar event; (c) a strike, work stoppage, picketing or similar concerted labor action; (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain environmental permits or essential materials after diligent and timely efforts; (e) an order or regulation issued by a federal, state, regional or local regulatory agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date; or (f) any other action by any third party that makes it impossible or extremely impracticable for a party to perform its obligations under this Agreement.

Section 15. Default and Remedy.

(a) Failure on the part of any party to observe, comply with, perform or maintain in any material way any term, covenant, condition, duty, obligation, representation or warranty contained in or arising out of this Agreement, shall constitute a default under this Agreement. Upon occurrence of a default by any party, the non-defaulting party shall deliver written notice to the party in default in the manner provided in Section 8, identifying the specific nature of the default therein. The party in default shall have thirty (30) days within which to cure such default unless the nature of the default is such that it cannot be cured within thirty days, the party in default shall have additional time that may be necessary to cure the default, so long as the party in default commences the cure and diligently prosecutes such cure until completion. For any

default not cured as provided herein, the non-defaulting party may seek specific performance arising from the default. However, before any litigation is filed, the parties agree to mediate the dispute involving the default in good faith. The cost of any mediator shall be shared equally by the parties.

(b) Should either party have a dispute related to the Joint Project or declare a default under this Agreement, the party or parties may invoke this provision to attempt to resolve the dispute or default which has arisen. The party believing there is a dispute shall notify the other party in writing of the nature of the dispute and a factual background thereof, or in the case of default a written notice under Section 15. The parties will each select representatives they believe are necessary to resolve the dispute or default, as the case may be. The parties shall then meet within thirty (30) days, at a place, date and time mutually agreed upon. Should the parties be unable to come to an agreement regarding the dispute or default, either party may terminate this Agreement by providing the other party written notice.

Section 16. Governing Law and Venue. The parties acknowledge that this Agreement was entered into and delivered within the State of Florida. This Agreement shall be governed by and construed in accordance with laws of the State of Florida, without giving effect to any choice of laws or rules thereof which may direct the application of laws of another jurisdiction. The venue for any judicial proceedings shall be in a State court of competent jurisdiction located in Brevard County. The parties hereby waive their right to a jury trial.

Section 17. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of Rockledge and Cocoa and no right or cause of action shall accrue to or for the benefit of anyone other than Rockledge and Cocoa. Nothing in this Agreement, expressed or implied, is

intended or shall be construed to confer upon or give any person or entity other than Rockledge and Cocoa 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 Rockledge and Cocoa.

Section 18. Effective Date; Recordation. This Agreement shall take effect on the date that it is executed by both parties hereto and recorded in the Official Records of Brevard County, Florida. Upon execution of this Agreement by both parties, Cocoa shall promptly record this Agreement in the Official Records of Brevard County, Florida, and return a recorded copy of this Agreement to the Rockledge City Clerk at the address listed in Section 8 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written.

ATTEST:

ROCKLEDGE, FLORIDA

Jennifer Levasseur, City Clerk

By: _____
Dr. Brenda Fettrow, City Manager

As authorized for execution by the Rockledge City Council at its _____, 2020 regular meeting.

ATTEST:

CITY OF COCOA, FLORIDA:

Carie Shealy, MMC, City Clerk

By: _____
Jake Williams Jr., Mayor

As authorized for execution by the City of Cocoa
City Council at its _____, 2020 regular
meeting.