



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COMMISSION MEETING JULY 11, 2023

**6:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Commission Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

- 1. CALL TO ORDER BY MAYOR**
- 2. ROLL CALL BY CITY CLERK**
- 3. PRAYER**
- 4. PLEDGE OF ALLEGIANCE**
- 5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:**
 - A. Proclamation for LJ Kuzmovich
- 6. APPROVAL OF MINUTES**
 - A. City Commission Minutes June 27, 2023
- 7. CONSENT AGENDA:**
 - A. Mutual aid agreement for Coastal Crisis Negotiations Team

8. OLD BUSINESS:

9. NEW BUSINESS:

A. Ordinance 2023-06 Gas Franchise Agreement

B. Consideration to cancel the August 8, 2023 City Commission Meeting

10. REPORTS OF THE CITY ATTORNEY:

11. REPORTS OF THE CITY MANAGER:

12. COUNCIL COMMENTS:

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-7635364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 711 or 1 8009558771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

MINUTES
CITY COMMISSION MEETING
June 27, 2023
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

Staff: City Manager Kurt Swartzlander, City Clerk Cheri Schwab, City Attorney Becky Vose, Community Services Director Stewart Cruz, Finance Director Lory Irwin, Economic Development and Public Affairs Director Nancy Maddox, and Public Safety Director Michael Fowler.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Proclamation for Parks and Recreation Month

Mayor Miller read the proclamation stating July was Parks and Recreation month.

6. APPROVAL OF MINUTES

A. City Commission Minutes June 13, 2023

COMMISSIONER MEL LINDAUER moved, seconded by COMMISSIONER RICHARD BRYAN to Approve the City Commission Minutes of June 13, 2023.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

B. City Commission Workshop Minutes June 13, 2023

COMMISSIONER MEL LINDAUER moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve the City Commission Workshop Minutes of June 13, 2023.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

7. **CONSENT AGENDA:**

A. Public Safety May report

B. Community Services Department Monthly Report - May 2023

C. May 2023 Executive Summary Report

COMMISSIONER CHRIS CONOMOS moved, seconded by VICE MAYOR MICHAEL POLITIS to Approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

8. **OLD BUSINESS:**

A. Ordinance 2023-04: Voluntary Annexation - 3038 S. Peninsula Drive

Attorney Becky Vose read the ordinance by title. City Planner Noel Eaton presented a brief staff report stating this was a voluntary annexation. The property is a single family residence and will remain so. All due public notice had been given and staff recommended approval.

COMMISSIONER RICHARD BRYAN moved, seconded by COMMISSIONER MEL LINDAUER to Adopt Ordinance 2023-04 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

B. Ordinance 2023-05: Voluntary Annexation - 3040 S. Peninsula Drive

Attorney Becky Vose read the ordinance by title. City Planner Noel Eaton presented a brief staff report stating this was a voluntary annexation. The property is a single family residence and will remain so. All due public notice had been given and staff recommended approval.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER MEL LINDAUER to Adopt Ordinance 2023-05 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

9. NEW BUSINESS:

A. Consideration of Voting Delegate for Annual Conference

Commissioner Richard Bryan nominated Commissioner Mel Lindauer to be the voting delegate in August at the annual conference.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve Commissioner Mel Lindauer as Voting Delegate for the Annual Conference.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

B. Consideration of Chris Pollard for Alternate Member on Planning & Zoning Board

COMMISSIONER CHRIS CONOMOS moved, seconded by COMMISSIONER MEL LINDAUER to Approve Chris Pollard for Alternate Member on the Planning & Zoning Board.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Commissioner Mel Lindauer, Commissioner Richard Bryan, Vice Mayor Michael Politis, Commissioner Chris Conomos

10. REPORTS OF THE CITY ATTORNEY:

Attorney Vose had no additional items for comment.

11. REPORTS OF THE CITY MANAGER:

City Manager Kurt Swartzlander announced that both Mayor Miller and Nancy Maddox won awards at the recent Volusia League of Cities Annual Banquet. The mayor won the Elected Official of the year and Ms. Maddox won the Economic Enrichment Award. Mayor Miller was also named a Home Town hero for the second year in a row. Commissioner Richard Bryan was named for the third consecutive year. The city has been awarded the Certificate of Achievement in Excellence for 2021 in regards to financial reporting. The Public Safety Department will receive their Excelsior status for Accreditation later this week at a ceremony in Orlando. The City Manager provided an updated non-conforming sign list to the commission. Finally, he reported that the new crosswalk in front of Peck Park had begun construction.

12. COUNCIL COMMENTS:

Mayor Miller showed pictures of recent seawall updates for beachfront properties. She announced that the hurricane restoration reimbursement grant from the Dept. of Environmental Protection would be extended until July 2024. The grant is available for single family residents and condo owners. Comm. Bryan provided a brief update on coastal properties. He felt that approximately 60 properties would not have permanent armoring for the next hurricane season. Comm. Lindauer was very impressed with the monthly financial report that showed an increase in interest earned. Vice Mayor Politis provided an update to last month's TPO meeting. Three projects that involve Interstate 95 will move forward with funding.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

Kristen Johansson, representing the Port Orange/South Daytona Chamber of Commerce, thanked the commission for their support of the grand re-opening of the chamber annex. The annex is both a welcome center for visitors to the area along with a co-op space for small businesses in the city who wish to volunteer their time. Upcoming chamber events were mentioned along with the 2023 Leadership program.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

There were no additional items added for the next agenda.

15. ADJOURNMENT:

The meeting ended at 6:46 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
KURT D. SWARTZLANDER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY COMMISSION AGENDA MEMORANDUM JULY 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Mike Fowler, Public Safety Director
PREPARED BY: Mike Fowler, Public Safety Director
SUBJECT: Mutual aid agreement for Coastal Crisis Negotiations Team

SYNOPSIS:

The cities of Daytona Beach Shores, Port Orange, South Daytona, New Smyrna Beach, and Edgewater share a crisis negotiations team to respond to police calls that require negotiation (i.e. hostage situations, barricaded subjects). This agreement adds the cities of Ormond Beach and Holly Hill to the agreement.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The above mentioned cities have engaged in a cooperative agreement in which highly trained officers work and train together to address incidents requiring crisis negotiations to include: barricaded subjects and/or hostage negotiations and rescues, terrorist acts involving barricaded subjects and/or hostages, suicide threats, active assailants, civil unrest events, and/or any other situations where lives are endangered and negotiations may resolve the incident without injury to those involved.

The primary responsibility of the team is to provide a systematic approach to saving lives. As such, the specific circumstances will dictate the negotiations necessary to adequately protect the public and the team members involved. Resolution of some incidents may require the intervention and specific application of various levels of force by the associated regional SWAT Team members up to, and including, lethal force.

The team trains and works in conjunction with the Southeast Volusia Regional SWAT Team of which Daytona Beach Shores is a member.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval.

SUGGESTED MOTION:

I move that we approve the item as presented.

ATTACHMENT: 1. CCNT Mutual Aid Agreement 2023

**COASTAL CRISIS NEGOTIATIONS TEAM (CCNT) MUTUAL AID AGREEMENT BETWEEN
THE CITIES OF PORT ORANGE, DAYTONA BEACH SHORES, EDGEWATER, NEW
SMYRNA BEACH, ORMOND BEACH, HOLLY HILL AND SOUTH DAYTONA**

WITNESSETH

Whereas, the Cities of Port Orange, Daytona Beach Shores, Edgewater, New Smyrna Beach, Ormond Beach, Holly Hill and South Daytona (collectively referred to herein as the “Cities”) are so located in relation to each other that it is to the advantage of each to share specific law enforcement services and resources to adequately respond to:

- (1) Intensive law enforcement situations including, but not limited to, emergencies as defined in Section 252.34, *Florida Statutes*; and
- (2) Exceptional situations, circumstances and events requiring personnel with special skills, training and equipment.

; and

Whereas, the Cities have the authority under Section 23.12 through Section 23.127, et seq., *Florida Statutes*, the “*Florida Mutual Aid Act*,” to enter into a combined mutual aid agreement for law enforcement service which:

- (1) Provides for rendering of assistance in a law enforcement emergency, as defined in Section 252.34, *Florida Statutes*; and
- (2) Permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines.

; and

Whereas, the Cities desire to form a Joint Crisis Negotiations Team (known as the Coastal Crisis Negotiations Team “CCNT”), and hereafter referred to as “the Team”, consisting of highly dedicated law enforcement personnel from each of the Cities with special skills, training and equipment to respond to exceptional situations, circumstances, and events requiring action by the Team.

NOW, THEREFORE, the Cities agree as follows:

SECTION 1. DEFINITIONS:

Incident Commander: The Chief of Police, or their designee, of the jurisdiction in which an incident requiring emergency response is occurring.

CCNT: The Team is made up of a group of Team Members who are specially trained, equipped and readily available to respond to high risk/critical incidents requiring crisis intervention or negotiation efforts that are beyond the scope and training of law enforcement

personnel generally assigned to routine patrol or law enforcement functions. Team Members shall, when acting in the capacity of the Team, be under the direct supervision of the Team Commander. The Team supports each of the Cities with a response to critical incidents requiring crisis intervention or negotiations. High risk/critical incidents requiring crisis intervention or negotiations include, but are not limited to:

- (a) Barricaded subjects and/or hostage negotiations and rescues.
- (b) Terrorist acts involving barricaded subjects and/or hostages.
- (c) Suicide threats.
- (d) Active assailants
- (e) Civil unrest events
- (f) Any other situations where lives are endangered and negotiations may resolve the incident without injury to those involved.

The primary responsibility of the Team is to provide a systematic approach to saving lives. As such, the specific circumstances will dictate the negotiations necessary to adequately protect the public and the Team Members involved. Resolution of some incidents may require the intervention and specific application of various levels of force by the associated regional SWAT Team Members up to, and including, lethal force.

Team Commander: A Team Member designated by a majority vote of each of the Chiefs of Police for the Cities, to act as the Team Commander. The Team Commander is accountable for effectively directing, controlling, and coordinating the operational duties and related administrative tasks of the Team. During an unusual occurrence or high-risk incident, the Team Commander shall report directly to the Chief of Police, or designee, within the jurisdiction in which the Team is conducting an operation. The Team Commander shall maintain direct supervision of operational activities of Team Members.

Team Leaders: Members of the Team designated by the Team Commander to act as Team Leader. The Team Leader shall act as the Team's Commander in the absence of the Team Commander. The Team Leader shall, in concert with the Team Commander, establish a response plan for each activation of the Team and be responsible for the supervision and deployment of Team Members.

Team Member: A sworn officer trained in Hostage Negotiations, as well as additional courses of instruction as they become available to enhance their capabilities. Only members assigned to the Team by their respective Chief of Police shall be eligible to serve on the Team as a Team Member. Team Members will be assigned a specific duty/task and/or responsibility by the Team Commander or Team Leader at the scene of each activation of the Team.

SECTION 2. PROVISIONS FOR OPERATIONAL ASSISTANCE:

- (a) The Cities hereby approve and enter into this Agreement whereby each of the Cities agrees to contribute the personnel, equipment, facilities and resources necessary for the Team to perform the functions agreed upon by the Cities and outlined in this Agreement. If one of the Cities is experiencing a law enforcement issue within the scope of the Team's expertise, that city may call upon the Team for assistance.
- (b) Each of the Cities will maintain a consistent policy and procedure directive as it relates to the requirements, operation, deployment, training, and equipment of the Team.
- (c) When activated, the Team Commander reports to the Incident Commander or the on-scene supervisor, unless otherwise determined by the Chief of Police, or designee, in order to conduct Team operations within the jurisdiction in which the Team is activated..
- (d) All Team operations shall be consistent with the guidelines outlined by the National Council of Negotiation Associations (NCNA) and FBI Crisis Negotiation Unit (CNU).
- (e) The Team Commander shall be responsible for the deployment of the Team, including the Team's equipment, decision making, and resolution of the incident.
- (f) Unless the Team Commander relinquishes control to another law enforcement officer who is not a Team Member, no other person except the Chief of Police within the jurisdiction in which the Team is conducting an activation , or designee, who is not the Team Leader or Team Commander, will attempt to direct, supervise, or control any element or Team Member.
- (g) In the event of a combined response of both the Team and the associated Regional SWAT Team, the Team Commander, or designee, shall coordinate efforts with the Team Commander of the associated Regional SWAT Team to ensure efficiency of the activation/operation and safety of all parties involved.
- (h) Consistent with NCNA guidelines, the Team shall conduct regular and reoccurring training. Each of the Cities shall jointly develop training lesson plans and schedules and schedule the training sessions. All training shall be performance oriented and related to tasks and missions performed by the Team. On occasion, Team training may take place in conjunction with other training within one of the Cities. Should a situation arise that prevents the Team from completing the full requirements in a given quarter, the reason shall be documented in a memorandum addressed to the Chiefs of Police of the Cities. Each of the Cities shall ensure that all Team Members are properly trained and certified in the use of special equipment. Joint training of the Team shall be

- coordinated and implemented by the Chiefs of Police of the Cities or their designees. A minimum of 40 hours of training will be completed by each Team member on an annual basis. Training records shall be completed by the Team Commander, or designee and maintained for use in Accreditation standards or other administrative functions for each of the Cities, in addition to in accordance with law.
- (i) Each of the Cities shall conduct an annual inventory and inspection of all Team equipment and supplies to ensure operational readiness and provide a copy to each of the other Cities.
 - (j) Each of the Cities shall ensure that all Team Members have the required equipment for the operations to which the Team may be assigned.
 - (k) The Team Leader shall prepare an after-action report on all activations that involve the deployment of the Team. Such records shall be kept by the Team Commander with copies sent to the designated records liaison in each of the Cities and maintained in accordance with law.
 - (l) Requests to utilize the Team for a planned event may be made by any of the Cities by its Chief of Police. Final approval for the Team deployment shall be made by the Team Commander.
 - (m) At a minimum, each of the Cities shall supply its Team Members with the following equipment:
 - (1) Ballistic vest
 - (2) Handheld radio with operational frequencies
 - (3) Handgun
 - (4) Handcuffs
 - (5) One short sleeve CCNT shirt
 - (6) One long sleeved CCNT shirt with the word “negotiator” along the left sleeve and the acronym “CCNT” along the right sleeve for use under external ballistic carriers
 - (n) As a whole, the Cities will ensure Team members of the CCNT will have access to the following equipment for use in activations:
 - (1) Throw phone(s)
 - (2) Cellular device for use in communications
 - (3) Computer with internet capabilities for ease of access to social media
 - (4) Ballistic shield
 - (5) Tool kit containing at a minimum: bolt cutters, wire snips, pry bar or halogen tool, hammer, standard screwdriver set and Phillips screwdriver set.
 - (6) Bullhorn(s)

SECTION 3. PROVISIONS FOR VOLUNTARY COOPERATION:

The Cities hereby approve and enter into this Agreement whereby each of the Cities may request and render voluntary law enforcement cooperation and assistance across jurisdictional lines for the incidents outlined in this Agreement and related law enforcement situations.

SECTION 4. PROCEDURE FOR REQUESTING ASSISTANCE:

- (a) If one of the Cities is in need of emergency assistance as set forth above, it shall notify the Team Commander or Team Leader and provide appropriate information (e.g., nature of the law enforcement assistance requested). Requests for assistance will be made through Central Dispatch to be sent via the Everbridge system.
- (b) Each of the Cities is responsible for tracking mutual aid requests made or received in accordance with this Agreement and may revise the contact person designated above by advising the other Cities in writing.
- (c) The Chief of Police in whose jurisdiction assistance is being rendered may determine who is authorized to lend assistance in their jurisdiction, for how long such assistance is authorized, and for what purpose such authority is granted. This authority may be granted either verbally or in writing as the particular situation dictates.

SECTION 5. COMMAND AND SUPERVISORY RESPONSIBILITIES:

- (a) Whenever a Team Member is rendering aid pursuant to this Agreement, they shall abide by, and be subject to, the rules and regulations, personnel policies, general orders, and standard operating procedures of their employer. If any such rule, regulation, personnel policy, general order, or standard operating procedure is contradicted, contravened, or otherwise in conflict with a direct order of a superior officer of one of the requesting Cities, then such rule, regulation, policy, general order, or standard operating procedure of their employer shall control and supersede the direct order.
- (b) Whenever there is cause to believe that a complaint has arisen as a result of Team action as it may pertain to this Agreement, the city in which the Team operated and gave rise to the complaint shall be responsible for documenting the complaint to ascertain at a minimum:
 - (1) The identity of the complainant.
 - (2) An address where the complaining party can be contacted.
 - (3) The specific allegation.
 - (4) The identity of the employees accused without regard to City affiliation.

- (c) The city responsible for documenting the complaint shall expeditiously provide the city or cities employing the subject officer(s) with this information, along with a copy of all applicable documentation. The City employing the person who is the subject of the complaint shall be responsible for conducting an appropriate review.

SECTION 6. LIABILITY:

Each of the Cities engaging in any mutual cooperation and assistance pursuant to this Agreement agree to assume responsibility for the acts, omissions, or conduct of such City's own employees while engaged in rendering such and pursuant to this Agreement, subject to the provisions of Section 768.28, *Florida Statutes*, where applicable. None of the Cities waive any sovereign immunity protection provided by law. Team Members are responsible for their own safety as well as the safety of other Team Members, and the public. This Agreement shall in no event confer upon any person, corporation, partnership, or other entity, including the Cities hereto, the right to damages or any other form of relief against any of the Cities in this Agreement for operations or omissions hereunder. Any property damage occurring during an activation, except as provided in Section 7 (b), is the responsibility of the city in whose jurisdiction the Team was operating. Uses of force by a Team Member shall be investigated by the agency of which the Team Member is employed.

SECTION 7. POWERS, PRIVILEGES, IMMUNITIES, AND COSTS:

- (a) Pursuant to the provisions of Section 23.127 *Florida Statutes*, a Team Member who renders aid outside the city in which the Team Member is employed but inside the state in accordance with this Agreement shall have the same powers, duties, rights, privileges, and immunities as if performing duties inside the Team Member's political subdivision in which normally employed.
- (b) Each of the Cities that furnishes equipment pursuant to this Agreement shall bear the cost of loss or damage to that equipment and must pay any expense incurred in the operation and maintenance of that equipment.
- (c) The Cities shall be responsible for providing compensation and benefits to their respective employees providing services hereunder, including but not limited to salary, overtime, health insurance, disability insurance, life insurance, liability insurance, workers compensation, pension/retirement, vacation time, sick leave, and any amounts due for personal injury or death.
- (d) The privileges and immunities from liability; exemption from laws, ordinances, and rules; and all pension, insurance, relief, disability, workers' compensation, salary, death, and other benefits that apply to the activity of an employee of a City when performing the employee's duties within the territorial limits of the employee's City apply to the employee to the same degree, manner, and extent while engaged in the performance of the employee's duties extraterritorially under the provisions of this Mutual Aid Agreement. The provisions of this Agreement shall apply with equal effect to paid, volunteer, and auxiliary employees.

- (e) Nothing herein shall prevent any of the Cities from seeking supplemental appropriations from the governing authority having budgeting jurisdiction, or funds from other available sources, such as grants, to reimburse any of the Cities for any actual costs or expenses incurred by its performing hereunder.

SECTION 8. TERM:

This Agreement shall take effect upon execution and approval by the hereinafter named officials and shall continue in full force and effect through **September 30, 2027**, unless otherwise terminated as provided for herein.

SECTION 9. TERMINATION:

Any of the Cities may terminate its participation in this Agreement for convenience upon delivery of written notice to the other Cities no less than 90 days before the date of termination. The liability provisions of this Agreement shall survive any such termination. Termination by any one or more of the Cities does not impact the effectiveness of this Agreement as to the remaining Cities.

SECTION 10. RELATION TO OTHER AGREEMENTS:

Once this Agreement is fully executed, it shall effectively repeal and replace the current Southeast Volusia Regional Negotiations Team (SEVRNT) Mutual Aid Agreement dated _____. Nothing herein is intended to abrogate any other agreements, or portions thereof, between the Cities.

SECTION 11. MISCELLANEOUS PROVISIONS:

- (a) Each of the Cities shall adopt and enforce written policy that is consistent with this Agreement and applicable law. Each of the Cities shall also train its law enforcement officers on extraterritorial jurisdiction including, but not limited to, the parameters of mutual aid agreements.
- (b) All Team Members, regardless of rank or position, must maintain acceptable standards of performance.
- (c) All Team Members, regardless of rank or position, must maintain firearms qualification by passing the CJSTC handgun course.
- (d) All Team Members must successfully complete a Hostage Negotiations Course.
- (e) Nothing in this Agreement shall be construed as any transfer or contracting away of the powers or functions of any one of the Cities to the other.
- (f) This Agreement does not grant law enforcement powers for purposes of law enforcement related off-duty employment.

- (g) In the event of a conflict between the provisions of this Agreement and the "*Florida Mutual Aid Act*," the provisions of the *Florida Mutual Aid Act* shall control.
- (h) This Agreement contains the entire understanding between the Cities and shall not be renewed, amended, or extended except in writing.
- (i) This Agreement shall be construed in accordance with Florida law. The venue of any litigation arising hereunder shall be Volusia County, Florida.

IN WITNESS WHEREOF, the Cities have caused this Agreement to be executed by the undersigned persons as duly authorized.

SIGNATURE PAGES FOLLOWS

Attest:

CITY OF DAYTONA BEACH SHORES

Kurt Swartzlander, City Manager
Date: _____

Michael Fowler
Director of Public Safety

Approved as to form and legality:

Becky Vose, City Attorney

Attest:

CITY OF EDGEWATER

Glenn Irby, City Manager

Date: _____

Approved as to form and legality:

Aaron Wolfe, City Attorney

Joe Mahoney
Chief of Police

Attest:

CITY OF NEW SMYRNA BEACH

Khalid Resheidat, City Manager
Date: _____

Eric Feldman
Chief of Police

Approved as to form and legality:

Carrie Avallone
City Attorney

Attest:

CITY OF SOUTH DAYTONA

James Lester Gillis Jr., City Manager

Date: _____

Approved as to form and legality:

Wade Vose, City Attorney

Mark Cheatham

Chief of Police

Attest:

CITY OF PORT ORANGE

Wayne Clark, City Manager

Date: _____

Approved as to form and legality:

Matthew J. Jones, City Attorney

Manuel "Manny" Marino
Chief of Police

Attest:

CITY OF ORMOND BEACH

Joyce Shanahan, City Manager

Date: _____

Approved as to form and legality:

Randy Hayes, City Attorney

Jesse Godfrey

Chief of Police

Attest:

CITY OF HOLLY HILL

Joseph A. Forte, City Manager

Date: _____

Approved as to form and legality:

Scott Simpson, City Attorney

Jeff Miller
Chief of Police



CITY COMMISSION AGENDA MEMORANDUM JULY 11, 2023 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Lory Irwin, Finance Director
PREPARED BY: Lory Irwin, Finance Director
SUBJECT: Ordinance 2023-06 Gas Franchise Agreement

SYNOPSIS:

TECO Gas (People's Gas) is the provider of gas in the City of Daytona Beach Shores. The agreement between People's Gas and the City is due for renewal and according to the City Charter, Sec. 2.18.(d)(3) renewals of franchise agreements must be done by ordinance.

FISCAL IMPACT STATEMENT:

BACKGROUND:

Sec. 2.18.(d)(3) of the City Charter states that renewals of franchise agreements must be done by ordinance. The City, with Ordinance 91-3 enacted a gas franchise agreement with People Gas that was renewed with Ordinance 2002-32. The agreement is up for renewal and is being presented to commission in Ordinance 2023-06.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2023-06.

SUGGESTED MOTION:

Move to approve Ordinance 2023-06

ATTACHMENT: 1. Ordinance 2023_06 Gas Franchise Final

ORDINANCE 2023-06

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, INC., ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING FOR CONFLICTS; SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE 2002-32.

WHEREAS, the City of Daytona Beach Shores finds it in the public interest to ensure that areas within its limits are adequately provided with high-quality gas services, and

WHEREAS, the City of Daytona Beach Shores finds it in the public interest to retain regulatory authority over the provision of gas, to the extent allowed by law, and

WHEREAS, the City of Daytona Beach Shores finds it in the public interest to retain control over the use of public rights of way by providers of gas to ensure against interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right of way space, and to protect the public investment in right of way property; and

WHEREAS, Peoples Gas System and the City of Daytona Beach Shores desire to enter into a franchise agreement for a period of ten (10) years followed by two (2) consecutive, automatic extension periods of ten (10) year terms commencing from the date provided herein; and

WHEREAS, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, THAT:

SECTION 1: DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meanings given herein.

- A. “Customer” shall mean any Person served by the Company within the corporate limits of the City.

- B. "City" shall mean the City of Daytona Beach Shores, Volusia County, Florida, its successors and assigns.
- C. "Company" shall mean Peoples Gas System, Inc., a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement as passed and adopted by the City and accepted by the Company as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- I. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premises. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- J. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place, or other right-of-way that is owned by the City.

SECTION 2: GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3: TERM

The Franchise shall be for an initial period of ten (10) years from the effective date of this Ordinance, followed by two (2) consecutive, automatic extension periods of ten (10) year terms, unless one of the parties provides written notice to the other not less than 180 days' prior to the expiration of the then current term that it does not want the Franchise to automatically renew. If either party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the then current term.

SECTION 4: ASSIGNMENT

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B. Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the

operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5: CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 6: USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Right-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue or, if applicable, deny permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this Franchise Agreement, the City shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Right-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Right-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the

exercise of its police power, provided, however, that the City shall not pass any ordinance or regulation that results in a material change to the rights or obligations of the Company under the Franchise Agreement.

SECTION 7: MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8: LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 9: CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate, or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation, or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate, or disconnect any portion of its Distribution System or in any way

to alter the placement or location of the Distribution System to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection, or alteration to reimburse the Company for any loss, cost, or expense caused by or arising out of such removal, relocation, disconnection, or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10: FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the Effective Date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors, or assigns, shall pay to the City or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the City ("Franchise Fee"). The Franchise ~~f~~Fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month. Company represents that the Franchise Fee provided for herein (6%) is currently equal to or higher than any Franchise Fee payable by Company to any Florida governmental agency. In the event Company, its successors, or assigns, ever enters into a Franchise Agreement with any Florida governmental agency providing for a Franchise Fee payment higher than, or in excess of, that provided in this Franchise Agreement, (higher than or in excess of 6%), the Company shall immediately thereafter notify the City of that fact, and this Franchise Agreement shall, as of the following month after notification, be automatically amended to equal that higher Franchise Fee.

SECTION 11: IDENTIFICATION OF CITY RESIDENTS

No less than thirty (30) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation, or consolidation, or upon the Company's request. The Company shall be relieved of any obligation to pay franchise fees to the extent the City has failed to provide information in accordance with this Section 11.

SECTION 12: ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13: INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the

corporate limits of the City as they currently exist or may exist in the future. Each such policy shall provide for the minimum sum of \$1,000,000.00 for injury or death to any one person, and for the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one incident or accident, and for the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Franchise Agreement. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Company shall notify the Clerk of the City in writing, promptly upon any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14: INDEMNIFICATION:

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses, and liabilities incurred by the City in connection with any such claim, suit, or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however,** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits,

actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 15: TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination of this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service by certified U.S. mail of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, then sixty (60) days to present a plan reasonably satisfactory to the City to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17: SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Franchise Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City, or any other governmental or regulatory body of a law, rule, regulation, or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18: GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 19: CONFLICTS

Ordinance 2002-32 is hereby repealed and all ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 19: EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and

adoption hereof including evidence of insurance, as set forth in Section 13, presented by the Company.

PASSED AND CERTIFIED AS TO PASSAGE this ____ day of _____, 2023.

CITY OF DAYTONA BEACH SHORES, FL

By: _____
Name: Nancy Miller
Title: MAYOR

By: _____
Name: Kurt Swartzlander
Title: City Manager

ATTEST: _____
Name: Cheri Schwab
Title: CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

Accepted this ____ day of _____, A.D. 2023

PEOPLES GAS SYSTEM, INC.

By: _____
Name: Tim O'Connor
Title: VICE PRESIDENT, OPERATIONS,
SUSTAINABILITY & EXTERNAL
AFFAIRS

By: _____
Name: Helen Wesley
Title: PRESIDENT & CEO



**CITY COMMISSION AGENDA MEMORANDUM
JULY 11, 2023 AGENDA**

TO: Honorable Mayor and Members of the City Commission

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration to cancel the August 8, 2023 City Commission Meeting

SYNOPSIS:

Due to members attending the Florida League of Cities Annual Meeting the week of August 7th, consideration to cancel the August 8th meeting.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

I move to cancel the regular City Commission Meeting of August 8, 2023.

ATTACHMENT: None