



**AGENDA REPORT
December 4, 2018**

**Approval Re: Water Line & Ingress/Egress Easement from Brevard County
to the City of Cocoa and Resolution as part of the City's North Tropical
Trail Waterline Looping Improvements Project – District 2**

SUBJECT:

Approval Re: Water Line & Ingress/Egress Easement from Brevard County to the City of Cocoa and Resolution as part of the City's North Tropical Trail Waterline Looping Improvements Project – District 2

FISCAL IMPACT:

Fiscal impact: FY 2018 – 2019: No impact
FY 2019 – 2020: No impact

DEPT/OFFICE:

Public Works

REQUESTED ACTION:

It is requested that the Board of County Commissioners: 1) approve and authorize the Chair to execute the Waterline & Ingress/Egress Easement Agreement, and 2) adopt and authorize the Chair to execute a Resolution authorizing conveyance of real property interest by County.

SUMMARY EXPLANATION and BACKGROUND:

The subject parcel is located in Section 35, Township 23 South, Range 36 East.

The City of Cocoa is requesting that the County convey an easement for the City's North Tropical Trail Waterline Looping Improvements Project. The City of Cocoa Utilities Department (CCUD) owns and operates a 6" waterline running along the south side of Chase Hammock Road. The pending project proposes to upgrade the waterline to 8" D.I.P. (ductile iron pipe). Near the east end of the project, just west of the Judson Road intersection, the recorded Right of Way for Chase Hammock Road ends. The County owns the adjacent parcel on the south side of the road. The existing waterline runs thru this parcel, parallel and just south of the edge of pavement. In addition, there are two County maintained ditches which cross the roadway in this area. For one of the crossings, the waterline crosses over the drainage pipes, making it difficult for the City to maintain. As a part of the project, CCUD would like to reconstruct this crossing for more effective maintenance.

Land Acquisition Policies and Procedures require approval and authorization by the Board of County Commissioners for all easements.

CLERK TO THE BOARD INSTRUCTIONS:

Return the original executed Waterline & Ingress/Egress Easement Agreement with exhibit, original executed Resolution with exhibit, and Board approval memo to Land Acquisition with a copy to Parks & Recreation Department.

ATTACHMENTS:

Description

- **City of Cocoa Waterline Easement Agenda Documents**

BOARD OF COUNTY COMMISSIONERS

AGENDA: WATERLINE & INGRESS / EGRESS EASEMENT AGREEMENT
FROM BREVARD COUNTY (OWNER) TO THE CITY OF COCOA AND
RESOLUTION- AS PART OF THE CITY'S NORTH TROPICAL TRAIL
LOOPING IMPROVEMENTS PROJECT -DISTRICT 2

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION /
PARKS & RECREATION DEPARTMENT

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>API</u>	_____	<u>11/6/18</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney	<u>JWB</u>	_____	<u>11/14/18</u>

AGENDA DUE DATE: November 13, 2018 for the December 4, 2018 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

December 5, 2018

MEMORANDUM

TO: Dan Jones, Interim Public Works Director

RE: Item F.7., Resolution for Approval of Waterline and Ingress/Egress Easement from Brevard County to the City of Cocoa as Part of the City's North Tropical Trail Waterline Looping Improvements Project

The Board of County Commissioners, in regular session on December 4, 2018, adopted Resolution No. 18-188, authorizing conveyance of real property interest; and authorized the Chair to execute the Waterline & Ingress/Egress Easement Agreement with the City of Cocoa. Enclosed is a fully-executed Resolution and one executed Agreement.

Upon execution by the City of Cocoa, please return a fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

Encls. (2)

cc: Parks and Recreation Director

Prepared by and return to:
Carie E. Shealy, MMC, City Clerk
City of Cocoa
65 Stone Street
Cocoa, Florida 32922

Parcel ID. #(s) 23-36-35-00-2

WATER LINE & INGRESS/EGRESS EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made the last date signed below by **BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, and has a mailing address of 2725 Judge Fran Jamieson Way, Viera, Florida 32940, (hereinafter "**Grantor**") in favor of the **CITY OF COCOA**, a Florida municipal corporation, and having a mailing address of 65 Stone Street, Cocoa, Florida 32922 (hereinafter "**Grantee**").

WITNESSETH:

WHEREAS, **Grantee** requires a non-exclusive perpetual easement for the construction; installation, repair, replacement, operation, connection to, disconnection from and maintenance of a Water Line Facility, as well as a non-exclusive perpetual easement for ingress and egress across **Grantor's** property in order to access and use the Water Line Easement as provided herein; and

NOW, THEREFORE, in consideration of the public purpose stated herein, and the mutual covenants, terms, and conditions and restrictions contained herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated fully herein by this reference.

2. **Grant of Easement.** **Grantor** hereby voluntarily grants and conveys to **Grantee**, subject to any previous and duly recorded easements or grants of record, a perpetual non-exclusive water line easement over, under, through and across the real property described in "**Exhibit A**", a copy of which is attached hereto and incorporated herein by this reference (hereinafter Water Line Easement); and a perpetual non-exclusive ingress and egress across the real property described in "**Exhibit A**", a copy of which is attached hereto and incorporated herein by this reference (hereinafter "Ingress/Egress Easement"). Said easements shall be of the nature and character and to the extent hereinafter set forth.

3. **Purpose of Water Line Easement.** The Water Line Easement is granted for the express and sole purpose of allowing **Grantee** to perpetually use the property within the Water Line Easement for the construction, installation, repair, replacement, operation, connection to, disconnection from and maintenance of such water line facilities. **Grantee's** use of the easement shall be in such a manner so as not to damage or interfere with any of **Grantor's** property, facilities, or operations on the property..

4. **Purpose of Ingress/Egress Easement.** The Ingress/Egress Easement is granted for the express and sole purpose of allowing **Grantee** to perpetually use the property within the Ingress/Egress Easement to reasonably access its Water Line Facilities contained within the Water Line Easement for purposes provided therein. **Grantee's** use of the easement shall be in such a manner so as not to damage or interfere with any of **Grantor's** property, facilities, or operations on the property.

5. **Rights and Obligations of Grantee.** To accomplish the purpose stated above, and at **Grantee's** sole expense, the following rights are conveyed to **Grantee** by this Easement:

- (a) the right for **Grantee** to inspect, alter, improve, construct, repair, rebuild, relocate and remove, connect to, disconnect from, and maintain the Water Line Facilities and related appurtenances within the Water Line Easement;
- (b) all other rights and privileges reasonably and customarily necessary or convenient for **Grantee's** safe and efficient operation, maintenance, and/or repair of the Water Line Facilities including convenient and reasonable access to such facilities; and
- (c) for the enjoyment and use of said easements for purpose described above.

In addition, **Grantee** agrees to and shall promptly restore, or cause to be restored; the surface and subsurface of the real property described herein to the condition said property was in prior to the performance of any construction, reconstruction, replacement, removal, enlargement, operation, inspection, maintenance, repair improvement, relocation or any other use or work contemplated by this Easement Agreement. Any such restoration shall be in a workman like manner acceptable to the **Grantor**. **Grantee** shall use its best efforts in its use of the easement areas to not interfere with use by **Grantor**, its tenants, guests and invitees of easement area or adjacent property owned by **Grantor**. **Grantee** shall provide thirty (30) days' notice of any non-emergency construction, reconstruction, replacement, removal, enlargement, or non-routine maintenance.

6. **Grantor's Use of Easement.** Subject to and conditioned upon the provisions of Paragraph 3 and 4 of this Agreement, **Grantor** hereby reserves for itself the right to use the easement areas; provided, however, that **Grantor's** use may not (i) violate any provision of this Easement Agreement, or (ii) unreasonably interfere with any of **Grantee's** easements, rights or interest under this Agreement. Notwithstanding anything to the contrary contained herein, **Grantor** shall not have the right to relocate the Water Line Easement on **Grantor's** property.

7. **Easements Run with the Land.** These easements shall remain a charge against the property. Therefore, these easements shall run with the land and be automatically assigned by any deed or other conveyance conveying the easement property, or a portion thereof, relating to these easements, even though the conveyance makes no reference to these easements as such.

8. **Recordation.** Grantee shall record this instrument in a timely fashion in the Official Records of Brevard County, Florida and may re-record it at any time as may be required to preserve its rights in this Easement.

9. **Sovereign Immunity.** Nothing contained in this Agreement shall be construed as a waiver of either the Grantor or Grantee's right to the protections of and/or caps on damages afforded by sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on the Grantor or Grantee's potential liability under state or federal law.

10. **Indemnification.** Grantee agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless Grantor from and against all claims, losses, damages, personal injuries (including but not limited to death), or liability, arising from, out of, or caused by negligent or intentional acts, errors, omissions in the operation, maintenance, construction, repair or other use contemplated herein of the Water Line Facilities by Grantee, its officers, employees, agents, or contractors.

The indemnification provided herein shall obligate the Grantee to defend any claims based upon alleged negligence of Grantee regarding the easement which is the subject of this Agreement, whether brought against Grantee, Grantor, or both. In the event such claim(s) are brought against Grantor, the Grantor shall be permitted to choose legal counsel of its sole choice, the fees for which shall be included with the indemnification provided herein. Fees shall be paid at a reasonable rate as established in Brevard County, Florida.

11. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Florida. Venue for all disputes shall be properly placed in Brevard County, Florida. Any trial shall be non-jury and each party shall bear its own attorney's fees and costs. The parties agree that the Agreement was consummated in Brevard County, and the site of the easements is in Brevard County, Florida. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

12. **Notices.** All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or which are given with respect to this Agreement shall be effective only if in writing and delivered by personal service, or delivered to an overnight courier service with guaranteed next day delivery or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

TO GRANTOR:

Attention: County Manager
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

TO GRANTEE:

Attn: City Manager
City of Cocoa, Florida
65 Stone Street
Cocoa, Florida 32922

or to such other address as such party shall have specified most recently by like Notice. The aforesaid attorneys for the parties hereto are hereby respectively authorized to give any Notice permitted under this Agreement. Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing.

13. **Modification.** This Easement shall only be modified by a written instrument executed by the parties hereto or any successor, assigns, heirs, or representatives thereto. Grantee may not assign its rights under the easements without express written consent of Grantor.

14. **Entire Agreement.** This Easement constitutes the full and entire agreement between the parties hereto and supersedes any oral or written prior communications between the parties related to the subject matter contained in this Easement. The laws of Florida shall govern this Easement.

IN WITNESS WHEREOF, Grantor and Grantee have set their respective hands on the day and year first below written.

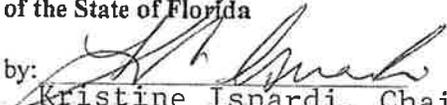
Attest:


Scott Ellis,
Clerk to the Board

GRANTOR

Brevard County, a political subdivision
of the State of Florida

by:


Kristine Isnardi, Chair
Date: 12/4/18

As approved by the Board 12/4/18

Agenda Item # F.7.

Board Meeting Date 12/4/18

**GRANTEE
CITY OF COCOA, ACCEPTANCE**

John A. Titkanich, Jr., City Manager

**STATE OF FLORIDA
COUNTY OF BREVARD**

I HEREBY certify that the foregoing instrument was acknowledged before me this _____ day of _____, 2018 by John A. Titkanich, Jr., as City Manager of the City of Cocoa, who is personally known to me, or who has produced _____ as identification.

Agenda Item # _____

Board Meeting Date _____

Notary Public, State of Florida

Print Name _____

My commission expires: _____

SKETCH OF DESCRIPTION

EXHIBIT "A"

PARCEL # 800

SHEET 1 OF 2

NOT VALID WITHOUT SHEET 2 OF 2

THIS IS NOT A SURVEY

PARENT PARCEL ID: 23-36-35-00-2
 PURPOSE: WATERLINE & INGRESS/EGRESS EASEMENT

LEGAL DESCRIPTION: PARCEL 800, WATERLINE & INGRESS/ENGRESS EASEMENT (BY SURVEYOR)

A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 23 SOUTH, RANGE 36 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE NORTH QUARTER CORNER OF SAID SECTION 35; THENCE SOUTH 89°57'33" EAST, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35, A DISTANCE OF 337.24 FEET; THENCE SOUTH 00°02'27" WEST A DISTANCE OF 50.00 FEET; THENCE NORTH 89°57'33" WEST A DISTANCE OF 58.13 FEET; THENCE NORTH 44°57'33" WEST A DISTANCE OF 14.14 FEET; THENCE NORTH 89°57'33" WEST A DISTANCE OF 66.39 FEET; THENCE NORTH 44°57'33" WEST A DISTANCE OF 14.14 FEET; THENCE NORTH 89°57'33" WEST A DISTANCE OF 192.72 FEET TO A POINT ON THE WEST LINE OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35; THENCE NORTH 00°02'27" EAST, ALONG SAID WEST LINE, A DISTANCE OF 30.00 FEET TO THE POINT-OF-BEGINNING

CONTAINING 0.28 ACRES (12,144 S.F.) MORE OR LESS AND BEING SUBJECT TO ANY EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

NOTES:

1. TITLE REPORT NOT FURNISHED.
2. THIS SKETCH AND DESCRIPTION WRITTEN UNDER THE DIRECTION OF BREVARD COUNTY SURVEY DEPARTMENT.
3. BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 23 SOUTH, RANGE 36 EAST, BEING "S.89°57'33"E.", AN ASSUMED BEARING.
4. THIS SKETCH AND DESCRIPTION WAS PREPARED FOR THE EXCLUSIVE USE OF THE PARTIES LISTED BELOW AND IS VALID ONLY WHEN BEARING THE SURVEYOR'S ORIGINAL SIGNATURE AND EMBOSSED SEAL OR VERIFIED ELECTRONIC SIGNATURE AND SEAL.
5. THIS SKETCH AND DESCRIPTION IS CERTIFIED CORRECT TO:
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS;
 CITY OF COCOA**

CERTIFICATE:

I HEREBY CERTIFY THAT THE SKETCH AND DESCRIPTION SHOWN HEREON WAS PRODUCED UNDER THE DIRECTION OF THE BREVARD COUNTY SURVEY DEPARTMENT AND THAT IT MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 54-17.052 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

Joseph Barry Cabaniss
 Joseph Barry Cabaniss, P.L.S. Date: 11/5/18
 FLORIDA SURVEYOR'S CERTIFICATE NO.: 4524
 BUSSEN-MAYER ENGINEERING CERTIFICATE NO.: 3535

PREPARED FOR AND CERTIFIED TO:
**BREVARD COUNTY BOARD COUNTY COMMISSIONERS;
 CITY OF COCOA**

PREPARED BY:



Bussen-Mayer Engineering Group

100 PARNELL STREET • MERRITT ISLAND, FLORIDA 32953
 PH. NO.: (321) 453-0010 FAX NO.: (321) 454-6885



DRAWN BY: JCC
 DATE: 09-25-2018

CHECKED BY: JBC
 DRAWING NO.: 379109-SK02

PROJECT NO. 379109

REVISIONS	DATE	DESCRIPTION
	11/5/18	BREV. CO. COMMENTS

SECTION 35
 TOWNSHIP 23 SOUTH
 RANGE 36 EAST

SKETCH OF DESCRIPTION

PARCEL # 800

PARENT PARCEL ID: 23-36-35-00-2
 PURPOSE: WATERLINE & INGRESS/EGRESS EASEMENT

NOTE: SEE SHEET 1 FOR DESCRIPTION, NOTES AND CERTIFICATION.



SOUTH LINE OF O.R.B. 4641
 PAGE 3185

73' WIDE FDOT
 DRAINAGE EASEMENT
 DEED BOOK 247,
 PAGE 373

BRIAN J. WILLIAMS/MICHELLE VALADEZ
 O.R. BOOK 4641, PAGE 3185
 PARCEL ID: 23-36-26-00-782

NORTH LINE OF NORTHWEST
 1/4 OF NORTHEAST 1/4 OF
 SECTION 35

POINT-OF-BEGINNING:
 NORTH 1/4 CORNER OF SECTION 35

CHASE HAMMOCK ROAD

33.00'

337.24'

S89°57'33"E

S00°02'27"W
 50.00'

N89°57'33"W
 58.13'

N44°57'33"W
 14.14'

N44°57'33"W
 14.14'

N89°57'33"W
 192.72'

N00°02'27"E
 30.00'

30.00' RIGHT-OF-WAY PER
 O.R. BOOK 275, PAGE 386

EXHIBIT "A"

SHEET 2 OF 2

NOT VALID WITHOUT SHEETS 1 OF 2

THIS IS NOT A SURVEY

Legend:

- O.R.B. Official Records Book
- P.G. Page
- R/W Right-of-way
- S.F. Square feet
- FDOT Florida Department of Transportation
- ± Plus or minus

BREVARD COUNTY
 PARCEL ID: 23-36-35-00-2
 NOTE: OWNED BY BREVARD
 COUNTY—NO DEED AVAILABLE
 995 CHASE HAMMOCK TRAIL

PARCEL 800
WATERLINE &
INGRESS/EGRESS
EASEMENT
 12,144 S.F.±
 0.28 ACRES±

WEST LINE OF
 NORTHWEST 1/4
 OF NORTHEAST 1/4
 OF SECTION 35

PREPARED BY:



Bussen-Mayer Engineering Group

100 PARNELL STREET • MERRITT ISLAND, FLORIDA 32953
 PH. NO.: (321) 453-0010 FAX NO.: (321) 454-6885



SCALE: 1"=60'

PROJECT NO:
 379109

SECTION	35
TOWNSHIP	23 SOUTH
RANGE	36 EAST

RESOLUTION NO. 18-188

A RESOLUTION PURSUANT TO SECTION 125.38, FLORIDA STATUTES, AUTHORIZING THE CONVEYANCE OF REAL PROPERTY INTEREST BY THE COUNTY.

WHEREAS, Brevard County, Florida, a political subdivision of the State of Florida, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, hereafter known as County, owns certain real property described in Exhibit "A"; and

WHEREAS, the City of Cocoa, Florida, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter known as "City", needs a non-exclusive perpetual water line easement with full rights of ingress and egress for the purpose of constructing and maintaining related improvements and structures as stated herein on the property; and

WHEREAS, the improvements to be served will be part of the County's Parks and Recreation Department; and

WHEREAS, said Water line & Ingress/Egress Easement Agreement benefits the County and will not conflict with the County's use of the servient property;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that;

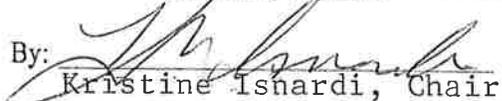
The County hereby agrees to convey a non-exclusive perpetual Water Line & Ingress/Egress Easement Agreement to the City of Cocoa for the purpose of construction, installation, and maintenance of related improvements and structures with full rights of ingress and egress for the purposes stated herein. No payment or consideration shall be required.

DONE ORDERED AND ADOPTED this 4th day of December, 2018.

ATTEST:


Scott Ellis, Clerk

BREVARD COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

By: 
Kristine Isnardi, Chair

As approved by the Board 12/4/18

As approved by the Board on 12/4/18
Agenda Item # F.7.

LOCATION MAP

TWP: 23 S RNG: 36 E SEC: 35 DISTRICT: 2

STREET NAME: Chase Hammock Road

OWNER'S NAME: Brevard County, Florida

