

City of Cocoa
65 Stone St
Cocoa, FL 32922

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Prepared by and Return to:

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Brevard County
Pgs:17

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

(Pineda Causeway Pipeline Project)

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this 22nd day of May, 2018, 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 MELBOURNE**, a Florida municipal corporation, whose address is 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (hereafter referred to as the "Melbourne") and .

WITNESSETH:

WHEREAS, Melbourne is a regional public water supplier within the southern portion of Brevard County with a service area located within and outside the boundaries of the city of Melbourne, Brevard County, Florida in accordance with its home rule powers, as well as chapters 166 and 180, Florida Statutes; and

WHEREAS, Cocoa is a regional public water supplier within the central portion of Brevard County with a service area located within and outside the boundaries of the city of Cocoa, Brevard County, Florida in accordance with its home rule powers, as well as chapters 166 and 180, Florida Statutes and chapter 57-1232, Laws of Florida; and

WHEREAS, Cocoa and Melbourne have common power to provide reliable potable water for the benefit of the public within their respective service areas; and

WHEREAS, Cocoa and Melbourne each have service areas located beachside which require them to deliver potable water from the mainland across the Indian and Banana Rivers; and

WHEREAS, Cocoa and Melbourne share a need to each install a sixteen inch (16") diameter water transmission line across the Pineda Causeway to serve the beachside within their respective service areas, and to improve the reliability of their water systems; and

WHEREAS, Cocoa and Melbourne desire to cooperate and coordinate together the design, permitting and installation of their respective water lines to run parallel across the Pineda Causeway in order share common costs to make the project more cost effective and efficient as more specifically set forth under this Agreement; and

WHEREAS, this Agreement is authorized pursuant to the provisions of Chapters 163, 166 and 180, Florida Statutes and other applicable law; and

WHEREAS, the parties hereto have determined that this Agreement is in furtherance of 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 deemed true and correct and are hereby incorporated herein by this reference.

Section 2. Purpose. The purpose of this Agreement is for Cocoa and Melbourne to cooperate and coordinate the design, permitting and installation of two (2) parallel sixteen inch (16") diameter water transmission lines across the Pineda Causeway. Upon installation, each party will own and maintain their own water transmission line for the benefit of their customers within their respective service areas.

Section 3. Water Transmission Line Project. Cocoa and Melbourne agree to cooperate and coordinate the design, permitting and installation of two (2) parallel, sixteen inch (16") diameter water transmission lines across the Pineda Causeway (hereinafter referred to as the "Project"). Each party will own and maintain one of the water transmission lines installed under this Agreement. Melbourne shall be the lead agency on all aspects of the Project, and, in its sole discretion, may provide all appropriate and necessary contractors to complete the Project. The following terms and conditions are further assented to and agreed by the parties with respect to the Project:

3.1 Plans and Permits. Melbourne will be responsible for preparing all necessary engineering plans for the design of the Project, but Cocoa will have the right to provide comments on the engineering plans before Melbourne approves the plans. The plans for the sixteen inch (16") diameter water transmission line being designed for Cocoa shall be consistent with the City of Cocoa Utilities Handbook and the specifically, the most current version of the Cocoa's Technical Provisions and Standard Detail Sheet. Cocoa's comments will be considered in good faith and shall be incorporated into the plans to the extent reasonable and necessary to comply with Cocoa's Technical Provisions and Standards. Melbourne shall also be responsible for obtaining all required federal, state and local permits for the Project, and to the extent necessary by a permitting agency governing the Project, Cocoa shall be the permittee or co-permittee for its sixteen inch (16") diameter water transmission line. The Parties anticipate the following permits may be required to complete the Project: FDEP Specific Permit Construct PWS Components; FDEP Environmental Resources Permit; FDEP Sovereign Submerged Lands Easement; USACOE General Permit SAJ-14; FDOT ROW Permit;

and Brevard County PW ROW Permit. The Parties will evenly split the cost of permitting fees incurred for any joint or consolidated permit required for both Cocoa's and Melbourne's water transmission lines, and each party will be responsible for the entire amount of any permit fee related to a permit required solely for their own respective water transmission line. Additionally, Melbourne shall ensure that all aspects of the Project shall be constructed in accordance with the plans approved and permits received pursuant to this Agreement. Prior to commencing construction on the Project, Melbourne shall provide Cocoa with a copy of a complete set of final engineering plans and permits for the Project. During the design phase of the Project, Melbourne and Cocoa reserve the right to amend the proposed size diameter of their respective water transmission line to meet their needs.

3.2 Location of Cocoa's Water Line. One (1) sixteen inch (16") diameter water transmission line shall be designed, permitted and constructed by Melbourne for Cocoa's ownership, pursuant to the engineering plans. The water transmission line will commence from Cocoa's mainland point of connection located near the intersection of Pineda Causeway and Highway U.S. 1 and shall run south along Highway U.S. 1 to and across Pineda Causeway, then north to Cocoa's point of connection located near the intersection of Pineda Causeway and Highway U.S. A1A. A location map depicting the location of the water transmission line and connection points is attached hereto and incorporated herein by reference as **EXHIBIT "A."**

3.3 Construction Management. Melbourne shall be responsible for competitively bidding and contracting with the contractor required to construct the Project and install the two water transmission lines in accordance with applicable law and Melbourne's approved competitive bidding process. Melbourne shall provide

Cocoa written notice of any such competitive bid and Cocoa shall have the right to provide comments to Melbourne regarding any competitive bid under this Agreement before any bid is awarded to a contractor by Melbourne, provided such comments are timely provided within the award schedule established by Melbourne. Further, Melbourne shall be responsible for the construction management of the Project. Melbourne shall ensure that its contractor provides Cocoa with periodic inspection and status reports as reasonably requested by Cocoa. Melbourne shall keep Cocoa apprised of the construction of the Project. Cocoa and Melbourne shall cooperate with each other with respect to the construction management of the Project, and Cocoa shall have the right to participate in all Project progress meetings. Upon completion of the Project to the satisfaction of the parties, Melbourne shall transfer, or have its contractor transfer, to Cocoa, by bill of sale, title to the water transmission line free and clear of all liens and encumbrances and provide Cocoa "as-built" drawings of said infrastructure certified by the professional engineer registered in the State of Florida who was responsible for the Project.

3.4 Construction Contracts. All contracts and subcontracts for the construction of Cocoa's water transmission line under this Agreement must include hold harmless and indemnification provisions to protect Cocoa in a form acceptable to Cocoa. The construction contractors and subcontractors must provide insurance certificates and endorsements of acceptable levels and qualities of insurance, naming Cocoa as an additional named insured, and evidence of said hold harmless and indemnity prior to commencement of work. Melbourne must submit draft contract language containing this language to Cocoa and its City Attorney to review and allow Cocoa at least seven (7) days to review and comment on the same. If Cocoa submits

comments, Melbourne shall use all reasonable efforts to incorporate Cocoa's comments into the contracts and sub-contracts as applicable. The construction contract language requirements set forth in this section will be in the bid documents prepared by Melbourne so that all bidders are apprised of this requirement prior to submitting a bid for the Project.

3.5 Ownership; Contractor Warranties. Cocoa agrees that upon completion of the construction of the Project to Cocoa's satisfaction, Cocoa shall, consistent with this Agreement, accept ownership of, and operation and maintenance responsibilities for, the sixteen inch (16") diameter water transmission line constructed in accordance with Section 3.2 of this Agreement. Melbourne shall accept ownership of and operation and maintenance responsibilities for the other sixteen inch (16") diameter water transmission line constructed under this Agreement. In addition, at such time that Cocoa accepts ownership, all construction warranties and/or performance and maintenance bonds provided by Melbourne's contractor for Cocoa's sixteen inch (16") diameter water transmission line shall be assigned and transferred to Cocoa.

3.6 Project Costs; Cocoa and Melbourne 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 sixteen inch (16") diameter water transmission line. However, the parties anticipate that they will be able to identify certain common costs and other economies of scale associated with the Project during the design, permitting and construction phase of the Project that can be equally shared by the parties. As such, the parties will endeavor, to the maximum extent practical and feasible during this Project, to identify such common costs and economies of scale by mutual agreement, and said costs and economies of scale shall be reduced to writing

that will be signed by the City Managers of Melbourne and Cocoa ("Shared Cost Memo"). The Shared Cost Memo will be developed during the design phase of the Project, updated during the bidding phase, and finalized upon receiving the construction bids. Melbourne and Cocoa agree to split and pay the costs described on the Shared Cost Memo equally (50% each). Any proposed change orders for the Project must be reviewed and approved by Cocoa and Melbourne in writing. Additionally with respect to change orders, in the event the 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 Melbourne and the contractor via the change order process. If the requested change order requested by the contractor is specific to a portion of the Project solely related to either Melbourne 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 shared portion of the Project, then Melbourne and Cocoa agree to share the cost of the change order.

3.7 Payment by Cocoa. Prior to Melbourne issuing a Notice to Proceed with the construction of the Project, Melbourne shall deliver a written invoice to Cocoa itemizing Cocoa's share of the Project costs as set forth in Section 3.6 of this Agreement. Upon delivery of the invoice, Cocoa will have five (5) business days in which to accept the invoice or identify and notify Melbourne of any discrepancies. Discrepancies will be worked out by the parties expeditiously so as not to unreasonably delay the Project schedule. Within thirty (30) days from the date that Cocoa accepts the invoice, Cocoa will issue payment to Melbourne for its share of the Project costs stated in the accepted invoice. Melbourne will retain Cocoa's payment in escrow and shall only use said payment to pay Cocoa's Project costs. During the construction phase of

the Project, Melbourne and Cocoa will jointly review any progress payment requests made by the contractor and jointly sign off on the requests prior to Melbourne making payment to the contractor. Any Cocoa funds not expended by Melbourne due to any additional Project cost savings, if any, will be returned to Cocoa within thirty days of the Project being deemed complete by the parties. Melbourne shall be responsible for paying all contractors in full. Melbourne will likewise pay its share of Project costs.

3.8 Land Interests for Cocoa Water Transmission Line. Cocoa will be responsible for acquiring any land interests necessary to install its sixteen inch (16") diameter water transmission line that may not be covered by an FDOT right-of-way permit obtained pursuant to this Agreement. However, to the extent that Cocoa's water transmission line will be installed on land controlled and owned by Melbourne, Melbourne agrees to grant to Cocoa a perpetual easement to permit Cocoa's installation, operation and maintenance of the water transmission line. Additionally, to the extent that Melbourne's water transmission line will be installed on land controlled and owned by Cocoa, Cocoa agrees to grant to Melbourne a perpetual easement to permit Melbourne's installation, operation and maintenance of the water transmission line.

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

Section 5. Implementation and Other Documents. To the extent that the Melbourne City Attorney and Cocoa City Attorney determine that additional documents are required to be prepared and executed in order to effectuate this Agreement, the

Melbourne 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 Melbourne 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 the Cocoa in the performance of services and functions pursuant to this Agreement shall not be deemed to be the employees or agents of Melbourne.

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 MELBOURNE:

Public Works & Utilities Director
900 E. Strawbridge Avenue
Melbourne, Florida 32901
(321) 608-5000 (Phone)
Ralph.Reigelsperger@mlbfl.org

With copy to the City Attorney:

Alison Dawley
900 E. Strawbridge Avenue
Melbourne, Florida 32901
(321) 608-7241 (Phone)
Alison.dawley@mlbfl.org

For the COCOA:

Utilities Director
351 Shearer Blvd
Cocoa, Florida 32922
(321) 433-8701 (Phone)
jwalsh@cocoafl.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 19 of this Agreement and shall remain in effect until the Project has been completed to the satisfaction of both parties or on September 30, 2023, whichever event occurs sooner. The term of this Agreement may also be terminated or extended by mutual written agreement of the parties. 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. 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.

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. Cocoa and Melbourne Potable Water Service Areas. Cocoa and Melbourne agree to respect each other's potable water service areas and further agree not to use their sixteen inch (16") diameter water transmission lines installed pursuant to this Agreement to provide water to customers located within the other party's potable water service area without the other party's prior written consent. Nothing herein is intended to modify the boundaries of Cocoa's and Melbourne's existing water service areas.

Section 18. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of Melbourne and Cocoa and no right or cause of action shall accrue to or for the benefit of anyone other than Melbourne 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 Melbourne 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 Melbourne and Cocoa.

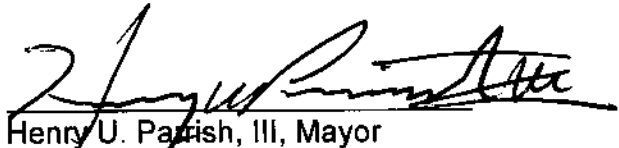
Section 19. Effective Date; Recordation. This Agreement shall take effect on the date that it is executed by both parties hereto and recorded in the Official Records of Brevard County, Florida. Upon execution of this Agreement by both parties, Cocoa shall promptly record this Agreement in the Official Records of Brevard County, Florida, and return a recorded copy of this Agreement to the Melbourne 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.



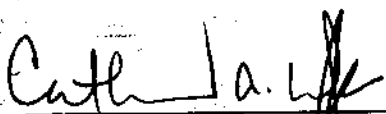
Carrie Shealy, MMC, City Clerk

CITY OF COCOA, FLORIDA:

By: 
Henry U. Parrish, III, Mayor

As authorized for execution by the City of Cocoa City Council at its May 8, 2018 regular meeting.

ATTEST:



Cathleen A. Wysor, City Clerk

CITY OF MELBOURNE, FLORIDA

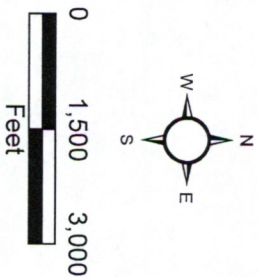
By: 
Kathy Meehan, Mayor

As authorized for execution by the Melbourne City Council at its MAY 22 2018, 2018 regular meeting.

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EXHIBIT "A"

Map – Proposed Location of Cocoa's Water Line



LEGEND

- Sending/Receiving Pit**
- Melbourne/Cocoa
 - Melbourne
 - Cocoa

Connection Locations

- * Melbourne
- * Cocoa
- * Interconnect

Installation Method (Melbourne)

- Directional Drill
- Open Cut
- Jack & Bore

Installation Method (Cocoa)

- Directional Drill
- Open Cut
- Jack & Bore
- A-1 Section ID



CITY OF MELBOURNE
PINEDA CAUSEWAY WATER TRANSMISSION MAIN DESIGN
Method of Construction - Melbourne and Cocoa Combined

FIGURE 7