



AGENDA REPORT
December 4, 2018

Execution of Agreement with the City of Melbourne for Utility Billing Services

SUBJECT:

Execution of Agreement with the City of Melbourne for Utility Billing Services

FISCAL IMPACT:

Fiscal Impact: Estimated cost of these services at \$1.73 per month, per account for FY2019 which totals approximately \$450,000. The Utility Services Department has included this amount in the FY2019 proposed budget.

DEPT/OFFICE:

Utility Services

REQUESTED ACTION:

It is requested that the Board of County Commissioners execute an Agreement between Brevard County and the City of Melbourne for the collection of monthly sewer and reclaimed water service fees.

SUMMARY EXPLANATION and BACKGROUND:

The County provides wastewater service to approximately 22,000 residential and commercial accounts in the City of Melbourne's Water Service area. Based on the City of Melbourne's water meter readings, the City provides wastewater billing and collection services on the County's behalf through an agreement between the County and the City. The City has been providing this service since 1968.

The current agreement expired on September 30, 2018 and a new agreement for these services is needed.

As provided in the current agreement, the new agreement includes a provision for annual adjustment to the rate billed per account, per month, with an increase of \$.01 per month, per account. The monthly charge per account will be \$1.73.

The new agreement would be retroactively effective October 1, 2018 with the annual adjustments effective each October 1st for the term of the contract. The agreement will automatically renew each year unless one or both parties request termination. This agreement was approved by the Melbourne City Council on November 27, 2018.

This agreement has been reviewed and approved by both the City and County Attorneys.

Contact: Jim Helmer, Director; (321) 633-2091; e-mail: jim.helmer@brevardfl.gov

ATTACHMENTS:

Description

- ▣ **Initial Contract Form Melbourne Billing Agmt**
- ▣ **Final Draft - Melbourne Billing Agreement**

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor:	
2. Fund/Account #:	3. Department Name:
4. Contract Description:	
5. Contract Monitor:	7. Contract Type:
6. Dept/Office Director:	

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency			_____	_____
Risk Management			_____	_____
County Attorney			_____	_____

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status	
Contract Title	
Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
Contract Expiration Date	
Contract Absolute End Date (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	



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

M E M O R A N D U M

TO: Jim Helmer, Utility Services Director

RE: Item F.8., Agreement with the City of Melbourne for Utility Billing Services

The Board of County Commissioners, in regular session on December 4, 2018, approved and executed the Agreement with the City of Melbourne for the collection of monthly sewer and reclaimed water service fees. Enclosed is one fully-executed Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Contract Administration
Finance
Budget

AGREEMENT

THIS AGREEMENT, made and entered into on this 4th day of December, 2018, by and between the CITY OF MELBOURNE, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "City", and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the County currently owns and operates certain sanitary sewer systems in the City of Melbourne Water System service area located throughout South Brevard County, Florida; and

WHEREAS, the City owns and operates a certain potable water supply system serving the Brevard County Sewer service area in the South Brevard County area; and

WHEREAS, the City has the capability and facilities to read water meters, and bill and collect deposits and service charges from the customers of the South Brevard County sanitary sewerage systems; and

WHEREAS, Section S(k) and Section 10 of Chapter 67-1145, Special Acts of Florida, 1967, grant to the County the power to contract with any municipality providing water services to arrange for the collection of sanitary sewer charges and to enforce payment of delinquent service charges by shutting off and disconnecting such water service; and

WHEREAS, Section 110-38 (D) of the Brevard County Code grants to the County, and any municipality within the County, a right to discontinue sewer and water services for failure to pay service charges when due and the right to refuse to connect or reconnect such services until the delinquency is eliminated; and

WHEREAS, the County desires to enter into an agreement with the City to provide for the billing and collection of sanitary sewer service charges from its customers located in the City of Melbourne Water System service area; and

WHEREAS, execution of this Agreement will mutually benefit the parties and the residents of Brevard County, Florida.

NOW THEREFORE, in consideration of the premises and the covenants herein contained, this Agreement is mutually agreed upon between the parties as follows:

1. The City hereby agrees to collect all deposits and service charges from customers of Brevard County sanitary sewer systems located in southern Brevard County, Florida and served by the City's water system. Said charges will include current as well as past due charges and will be collected on a monthly basis in accordance with policies and procedures attached hereto as Exhibit "A" and made a part thereof by this reference. These policies may be amended from time to time by mutual written agreement of the parties. The City agrees to provide the County at least sixty (60) days' notice prior to the date of implementation of any amendments. All charges for sanitary sewer service provided by the County shall be separately itemized and included on monthly water bills issued by the City to its customers. If said person is not on City water, a separate monthly billing shall be prepared by the City for said charges.
2. In consideration of the services to be provided and performed by the City, the County agrees to pay to the City an amount per account per month computed as follows:
 - a. For all accounts, the billing whether based on a flat rate or on consumption is \$1.73 per bill. The rate will increase each year in October by \$.01.
 - b. The City shall deduct the monthly billing charges set forth above directly from the City's monthly collections from the County's customers. The City shall forward the monthly collections to the County, less the City's billing charges, along with a statement setting forth the billing charges retained by the City no later than fifteen (15) working days after the close of each month.
3. The County shall furnish to the City a list of all customers to be billed by the City together with the applicable sanitary sewer service billing rate. The City shall continue to utilize the County's current schedule of sanitary sewer service billing rates until an amended schedule of sanitary sewer service billing rates is provided to the City in December, 2018 and said amended schedule shall be incorporated herein by this reference. In no event will the City charge or assess any rate, fee, charge or penalty to any customer unless specifically set forth in Exhibit "A" or the County schedule of sanitary sewer service billing rates provided to the City, or any amendments thereto. The County will provide the City written notice of any changes in said sanitary sewer service billing rates at least forty-five (45) days prior to the effective date thereof.

4. The City shall collect and retain sanitary sewer service deposits from County customers in accordance with Exhibit "A".

In addition, on a monthly basis, the City shall provide to the County the following documents and information:

- a. Monthly billing register;
- b. Monthly summary of billings, adjustments and collections;
- c. Monthly copy of the City's control accounts;
- d. Water consumption information;
- e. Other additional information as mutually agreed upon by the County or its authorized representative and the City or its authorized representative.

In the event of partial payments of bills by customers utilizing both City water and County sanitary sewer service facilities, all amounts shall be applied first to the delinquent billings and then to current charges.

5. Normal billing adjustments to customer accounts shall be made by the City without prior County approval in accordance with the policies and procedures set forth in Exhibit "A".

Authorization for adjustments to customer accounts not involving normal billing adjustments, imposition of fees as set forth in Exhibit "A", or normal accounting adjustments in accordance with generally accepted accounting principles, shall be made by the City solely upon written notification from the County or its designated representative.

6. The City hereby agrees to disconnect or interrupt water service to property which is the subject of this agreement for nonpayment of County sanitary sewer services charges, and to refuse to connect or reconnect such services until said delinquency has been eliminated consistent with Melbourne City Code Sec. 58-11. The disconnection of water service for nonpayment of County sanitary sewer service charges shall be made by the City without prior County approval in accordance with City of Melbourne policies and procedures set forth in Exhibit "A".

In the event any suit or cause of action is brought seeking to enjoin the City from disconnecting or interrupting water service, or seeking to recover damages against the City as a result of the City's discontinuance or interruption of water services, where said interruption occurred to enforce nonpayment of County sanitary sewer service charges, the County agrees to indemnify and hold the City harmless, to the extent

permitted by law, for any and all expenses incurred in defending such suit and for any and all damages that are assessed against the City in such suit by a court of competent jurisdiction.

In no event will the city be responsible for taking action other than discontinuance of water service in order to enforce payment of County sanitary sewer service charges.

7. The initial term of this Agreement shall be effective nunc pro tunc October 1, 2018. This Agreement shall be automatically renewed for successive one (1) year periods commencing on October 1 of the applicable year and terminating on September 30 of the following year unless otherwise terminated by either party. This Agreement may be terminated by either party upon one hundred eighty (180) days' notice of the other party. For the purpose of this section, notice shall be given to the County by mailing written notice to Brevard County Utility Services Department Director, 2725 Judge Fran Jamieson Way, Building "A", Viera, Florida 32940, and notice shall be given to the City by mailing written notice to the City Manager, City of Melbourne, 900 E. Strawbridge Avenue, Melbourne, Florida 32901.

8. Miscellaneous Provisions.

- a. This interlocal agreement shall be considered an interlocal agreement pursuant to Section 163.01, Florida Statutes. A true and correct copy of this agreement shall be filed with the Clerk of the Circuit Court in Brevard County, Florida.
- b. This interlocal agreement may only be modified, amended or altered if the terms and conditions are contained in a written document executed by each of the parties hereto with the same formality and equal dignity herein. All modifications, amendments or alterations shall be promptly filed with the Clerk of the Circuit Court in Brevard County, Florida.
- c. If any word, sentence, or paragraph or provision in this interlocal agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the interlocal agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the Parties can be accomplished.
- d. This interlocal agreement represents the entire understanding and agreement of the parties.
- e. The laws of the State of Florida shall govern the validity and interpretation of this interlocal agreement. Venue shall be in Brevard County, Florida for any action filed in state court and in Orlando, Florida for any action filed in federal court.
- f. Both the City and the County have participated in the drafting of all parts of this interlocal agreement. As a result, it is the intent of the parties that no portion of

this interlocal agreement shall be interpreted more harshly against either party as drafter.

- g. No delay or failure by either party to exercise any right under this interlocal agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless expressly provided herein.
- h. Nothing in this interlocal agreement shall be construed to give any rights or benefits to anyone other than the City and County.
- i. Nothing contained in this interlocal agreement shall be construed as a waiver by the City or the County of sovereign immunity under Section 768.28, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

BY: _____

KRISTINE ISNARDI, Chair

As approved by the Board 12/4/18

ATTEST: _____

Scott Ellis, Clerk of Court
Brevard County, Florida

CITY OF MELBOURNE, FLORIDA

BY: _____

MICHAEL A. MCNEES, City Manager

ATTEST: _____

Cathleen A. Wysor, City Clerk
Melbourne, Florida

EXHIBIT "A"

Sec. 58-5. - Joint billing of utility charges.

Water charges, sewer charges and reclaimed water charges shall be billed and collected together.

Sec. 58-6. - Custody of deposits.

The city manager shall assign administrative responsibility for the collection and custody of utility security deposit monies. All security deposits held for utility customers shall be maintained in a non-interest bearing account by the city.

Sec. 58-7. - Security deposit.

(a) Based on the type of service received, a water security deposit or a water and sewer security deposit is required of and from all customers of the city with exceptions listed below:

- (1) Residential accounts with good payment history as defined by section 58-8.
- (2) Owner accounts with discontinued service as defined by sections 58-133 and 58-243.
- (3) Government agencies.

(b) Security deposits shall be calculated based on equivalent residential connections (ERCs) determined using meter equivalent factors derived from meter capacity information published by the American Water Works Association (AWWA) in the following amounts:

Meter Size (Inches)	Meter ERC Factor	Deposit		
		Water	Sewer	Combined
0.75	1	\$ 60.00	\$ 90.00	\$ 150.00
1.0	3	\$ 180.00	\$ 270.00	\$ 450.00
1.5	5	\$ 300.00	\$ 450.00	\$ 750.00
2.0	8	\$ 480.00	\$ 720.00	\$ 1,200.00
3.0	15	\$ 900.00	\$ 1,350.00	\$ 2,250.00
4.0	25	\$1,500.00	\$ 2,250.00	\$ 3,750.00
6.0	50	\$3,000.00	\$ 4,500.00	\$ 7,500.00
8.0	80	\$4,800.00	\$ 7,200.00	\$12,000.00
10.0	115	\$6,900.00	\$10,350.00	\$17,250.00

- (1) Deposits for individually metered residential customers will be based as one ERC.
- (2) Commercial and multifamily customers' initial minimum deposit will be based on the meter size and the correlating meter ERC factor. Commercial and multifamily customers ERC value will be evaluated annually based on actual water use, and if the actual ERC value exceeds the established ERC minimum factor, then the corresponding deposit may be increased by the difference in ERC values multiplied by the deposit rate for one ERC, rounded to the nearest dollar.

Sec. 58-8. - Refund of deposit.

Except as provided below, the deposits required by this chapter shall be applied pro rata against the final bill prepared for termination of the account. If the deposit exceeds the final bill, the balance of the deposit shall be refunded to the customer.

- (1) For individually metered residential customers, the deposit shall be refunded or applied as a credit to the customer account after 12 consecutive months of service if such customer has not been delinquent in the payment of any bill for utility service or has not had checks or bank drafts returned due to insufficient funds. The city reserves the right to require the customer to re-establish a security deposit if the customer does not maintain good payment history.
- (2) For all other customers, the deposit shall be held by the city for the term of service for the account.

Sec. 58-9. - When utility accounts become delinquent; penalty for delinquency.

All utility accounts shall be due upon receipt and shall become delinquent if not paid within 25 days of the billing thereof. All utility accounts not paid within 25 days shall pay a late payment charge of 1.5 percent of the unpaid portion of the utility account, but not less than \$5.00, and shall be subject to disconnection of utility service in accordance with applicable law. The fee will be applied by the city on a monthly basis to any outstanding balance that is considered delinquent by the city in excess of \$10.00.

Sec. 58-11. - Disconnection due to nonpayment; disconnection charge; payment of delinquent account; security deposit.

All past due balances associated with unpaid balances for utility service in excess of \$10.00 shall be paid by the customer within ten days of notification in the subsequent month utility bill as being delinquent or past due. If payment is not received by the city from the utility account within ten days of notification, the city will have the right to discontinue service without further notice. If service is discontinued, the city will not renew or resume service until all past due amounts and any security deposits as required by this chapter are paid in full by the customer. A \$30.00 disconnection charge will be assessed to the utility account.

Sec. 58-12. - Administrative adjustments to utility bills.

The city manager shall be authorized to provide adjustments to water, reclaimed water, and sewer utility bills as he deems appropriate after careful review of the circumstances which resulted in the unusually high consumption on those occasions when the customer's situation does not meet the criteria for an adjustment pursuant to section 58-137 or 58-243(d).

Sec. 58-129. - Penalty for nonpayment of deposit.

Any consumer who fails to pay the required water security deposit shall be terminated as a customer and the supply of water to such customer immediately turned off.

Sec. 58-130. - Prerequisite for commencement of water service.

No water shall be supplied or furnished to new or future consumers of utility service unless and until such consumers shall have first made a request to the city, provided an executed lease agreement or proof of ownership, and established the required security deposit.

Sec. 58-135. - Free service; connection to comply with article.

- (a) No free service or service not in accordance with the established rate schedule shall be furnished. In the event water service or related services are requested in a form which is not covered by this Code, the city manager or his designate shall negotiate or establish a service charge which will be in accordance with the city's covenants with bond holders.
- (b) No person shall make or cause to be made a connection to the water system except as provided herein.

Sec. 58-137. - Adjustments to bills.

The city manager shall be authorized to provide adjustments to water bills resulting from excessive consumption in special and unique situations not involving negligence and the accountholder is prevented from correcting the leak in a timely manner subject to the following conditions:

- (1) Excessive water consumption is defined as water consumption where the billed consumption exceeds the average monthly consumption for the previous six months by at least 100 percent and is a minimum of 10,000 gallons above said monthly average.
- (2) The accountholder shall submit a written request for adjustment within 60 days of the date of the bill for which the adjustment is requested.

Sec. 58-243. - Sewer service rates.

- (d) Adjustments to bills. The city manager or his designee shall be authorized to provide adjustments to sewer bills resulting from excessive water consumption because of leaks in the water service lines,

defective plumbing fixtures, filling of a swimming pool, or unusual circumstances where the water did not enter the sanitary sewer system as waste pursuant to the following conditions:

- (1) Excessive water consumption is defined as water consumption resulting from one of the above described causes, where the billed consumption exceeds the average monthly consumption for the previous six months by at least 100 percent and is a minimum of 10,000 gallons above said monthly average.
- (2) The account holder shall submit a written request for adjustment within 60 days of the date of the bill for which adjustment is requested.
- (3) The account holder must establish that the water did not flow through the sanitary sewer system.
- (4) An adjustment to a sewer bill has not been granted in the previous 12 months.
- (5) In the event the excessive water consumption crosses two billing cycles, the calculation for the adjustment shall be based upon the average monthly consumption which exceeds two times the average monthly consumption for the previous six months pursuant to the limitations described in subsection (d)(1) of this section. An adjustment that is provided in this subsection shall only be authorized when the customer demonstrates that corrective action is taken within ten days of the billing date when the excessive consumption first occurred.

Sec. 58-247. - Billing; collection; reconnection; free service; connection to comply with article.

- (a) Bills for the monthly sewer service charge levied by this article shall be submitted and paid monthly along with and at the same time as the monthly water bill. If any monthly bill for sewage disposal service shall be unpaid after the water bill with which it was submitted is overdue, the water service to the premises and the sewer connection to the premises may be discontinued and disconnected and shall not be reconnected until all past due sewage disposal fees are fully paid.
- (b) No free service or service not in accordance with the established rate schedule shall be furnished. In the event sewer service or related services are requested in a form which is not covered by this Code, the city manager or his designate shall negotiate or establish a service charge which will be in accordance with the city's covenants with bond holders.
- (c) No person shall make, or cause to be made, a connection to the sewer system except as provided herein.

AGREEMENT

THIS AGREEMENT, made and entered into on this _____, day of _____, 2018, by and between the CITY OF MELBOURNE, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "City", and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the County currently owns and operates certain sanitary sewer systems in the City of Melbourne Water System service area located throughout South Brevard County, Florida; and

WHEREAS, the City owns and operates a certain potable water supply system serving the Brevard County Sewer service area in the South Brevard County area; and

WHEREAS, the City has the capability and facilities to read water meters, and bill and collect deposits and service charges from the customers of the South Brevard County sanitary sewerage systems; and

WHEREAS, Section S(k) and Section 10 of Chapter 67-1145, Special Acts of Florida, 1967, grant to the County the power to contract with any municipality providing water services to arrange for the collection of sanitary sewer charges and to enforce payment of delinquent service charges by shutting off and disconnecting such water service; and

WHEREAS, Section 110-38 (D) of the Brevard County Code grants to the County, and any municipality within the County, a right to discontinue sewer and water services for failure to pay service charges when due and the right to refuse to connect or reconnect such services until the delinquency is eliminated; and

WHEREAS, the County desires to enter into an agreement with the City to provide for the billing and collection of sanitary sewer service charges from its customers located in the City of Melbourne Water System service area; and

WHEREAS, execution of this Agreement will mutually benefit the parties and

the residents of Brevard County, Florida.

NOW THEREFORE, in consideration of the premises and the covenants herein contained, this Agreement is mutually agreed upon between the parties as follows:

1. The City hereby agrees to collect all deposits and service charges from customers of Brevard County sanitary sewer systems located in southern Brevard County, Florida and served by the City's water system. Said charges will include current as well as past due charges and will be collected on a monthly basis in accordance with policies and procedures attached hereto as Exhibit "A" and made a part thereof by this reference. These policies may be amended from time to time by mutual written agreement of the parties. The City agrees to provide the County at least sixty (60) days' notice prior to the date of implementation of any amendments. All charges for sanitary sewer service provided by the County shall be separately itemized and included on monthly water bills issued by the City to its customers. If said person is not on City water, a separate monthly billing shall be prepared by the City for said charges.
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 - a. For all accounts, the billing whether based on a flat rate or on consumption is \$1.73 per account. The rate will increase each year in October by \$.01.
 - b. The City shall deduct the monthly billing charges set forth above directly from the City's monthly collections from the County's customers. The City shall forward the monthly collections to the County, less the City's billing charges, along with a statement setting forth the billing charges retained by the City no later than fifteen (15) working days after the close of each month.
3. The County shall furnish to the City a list of all customers to be billed by the City together with the applicable sanitary sewer service billing rate. The City shall continue to utilize the County's current schedule of sanitary sewer service billing rates until an amended schedule of sanitary sewer service billing rates is provided to the City in December, 2018 and said amended schedule shall be incorporated herein by this reference. In no event will the City charge or assess any rate, fee, charge or penalty to any customer unless specifically set forth in Exhibit "A" or the County schedule of sanitary sewer service billing rates provided to the City, or any amendments thereto. The County will provide the

City written notice of any changes in said sanitary sewer service billing rates at least forty-five (45) days prior to the effective date thereof.

4. The City shall collect and retain sanitary sewer service deposits from County customers in accordance with Exhibit "A".

In addition, on a monthly basis, the City shall provide to the County the following documents and information:

- a. Monthly billing register;
- b. Monthly summary of billings, adjustments and collections;
- c. Monthly copy of the City's control accounts;
- d. Water consumption information;
- e. Other additional information as mutually agreed upon by the County or its authorized representative and the City or its authorized representative.

In the event of partial payments of bills by customers utilizing both City water and County sanitary sewer service facilities, all amounts shall be applied first to the delinquent billings and then to current charges.

5. Normal billing adjustments to customer accounts shall be made by the City without prior County approval in accordance with the policies and procedures set forth in Exhibit "A".

Authorization for adjustments to customer accounts not involving normal billing adjustments, imposition of fees as set forth in Exhibit "A", or normal accounting adjustments in accordance with generally accepted accounting principles, shall be made by the City solely upon written notification from the County or its designated representative.

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In the event any suit or cause of action is brought seeking to enjoin the City from disconnecting or interrupting water service, or seeking to recover damages against the City as a result of the City's discontinuance or interruption of water services, where

said interruption occurred to enforce nonpayment of County sanitary sewer service charges, the County agrees to indemnify and hold the City harmless, to the extent permitted by law, for any and all expenses incurred in defending such suit and for any and all damages that are assessed against the City in such suit by a court of competent jurisdiction.

In no event will the city be responsible for taking action other than discontinuance of water service in order to enforce payment of County sanitary sewer service charges.

7. The initial term of this Agreement shall be effective nunc pro tunc October 1, 2018. This Agreement shall be automatically renewed for successive one (1) year periods commencing on October 1 of the applicable year and terminating on September 30 of the following year unless otherwise terminated by either party. This Agreement may be terminated by either party upon one hundred eighty (180) days' notice of the other party. For the purpose of this section, notice shall be given to the County by mailing written notice to Brevard County Utility Services Department Director, 2725 Judge Fran Jamieson Way, Building "A", Viera, Florida 32940, and notice shall be given to the City by mailing written notice to the City Manager, City of Melbourne, 900 E. Strawbridge Avenue, Melbourne, Florida 32901.

8. Miscellaneous Provisions.

- a. This interlocal agreement shall be considered an interlocal agreement pursuant to Section 163.01, Florida Statutes. A true and correct copy of this agreement shall be filed with the Clerk of the Circuit Court in Brevard County, Florida.
- b. This interlocal agreement may only be modified, amended or altered if the terms and conditions are contained in a written document executed by each of the parties hereto with the same formality and equal dignity herein. All modifications, amendments or alterations shall be promptly filed with the Clerk of the Circuit Court in Brevard County, Florida.
- c. If any word, sentence, or paragraph or provision in this interlocal agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the interlocal agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the Parties can be accomplished.
- d. This interlocal agreement represents the entire understanding and agreement of the parties.
- e. The laws of the State of Florida shall govern the validity and interpretation of this interlocal agreement. Venue shall be in Brevard County, Florida for any

action filed in state court and in Orlando, Florida for any action filed in federal court.

- f. Both the City and the County have participated in the drafting of all parts of this interlocal agreement. As a result, it is the intent of the parties that no portion of this interlocal agreement shall be interpreted more harshly against either party as drafter.
- g. No delay or failure by either party to exercise any right under this interlocal agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless expressly provided herein.
- h. Nothing in this interlocal agreement shall be construed to give any rights or benefits to anyone other than the City and County.
- i. Nothing contained in this interlocal agreement shall be construed as a waiver by the City or the County of sovereign immunity under Section 768.28, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

BY: _____

RITA PRITCHETT, Board Chairman

As approved by the Board on

ATTEST:

Scott Ellis, Clerk of Court
Brevard County, Florida

CITY OF MELBOURNE, FLORIDA

BY: _____

MICHAEL A. MCNEES, City Manager

ATTEST:

Cathleen A. Wysor, City Clerk

EXHIBIT "A"

Sec. 58-5. - Joint billing of utility charges.

Water charges, sewer charges and reclaimed water charges shall be billed and collected together.

Sec. 58-6. - Custody of deposits.

The city manager shall assign administrative responsibility for the collection and custody of utility security deposit monies. All security deposits held for utility customers shall be maintained in a non-interest bearing account by the city.

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(a) Based on the type of service received, a water security deposit or a water and sewer security deposit is required of and from all customers of the city with exceptions listed below:

- (1) Residential accounts with good payment history as defined by section 58-8.
- (2) Owner accounts with discontinued service as defined by sections 58-133 and 58-243.
- (3) Government agencies.

(b) Security deposits shall be calculated based on equivalent residential connections (ERCs) determined using meter equivalent factors derived from meter capacity information published by the American Water Works Association (AWWA) in the following amounts:

Meter Size (Inches)	Meter ERC Factor	Deposit		
		Water	Sewer	Combined
0.75	1	\$ 60.00	\$ 90.00	\$ 150.00
1.0	3	\$ 180.00	\$ 270.00	\$ 450.00
1.5	5	\$ 300.00	\$ 450.00	\$ 750.00
2.0	8	\$ 480.00	\$ 720.00	\$ 1,200.00
3.0	15	\$ 900.00	\$ 1,350.00	\$ 2,250.00
4.0	25	\$1,500.00	\$ 2,250.00	\$ 3,750.00
6.0	50	\$3,000.00	\$ 4,500.00	\$ 7,500.00
8.0	80	\$4,800.00	\$ 7,200.00	\$12,000.00
10.0	115	\$6,900.00	\$10,350.00	\$17,250.00

- (1) Deposits for individually metered residential customers will be based as one ERC.
- (2) Commercial and multifamily customers' initial minimum deposit will be based on the meter size and the correlating meter ERC factor. Commercial and multifamily customers ERC value will be evaluated annually based on actual water use, and if the actual ERC value exceeds the established ERC minimum factor, then the corresponding deposit may be increased by the

difference in ERC values multiplied by the deposit rate for one ERC, rounded to the nearest dollar.

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Sec. 58-8. - Refund of deposit.

Except as provided below, the deposits required by this chapter shall be applied pro rata against the final bill prepared for termination of the account. If the deposit exceeds the final bill, the balance of the deposit shall be refunded to the customer.

- (1) For individually metered residential customers, the deposit shall be refunded or applied as a credit to the customer account after 12 consecutive months of service if such customer has not been delinquent in the payment of any bill for utility service or has not had checks or bank drafts returned due to insufficient funds. The city reserves the right to require the customer to re-establish a security deposit if the customer does not maintain good payment history.
- (2) For all other customers, the deposit shall be held by the city for the term of service for the account.

Sec. 58-9. - When utility accounts become delinquent; penalty for delinquency.

All utility accounts shall be due upon receipt and shall become delinquent if not paid within 25 days of the billing thereof. All utility accounts not paid within 25 days shall pay a late payment charge of 1.5 percent of the unpaid portion of the utility account, but not less than \$5.00, and shall be subject to disconnection of utility service in accordance with applicable law. The fee will be applied by the city on a monthly basis to any outstanding balance that is considered delinquent by the city in excess of \$10.00.

Sec. 58-11. - Disconnection due to nonpayment; disconnection charge; payment of delinquent account; security deposit.

All past due balances associated with unpaid balances for utility service in excess of \$10.00 shall be paid by the customer within ten days of notification in the subsequent month utility bill as being delinquent or past due. If payment is not received by the city from the utility account within ten days of notification, the city will have the right to discontinue service without further notice. If service is discontinued, the city will not renew or resume service until all past due amounts and any security deposits as required by this chapter are paid in full by the customer. A \$30.00 disconnection charge will be assessed to the utility account.

Sec. 58-12. - Administrative adjustments to utility bills.

The city manager shall be authorized to provide adjustments to water, reclaimed water, and sewer utility bills as he deems appropriate after careful review of the circumstances which resulted in the unusually high consumption on those occasions when the customer's situation does not meet the criteria for an adjustment pursuant to section 58-137 or 58-243(d).

Sec. 58-129. - Penalty for nonpayment of deposit.

Any consumer who fails to pay the required water security deposit shall be terminated as a customer and the supply of water to such customer immediately turned off.

Sec. 58-130. - Prerequisite for commencement of water service.

No water shall be supplied or furnished to new or future consumers of utility service unless and until such consumers shall have first made a request to the city, provided an executed lease agreement or proof of ownership, and established the required security deposit.

Sec. 58-135. - Free service; connection to comply with article.

- (a) No free service or service not in accordance with the established rate schedule shall be furnished. In the event water service or related services are requested in a form which is not covered by this Code, the city manager or his designate shall negotiate or establish a service charge which will be in accordance with the city's covenants with bond holders.
- (b) No person shall make or cause to be made a connection to the water system except as provided herein.

Sec. 58-137. - Adjustments to bills.

The city manager shall be authorized to provide adjustments to water bills resulting from excessive consumption in special and unique situations not involving negligence and the accountholder is prevented from correcting the leak in a timely manner subject to the following conditions:

- (1) Excessive water consumption is defined as water consumption where the billed consumption exceeds the average monthly consumption for the previous six months by at least 100 percent and is a minimum of 10,000 gallons above said monthly average.
- (2) The accountholder shall submit a written request for adjustment within 60 days of the date of the bill for which the adjustment is requested.

Sec. 58-243. - Sewer service rates.

- (d) Adjustments to bills. The city manager or his designee shall be authorized to provide adjustments to

sewer bills resulting from excessive water consumption because of leaks in the water service lines, defective plumbing fixtures, filling of a swimming pool, or unusual circumstances where the water did not enter the sanitary sewer system as waste pursuant to the following conditions:

- (1) Excessive water consumption is defined as water consumption resulting from one of the above described causes, where the billed consumption exceeds the average monthly consumption for the previous six months by at least 100 percent and is a minimum of 10,000 gallons above said monthly average.
- (2) The account holder shall submit a written request for adjustment within 60 days of the date of the bill for which adjustment is requested.
- (3) The account holder must establish that the water did not flow through the sanitary sewer system.
- (4) An adjustment to a sewer bill has not been granted in the previous 12 months.
- (5) In the event the excessive water consumption crosses two billing cycles, the calculation for the adjustment shall be based upon the average monthly consumption which exceeds two times the average monthly consumption for the previous six months pursuant to the limitations described in subsection (d)(1) of this section. An adjustment that is provided in this subsection shall only be authorized when the customer demonstrates that corrective action is taken within ten days of the billing date when the excessive consumption first occurred.

Sec. 58-247. - Billing; collection; reconnection; free service; connection to comply with article.

- (a) Bills for the monthly sewer service charge levied by this article shall be submitted and paid monthly along with and at the same time as the monthly water bill. If any monthly bill for sewage disposal service shall be unpaid after the water bill with which it was submitted is overdue, the water service to the premises and the sewer connection to the premises may be discontinued and disconnected and shall not be reconnected until all past due sewage disposal fees are fully paid.
- (b) No free service or service not in accordance with the established rate schedule shall be furnished. In the event sewer service or related services are requested in a form which is not covered by this Code, the city manager or his designate shall negotiate or establish a service charge which will be in accordance with the city's covenants with bond holders.
- (c) No person shall make, or cause to be made, a connection to the sewer system except as provided herein.