



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COMMISSION MEETING

APRIL 9, 2024

**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 Chambers. 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:**
- 6. APPROVAL OF MINUTES**
 - A. City Commission Minutes March 26, 2024
- 7. CONSENT AGENDA:**
 - A. General Engineering Services RFQ Selection & Authorization of City Manager to Execute Master Agreement For Continuing Professional Services

- B. Approval of St. Kitts Park Rock Revetment and Beach Access Stairs Agreement: East Coast Marine Construction & Design, Inc.
- C. Approval of Priority Sites Dune Walkover Reconstruction Agreement: Greg Reynolds Construction, LLC.

8. OLD BUSINESS:

9. NEW BUSINESS:

- A. Ordinance 2024-08: Voluntary Annexation, 3635 Cardinal Boulevard
- B. Ordinance 2024-09: Voluntary Annexation, 129 Esmeralda Avenue
- C. Ordinance 2024-10: Voluntary Annexation, 110 Van Avenue

10. CITY ATTORNEY COMMENTS

11. CITY MANAGER COMMENTS

12. COMMISSION 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
March 26, 2024
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card **Excused:** Commissioner Stephan Dembinsky.

Staff: City Manager Kurt Swartzlander, City Clerk Cheri Schwab, City Attorney Paul Waters, 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. September 30, 2023 Audit Presentation by James Hallaran, James Moore & Co.

James Hallaran, from James Moore, presented the audit report for 2023. They provided an unmodified opinion with no material weaknesses in internal control over the financial reporting. The fund balances were reviewed as of September 30, 2023. It was noted that the city was awarded the GFOA Certificate of Achievement for Excellence in Financial Reporting for the second consecutive year.

6. APPROVAL OF MINUTES

A. City Commission Minutes February 27, 2024

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve the City Commission Minutes of February 27, 2024.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

7. CONSENT AGENDA:

- A. PS February monthly report
- B. Approval for Volusia County Mosquito Control
- C. Community Services Department Monthly Report - February 2024
- D. Executive Financial Summary Report for February 2024
- E. Approval of Agreement to Piggyback Services Contracted by Sourcewell: City Hall Floor Treatment Project

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 = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

8. OLD BUSINESS:

- A. Ordinance 2024-02: A Request by B&Y, Inc. To Vacate And Abandon A Portion of Fraile Street (Alley) Right-of-Way

Attorney Waters read the ordinance by title only. There were no additional comments or concerns.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER MARK CARD to Adopt Ordinance 2024-02 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

- B. Ordinance 2024-04: Daytona Beach Shores, LLC Development Agreement - 3411 S. Atlantic Avenue, Serena by the Shores.

Attorney Waters ready the ordinance by title only. there were no additional comments or concerns.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Adopt Ordinance 2024-04 on second reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

9. QUASI-JUDICIAL HEARING

- A. Ordinance 2024-07: Rezoning application for recently annexed property located at 3215 La Paloma Avenue

Attorney Waters read the ordinance by title only. The City Clerk swore in all witnesses for the hearing. There was no ex-parte communication by the commission. Community Services Director Stewart Cruz provided a short staff report on the item. It was explained the proposed ordinance would rezone the recently annexed property as required per Florida Statutes. The zoning would change from the county's R9 designation to the city's RSF2 (single family residential). Aerial views of the property and surrounding neighborhood were shown. All the criteria for the application have been met and all due public notice was satisfied. Both the Planning & Zoning Board and staff recommended approval.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve Ordinance 2024-07 on first reading.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

10. NEW BUSINESS:

- A. Ordinance 2024-06: Comprehensive Plan Future Land Use Map Amendment for recently annexed single-family residential property located at 3215 La Paloma Avenue

Attorney Waters read the ordinance by title only. Director Cruz explained that this was a recently annexed property and state law requires that the city assign a future land classification use. The property is a single-family residence. The current county designation is county urban low intensity. The proposed city designation is residential low intensity. All due public notice had been satisfied and both the Planning & Zoning Board and staff recommended approval.

COMMISSIONER CHRIS CONOMOS moved, seconded by COMMISSIONER MARK CARD to Approve Ordinance 2024-06: Comprehensive Plan Future Land Use Map Amendment for recently annexed single-family residential property located at 3215 La Paloma Avenue.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

B. Economic Development Lease Subsidy Grant Application - Walkhart LLC

Community Engagement Director Nancy Maddox provided a brief report. The cafe will be open for breakfast, lunch and dinner. The application was complete and met the required guidelines. The Economic Development Committee met and recommended approval. The co-owners, Shawn Lockhart and Lisa Walker addressed the commission. The cafe is open and they are working on marketing right now.

COMMISSIONER MARK CARD moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve the Economic Development Lease Subsidy Grant for Walkhart LLC.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Michael Politis, Commissioner Chris Conomos, Commissioner Mark Card

11. CITY ATTORNEY COMMENTS

The City Attorney had no additional comments.

12. CITY MANAGER COMMENTS

City Manager Kurt Swartzlander announced that the city had been awarded an appropriation for \$1.3 million to use towards the sewer force main project. The wraps on the FPL boxes should begin within the next few weeks. The contractor has started resurfacing the pickleball courts. That should be completed in the next two weeks.

The City Manager distributed information regarding the county proposing to have paid parking at the county parks. It is unknown what type of impact this will have on city owned parks and side streets. He proposed holding a future workshop to discuss the matter. It was decided to have a workshop on May 14th before the regular City Commission meeting.

13. COMMISSION COMMENTS:

Mayor Miller announced two upcoming events in April; Coffee with the Mayor on April 10th and a concert with food trucks on April 26th. Commissioner Conomos announced that Mulligans Lagoon was now open for miniature golf and pizza. Vice Mayor Politis provided a brief report on the February TPO meeting that he attended.

14. AUDIENCE REMARKS/PUBLIC COMMENTS:

Cassie Rhodes from the Port Orange/South Daytona Chamber of Commerce provided information on upcoming events.

15. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

There were no additional items recommended for the next agenda.

16. ADJOURNMENT:

The meeting ended at 7:03 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
KURT D. SWARTZLANDER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY COMMISSION AGENDA MEMORANDUM APRIL 9, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM:

PREPARED BY: Stewart Cruz, Community Services Director

SUBJECT: General Engineering Services RFQ Selection & Authorization of City Manager to Execute Master Agreement For Continuing Professional Services

SYNOPSIS:

The City's current continuing professional services contracts for engineering services are set to expire. Therefore, in mid-February 2024, the City posted a request for qualifications (RFQ) for general engineering services (RFQ-2024-01). The scope of the services defined in the RFQ is intended for the selected firms to provide a variety of engineering services on an as-needed basis for future City projects and consultation in the engineering fields of sanitary sewer, civil, and transportation, among others.

FISCAL IMPACT STATEMENT:

No fiscal year impact as professional services are included in the current year budget.

BACKGROUND:

The RFQ selection committee met on March 14, 2024 to evaluate the six submissions made and concluded that all firms are qualified and should be retained. If approved, the proposed firms will be engaged through the City's Master Agreement For Continuing Professional Services.

The RFQ selection committee comprised of the following:

1. Stewart Cruz, Community Services Director
2. Tom Brown, Deputy Public Works Director
3. Steve Edmunds, Building Official
4. Kurt Swartzlander, City Manager

LEGAL REVIEW:

RECOMMENDATION:

- 1) Approval of the following engineering firms for continuing professional services with the City: Graef-USA, Inc., Florida Technical Consultants, Kimley-Horn and Associates, Inc., Matthews Design Group, LLC dba Matthews/DCCM, McKim & Creed, and Zev Cohen & Associates, Inc.
- 2) Approval to authorize the City Manager to execute the City's Master Agreement For Continuing Professional Services with the firms selected.

SUGGESTED MOTION:

- 1) Approval of the following engineering firms for continuing professional services with the City: Graef-USA, Inc., Florida Technical Consultants, Kimley-Horn and Associates, Inc., Matthews Design Group, LLC dba Matthews/DCCM, McKim & Creed, and Zev Cohen & Associates, Inc.
- 2) Approval to authorize the City Manager to execute the City's Master Agreement For Continuing Professional Services with the firms selected.

ATTACHMENT:

1. Master Agreement General Engineering - 2024_GRAEF
2. Master Agreement General Engineering - 2024-FTC
3. Master Agreement General Engineering - 2024-Matther-DCCM
4. Master Agreement General Engineering - 2024-Kimley Horn
5. Master Agreement General Engineering - 2024-Zev Cohen
6. Master Agreement General Engineering - 2024 - McKim&Creed

CITY OF DAYTONA BEACH SHORES, FLORIDA
MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES, hereinafter referred to as the “Master Agreement”, is made and entered into this ____ day of _____, 2024, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the “City”, and _____ Graef-USA Inc., hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, Contractor is licensed in the State of Florida to perform the professional services contracted for herein; and

WHEREAS, the City wishes to contract with a Contractor to provide the Scope of Services and products / services based on the terms and subject to the conditions contained herein; and

WHEREAS, Contractor is qualified, willing and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below; and

WHEREAS, On or around _____, 2024, the City advertised a Request for Qualifications, (RFQ # _____), hereinafter referred to as the “RFQ”, which is attached hereto and made a part hereof as EXHIBIT “A” ; and

WHEREAS, at their regularly scheduled meeting on _____, 2024, the City Commission of the City of Daytona Beach Shores voted that the Contractor was qualified, experienced and capable to execute the terms of the RFQ; and

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process;

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

WHEREAS, Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Master Agreement hereby amends and supplements the terms of any prior written agreement between the parties. In the event of a conflict between the terms of the Master Agreement and terms of any prior agreement, the terms of the Master Agreement shall prevail.

2. Compliance with the Requirements of the RFQ. The Contractor shall comply with all requirements of the RFQ including but not limited to those that describe the scope of work, the term of this Master Agreement, fees, and insurance requirements.

3. Work Orders. The City shall independently negotiate Work Orders with Contractor to perform specific projects. All Work Orders shall be governed by the terms contained herein and those requirements of the RFQ.

4. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Master Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

5. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

6. Insurance.

- a. Contractor must maintain such insurance as will fully protect both Contractor and the City from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for professional liability, personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by Contractor, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. The amount of insurance required by this Agreement must not be less than:
- a. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;

- b. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - c. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - d. Professional Liability. Contractor shall maintain Professional liability or equivalent Errors and Omissions Liability, with limits not less than \$1,000,000.00 per claim / occurrence for professional services rendered under this Agreement. If coverage is written on a claims-made basis: a) any retroactive date shall precede the effective date of this Agreement; b) Contractor shall provide certificates of insurance evidencing the required coverage for a period of one year after final payment under this Agreement is made, or provide evidence showing Contractor has obtained a one-year extended reporting period endorsement.
- c. Contractor must furnish the City with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

The insurance coverages procured by Contractor as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Contractor, and any other insurance, or self-insurance available to Contractor will be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor as required herein.

7. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by City specified in this Master Agreement shall not be construed as a waiver of City's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

8. Non-appropriation. City's performance and obligation to pay under this Master Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of this Master Agreement, and this Master Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of this Master Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period this Master Agreement was funded by appropriations.

9. E-Verify Compliance. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

10. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

11. Prohibited Contracting. Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in

government contracting. Pursuant to Section 287.05701, Fla. Stat., the City of Daytona Beach Shores shall not request documentation of or consider a vendor's social, political, or ideological interests when determining if a vendor is a responsible vendor.

12. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Master Agreement and the parties' actions under this Master Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Master Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

13. Waiver of Right to Dispute RFQ Solicitation: By entering into this Master Agreement, contractor hereby waives the right to challenge any inconsistency or irregularity contained within the bid documents, including but not limited to changes and any term or provision related to the selection process, scope of work, price or any other provision contained therein.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: Cheri Schwab, City Clerk

By: _____

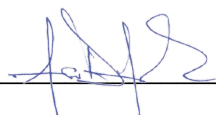
Print Name: _____

Title: _____

CONTRACTOR.:

APPROVED AS TO FORM

Gretchen R.H. Becky Vose
City Attorney

By:  _____

Print Name: Scott Hinrichs, PE

Title: Principal, VP

CITY OF DAYTONA BEACH SHORES, FLORIDA
MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES, hereinafter referred to as the “Master Agreement”, is made and entered into this ____ day of _____, 2024, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the “City”, and _____, hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, Contractor is licensed in the State of Florida to perform the professional services contracted for herein; and

WHEREAS, the City wishes to contract with a Contractor to provide the Scope of Services and products / services based on the terms and subject to the conditions contained herein; and

WHEREAS, Contractor is qualified, willing and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below; and

WHEREAS, On or around _____, 2024, the City advertised a Request for Qualifications, (RFQ # _____), hereinafter referred to as the “RFQ”, which is attached hereto and made a part hereof as EXHIBIT “A” ; and

WHEREAS, at their regularly scheduled meeting on _____, 2024, the City Commission of the City of Daytona Beach Shores voted that the Contractor was qualified, experienced and capable to execute the terms of the RFQ; and

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process;

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

WHEREAS, Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Master Agreement hereby amends and supplements the terms of any prior written agreement between the parties. In the event of a conflict between the terms of the Master Agreement and terms of any prior agreement, the terms of the Master Agreement shall prevail.

2. Compliance with the Requirements of the RFQ. The Contractor shall comply with all requirements of the RFQ including but not limited to those that describe the scope of work, the term of this Master Agreement, fees, and insurance requirements.

3. Work Orders. The City shall independently negotiate Work Orders with Contractor to perform specific projects. All Work Orders shall be governed by the terms contained herein and those requirements of the RFQ.

4. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Master Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

5. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

6. Insurance.

- a. Contractor must maintain such insurance as will fully protect both Contractor and the City from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for professional liability, personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by Contractor, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. The amount of insurance required by this Agreement must not be less than:
- a. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;

- b. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - c. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - d. Professional Liability. Contractor shall maintain Professional liability or equivalent Errors and Omissions Liability, with limits not less than \$1,000,000.00 per claim / occurrence for professional services rendered under this Agreement. If coverage is written on a claims-made basis: a) any retroactive date shall precede the effective date of this Agreement; b) Contractor shall provide certificates of insurance evidencing the required coverage for a period of one year after final payment under this Agreement is made, or provide evidence showing Contractor has obtained a one-year extended reporting period endorsement.
- c. Contractor must furnish the City with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

The insurance coverages procured by Contractor as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Contractor, and any other insurance, or self-insurance available to Contractor will be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor as required herein.

7. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by City specified in this Master Agreement shall not be construed as a waiver of City's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

8. Non-appropriation. City's performance and obligation to pay under this Master Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of this Master Agreement, and this Master Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of this Master Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period this Master Agreement was funded by appropriations.

9. E-Verify Compliance. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

10. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

11. Prohibited Contracting. Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in

government contracting. Pursuant to Section 287.05701, Fla. Stat., the City of Daytona Beach Shores shall not request documentation of or consider a vendor's social, political, or ideological interests when determining if a vendor is a responsible vendor.

12. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Master Agreement and the parties' actions under this Master Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Master Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

13. Waiver of Right to Dispute RFQ Solicitation: By entering into this Master Agreement, contractor hereby waives the right to challenge any inconsistency or irregularity contained within the bid documents, including but not limited to changes and any term or provision related to the selection process, scope of work, price or any other provision contained therein.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: Cheri Schwab, City Clerk

By: _____

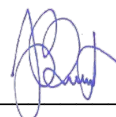
Print Name: _____

Title: _____

CONTRACTOR.:

APPROVED AS TO FORM

Gretchen R.H. Becky Vose
City Attorney

By:  _____

Print Name: James Barton

Title: President, Florida Technical Consultants

[_____, Master Agreement- General Engineering Services]

CITY OF DAYTONA BEACH SHORES, FLORIDA
MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES, hereinafter referred to as the “Master Agreement”, is made and entered into this ____ day of _____, 2024, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the “City”, and Matthews Design Group, LLC dba Matthews | DCCM, hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, Contractor is licensed in the State of Florida to perform the professional services contracted for herein; and

WHEREAS, the City wishes to contract with a Contractor to provide the Scope of Services and products / services based on the terms and subject to the conditions contained herein; and

WHEREAS, Contractor is qualified, willing and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below; and

WHEREAS, On or around _____, 2024, the City advertised a Request for Qualifications, (RFQ # _____), hereinafter referred to as the “RFQ”, which is attached hereto and made a part hereof as EXHIBIT “A” ; and

WHEREAS, at their regularly scheduled meeting on _____, 2024, the City Commission of the City of Daytona Beach Shores voted that the Contractor was qualified, experienced and capable to execute the terms of the RFQ; and

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process;

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

WHEREAS, Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Master Agreement hereby amends and supplements the terms of any prior written agreement between the parties. In the event of a conflict between the terms of the Master Agreement and terms of any prior agreement, the terms of the Master Agreement shall prevail.

2. Compliance with the Requirements of the RFQ. The Contractor shall comply with all requirements of the RFQ including but not limited to those that describe the scope of work, the term of this Master Agreement, fees, and insurance requirements.

3. Work Orders. The City shall independently negotiate Work Orders with Contractor to perform specific projects. All Work Orders shall be governed by the terms contained herein and those requirements of the RFQ.

4. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Master Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

5. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

6. Insurance.

- a. Contractor must maintain such insurance as will fully protect both Contractor and the City from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for professional liability, personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by Contractor, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. The amount of insurance required by this Agreement must not be less than:
- a. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;

- b. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - c. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - d. Professional Liability. Contractor shall maintain Professional liability or equivalent Errors and Omissions Liability, with limits not less than \$1,000,000.00 per claim / occurrence for professional services rendered under this Agreement. If coverage is written on a claims-made basis: a) any retroactive date shall precede the effective date of this Agreement; b) Contractor shall provide certificates of insurance evidencing the required coverage for a period of one year after final payment under this Agreement is made, or provide evidence showing Contractor has obtained a one-year extended reporting period endorsement.
- c. Contractor must furnish the City with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

The insurance coverages procured by Contractor as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Contractor, and any other insurance, or self-insurance available to Contractor will be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor as required herein.

7. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by City specified in this Master Agreement shall not be construed as a waiver of City's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

8. Non-appropriation. City's performance and obligation to pay under this Master Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of this Master Agreement, and this Master Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of this Master Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period this Master Agreement was funded by appropriations.

9. E-Verify Compliance. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

10. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

11. Prohibited Contracting. Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in

government contracting. Pursuant to Section 287.05701, Fla. Stat., the City of Daytona Beach Shores shall not request documentation of or consider a vendor's social, political, or ideological interests when determining if a vendor is a responsible vendor.

12. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Master Agreement and the parties' actions under this Master Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Master Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

13. Waiver of Right to Dispute RFQ Solicitation: By entering into this Master Agreement, contractor hereby waives the right to challenge any inconsistency or irregularity contained within the bid documents, including but not limited to changes and any term or provision related to the selection process, scope of work, price or any other provision contained therein.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: Cheri Schwab, City Clerk

By: _____

Print Name: _____

Title: _____

CONTRACTOR.:

APPROVED AS TO FORM

Gretchen R.H. Becky Vose
City Attorney

By: Rob A. Matthews III

Print Name: Rob A. Matthews III, PE

Title: CEO/President

CITY OF DAYTONA BEACH SHORES, FLORIDA
MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES, hereinafter referred to as the “Master Agreement”, is made and entered into this ____ day of _____, 2024, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the “City”, and KIMLEY-HORN and Associates, Inc., hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, Contractor is licensed in the State of Florida to perform the professional services contracted for herein; and

WHEREAS, the City wishes to contract with a Contractor to provide the Scope of Services and products / services based on the terms and subject to the conditions contained herein; and

WHEREAS, Contractor is qualified, willing and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below; and

WHEREAS, On or around _____, 2024, the City advertised a Request for Qualifications, (RFQ # _____), hereinafter referred to as the “RFQ”, which is attached hereto and made a part hereof as EXHIBIT “A” ; and

WHEREAS, at their regularly scheduled meeting on _____, 2024, the City Commission of the City of Daytona Beach Shores voted that the Contractor was qualified, experienced and capable to execute the terms of the RFQ; and

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process;

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

WHEREAS, Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Master Agreement hereby amends and supplements the terms of any prior written agreement between the parties. In the event of a conflict between the terms of the Master Agreement and terms of any prior agreement, the terms of the Master Agreement shall prevail.

2. Compliance with the Requirements of the RFQ. The Contractor shall comply with all requirements of the RFQ including but not limited to those that describe the scope of work, the term of this Master Agreement, fees, and insurance requirements.

3. Work Orders and Invoices. The City shall independently negotiate Work Orders with Contractor to perform specific projects. All Work Orders shall be governed by the terms contained herein and those requirements of the RFQ. The Contractor shall submit invoices for services provided and fees earned on a monthly basis. Such invoices shall be supported by a progress report showing the actual tasks performed and their relation to the percentage of fee claimed. Monthly invoices shall be paid by the City in accordance with Section 218.74, Florida Statutes. Resolution of improper payment requests or disputes between the City and the Contractor will be resolved in accordance with Section 287.76, Florida Statutes.

4. Termination. If the City or Contractor fails to comply with any covenant or obligation imposed by this agreement, the non-breaching Party may furnish written notice to the other Party identifying the breach and applicable provisions of this Agreement that have been violated. If the breaching Party fails to cure the breach within 30 days, the non-breaching Party may then terminate this agreement without further written notice to the other.

5. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Master Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

6. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

7. Insurance.

- a. Contractor must maintain such insurance as will fully protect both Contractor and the City from any and all claims under any Workers Compensation Act or Employers

Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for professional liability, personal injury, including death, made by anyone whomsoever, to the extent caused by Contractor's negligent professional performance of professional services, that may arise from operations carried on under this Agreement, either by Contractor, any of its subcontractors, or by anyone directly or indirectly engaged or employed by either of them.

- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. The amount of insurance required by this Agreement must not be less than:
 - a. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;
 - b. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - c. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - d. Professional Liability. Contractor shall maintain Professional liability or equivalent Errors and Omissions Liability, with limits not less than \$1,000,000.00 per claim / occurrence for professional services rendered under this Agreement. If coverage is written on a claims-made basis: a) any retroactive date shall precede the effective date of this Agreement; b) Contractor shall provide certificates of insurance evidencing the required coverage for a period of one year after final payment under this Agreement is made, or provide evidence showing Contractor has obtained a one-year extended reporting period endorsement.
- c. Contractor must furnish the City with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation and Professional Liability. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

The insurance coverages procured by Contractor as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Contractor, and any other insurance, or self-insurance available to Contractor will be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor as required herein.

8. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by City specified in this Master Agreement shall not be construed as a waiver of City's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

9. Non-appropriation. City's performance and obligation to pay under this Master Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of this Master Agreement, and this Master Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of this Master Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period this Master Agreement was funded by appropriations.

10. E-Verify Compliance. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

11. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business

operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

12. Prohibited Contracting. Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting. Pursuant to Section 287.05701, Fla. Stat., the City of Daytona Beach Shores shall not request documentation of or consider a vendor's social, political, or ideological interests when determining if a vendor is a responsible vendor.

13. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Master Agreement and the parties' actions under this Master Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Master Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

14. PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, EMPLOYEES OF CONTRACTOR MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: Cheri Schwab, City Clerk

By: _____

Print Name: _____

Title: _____

CONTRACTOR.:

APPROVED AS TO FORM

Gretchen R.H. Becky Vose
City Attorney

By:  _____

Print Name: LANCE LETTRELL

Title: VICE PRESIDENT

[_____, Master Agreement- General Engineering Services]

CITY OF DAYTONA BEACH SHORES, FLORIDA
MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES, hereinafter referred to as the “Master Agreement”, is made and entered into this day of _____, 2024, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the “City”, and ZEV COHEN & ASSOCIATES, INC., hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, Contractor is licensed in the State of Florida to perform the professional services contracted for herein; and

WHEREAS, the City wishes to contract with a Contractor to provide the Scope of Services and products / services based on the terms and subject to the conditions contained herein; and

WHEREAS, Contractor is qualified, willing and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below; and

WHEREAS, On or around _____, 2024, the City advertised a Request for Qualifications, (RFQ # 2024-01, hereinafter referred to as the “RFQ”, which is attached hereto and made a part hereof as EXHIBIT “A” ; and

WHEREAS, at their regularly scheduled meeting on _____, 2024, the City Commission of the City of Daytona Beach Shores voted that the Contractor was qualified, experienced and capable to execute the terms of the RFQ; and

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process;

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

WHEREAS, Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Master Agreement hereby amends and supplements the terms of any prior written agreement between the parties. In the event of a conflict between the terms of the Master Agreement and terms of any prior agreement, the terms of the Master Agreement shall prevail.

2. Compliance with the Requirements of the RFQ. The Contractor shall comply with all requirements of the RFQ including but not limited to those that describe the scope of work, the term of this Master Agreement, fees, and insurance requirements.

3. Work Orders. The City shall independently negotiate Work Orders with Contractor to perform specific projects. All Work Orders shall be governed by the terms contained herein and those requirements of the RFQ.

4. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Master Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

5. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

6. Insurance.

- a. Contractor must maintain such insurance as will fully protect both Contractor and the City from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for professional liability, personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by Contractor or anyone for whom Contractor is legally responsible..
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. The amount of insurance required by this Agreement must not be less than:
- a. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;

- b. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - c. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of the owned (if applicable), hired and non-owned autos and such policy shall be endorsed to provide contractual liability coverage; and
 - d. Professional Liability. Contractor shall maintain Professional liability or equivalent Errors and Omissions Liability, with limits not less than \$1,000,000.00 per claim / occurrence for professional services rendered under this Agreement. If coverage is written on a claims-made basis: a) any retroactive date shall precede the effective date of this Agreement; b) Contractor shall provide certificates of insurance evidencing the required coverage for a period of one year after final payment under this Agreement is made, or provide evidence showing Contractor has obtained a one-year extended reporting period endorsement.
- c. Contractor must furnish the City with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation and Professional Liability. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

The insurance coverages procured by Contractor as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Contractor, and any other insurance, or self-insurance available to Contractor will be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor as required herein.

PURSUANT TO SECTION 558.0035 FLORIDA STATUTES, THE CONTRACTOR'S CORPORATION IS THE RESPONSIBLE PARTY FOR THE PROFESSIONAL SERVICES IT AGREES TO PROVIDE UNDER THIS AGREEMENT. NO INDIVIDUAL PROFESSIONAL EMPLOYEE, AGENT, DIRECTOR, OFFICER OR PRINCIPAL SHALL BE INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THIS CONTRACT.

7. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by City specified in this Master Agreement shall not be construed as a waiver of City's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

8. **Non-appropriation.** City's performance and obligation to pay under this Master Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of this Master Agreement, and this Master Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of this Master Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period this Master Agreement was funded by appropriations.

9. **E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

10. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran

Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

11. Prohibited Contracting. Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting. Pursuant to Section 287.05701, Fla. Stat., the City of Daytona Beach Shores shall not request documentation of or consider a vendor's social, political, or ideological interests when determining if a vendor is a responsible vendor.

12. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Master Agreement and the parties' actions under this Master Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Master Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

13. Waiver of Right to Dispute RFQ Solicitation: By entering into this Master Agreement, contractor hereby waives the right to challenge any inconsistency or irregularity contained within the bid documents, including but not limited to changes and any term or provision related to the selection process, scope of work, price or any other provision contained therein.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: Cheri Schwab, City Clerk

By: _____

Print Name: _____

Title: _____

ZEV COHEN & ASSOCIATES, INC.

APPROVED AS TO FORM

Gretchen R.H. Becky Vose
City Attorney

By:  _____

Print Name: ROBERT BALL

Title: PRESIDENT

[_____, Master Agreement- General Engineering Services]

CITY OF DAYTONA BEACH SHORES, FLORIDA
MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES, hereinafter referred to as the “Master Agreement”, is made and entered into this ____ day of _____, 2024, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the “City”, and _____, hereinafter referred to as “Contractor”.

WITNESSETH:

WHEREAS, Contractor is licensed in the State of Florida to perform the professional services contracted for herein; and

WHEREAS, the City wishes to contract with a Contractor to provide the Scope of Services and products / services based on the terms and subject to the conditions contained herein; and

WHEREAS, Contractor is qualified, willing and able to provide the Scope of Services and products / services specified on the terms and conditions set forth herein; and

WHEREAS, the City desires to enter into this Contract with Contractor to perform the Scope of Services and product / services specified and, with a commission amount to be paid as agreed upon below; and

WHEREAS, On or around _____, 2024, the City advertised a Request for Qualifications, (RFQ # _____), hereinafter referred to as the “RFQ”, which is attached hereto and made a part hereof as EXHIBIT “A” ; and

WHEREAS, at their regularly scheduled meeting on _____, 2024, the City Commission of the City of Daytona Beach Shores voted that the Contractor was qualified, experienced and capable to execute the terms of the RFQ; and

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process;

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists.

WHEREAS, Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in government contracting.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Master Agreement hereby amends and supplements the terms of any prior written agreement between the parties. In the event of a conflict between the terms of the Master Agreement and terms of any prior agreement, the terms of the Master Agreement shall prevail.

2. Compliance with the Requirements of the RFQ. The Contractor shall comply with all requirements of the RFQ including but not limited to those that describe the scope of work, the term of this Master Agreement, fees, and insurance requirements.

3. Work Orders. The City shall independently negotiate Work Orders with Contractor to perform specific projects. All Work Orders shall be governed by the terms contained herein and those requirements of the RFQ.

4. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the City within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Master Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored

electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

5. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the City harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

6. Insurance.

- a. Contractor must maintain such insurance as will fully protect both Contractor and the City from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for professional liability, personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by Contractor, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. The amount of insurance required by this Agreement must not be less than:
- a. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;

- b. Commercial General Liability (CGL) insurance with a limit of not less than \$300,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this work in the amount of \$600,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - c. Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - d. Professional Liability. Contractor shall maintain Professional liability or equivalent Errors and Omissions Liability, with limits not less than \$1,000,000.00 per claim / occurrence for professional services rendered under this Agreement. If coverage is written on a claims-made basis: a) any retroactive date shall precede the effective date of this Agreement; b) Contractor shall provide certificates of insurance evidencing the required coverage for a period of one year after final payment under this Agreement is made, or provide evidence showing Contractor has obtained a one-year extended reporting period endorsement.
- c. Contractor must furnish the City with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the City before commencement of any work activities.

The insurance coverages procured by Contractor as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Contractor, and any other insurance, or self-insurance available to Contractor will be considered secondary to, or in excess of, the insurance coverage(s) procured by Contractor as required herein.

7. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by City specified in this Master Agreement shall not be construed as a waiver of City's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by City in the Agreement in derogation hereof shall be void and of no force or effect.

8. Non-appropriation. City's performance and obligation to pay under this Master Agreement is contingent upon an appropriation during the City's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of this Master Agreement, and this Master Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of this Master Agreement at fiscal year end shall be without penalty or expense to the City subject to the City paying all invoices for services rendered during the period this Master Agreement was funded by appropriations.

9. E-Verify Compliance. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

10. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with City for goods or services of any amount may be terminated at the option of City if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of City if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

11. Prohibited Contracting. Section 287.05701, Fla. Stat. requires notification to vendors in solicitations for procurement of commodities or contractual services, of the local government's prohibition against considering social, political, or ideological interests in

[_____, Master Agreement- General Engineering Services]

government contracting. Pursuant to Section 287.05701, Fla. Stat., the City of Daytona Beach Shores shall not request documentation of or consider a vendor's social, political, or ideological interests when determining if a vendor is a responsible vendor.

12. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Master Agreement and the parties' actions under this Master Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Master Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

13. Waiver of Right to Dispute RFQ Solicitation: By entering into this Master Agreement, contractor hereby waives the right to challenge any inconsistency or irregularity contained within the bid documents, including but not limited to changes and any term or provision related to the selection process, scope of work, price or any other provision contained therein.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

ATTEST:

CITY OF DAYTONA BEACH SHORES

By: Cheri Schwab, City Clerk

By: _____

Print Name: _____

Title: _____

CONTRACTOR.:

APPROVED AS TO FORM

Gretchen R.H. Becky Vose
City Attorney

By:  _____

Print Name: CHARLES HILL

Title: SENIOR PROJECT MANAGER



CITY COMMISSION AGENDA MEMORANDUM

APRIL 9, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM:

PREPARED BY: Stewart Cruz, Community Services Director

SUBJECT: Approval of St. Kitts Park Rock Revetment and Beach Access Stairs Agreement: East Coast Marine Construction & Design, Inc.

SYNOPSIS:

The City posted an invitation to bid for the construction of a rock revetment armoring system and beach access stairs at the St. Kitts Park located at 2843 S. Atlantic Avenue. The City received proposals from two contractors. East Coast Marine Construction & Design, Inc. provided the lowest bid. Staff is familiar with the aforementioned contractor's experience and expertise and has visited several projects in the city completed by the contractor. The City is still awaiting receipt of the FDEP permit approval for this project. The total project cost listed in the proposal is \$135,448.75, which is within the budgeted amount approved by the City Commission.

FISCAL IMPACT STATEMENT:

No fiscal impact as this expense was included in the current year budget

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

Approval of St. Kitts Park Rock Revetment and Beach Access Stairs Agreement with East Coast Marine Construction & Design, Inc.

SUGGESTED MOTION:

Approval of St. Kitts Park Rock Revetment and Beach Access Stairs Agreement with East Coast Marine Construction & Design, Inc.

ATTACHMENT: 1. Contract signed by ECMCD_St Kitts Park

2. EXHIBIT A- East Coast Marine- St. Kitts Park

**INDEPENDENT CONTRACTOR'S AGREEMENT BY AND BETWEEN
THE CITY OF DAYTONA BEACH SHORES, FLORIDA
AND EAST COAST MARINE CONSTRUCTION & DESIGN, INC.**

THIS INDEPENDENT CONTRACTOR'S AGREEMENT (hereinafter this "Agreement") is made and entered into this _____ day of _____ 2024, by and between THE CITY OF DAYTONA BEACH SHORES, FLORIDA, a Florida municipality (hereinafter referred to as the "CITY"), and EAST COAST MARINE CONSTRUCTION & DESIGN a Florida corporation (hereinafter referred to as the "CONTRACTOR"). The CITY and CONTRACTOR may be collectively referenced herein as the "Parties".

WITNESSETH

WHEREAS, the CITY has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, CONTRACTOR was the successful bidder of a project competitively bid in a manner which satisfies the CITY's Procurement Policy. The CITY's bid documents and CONTRACTOR's submittal is made a part hereof by reference; and

WHEREAS, Section 286.101, Florida Statutes contains a list of "foreign countries of concern" including, the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such "foreign country of concern". Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those "foreign countries of concern" to the Florida Department of Financial Services; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid, quotation, or proposal documents in connection with this project.

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.

2. **Description of Work.**

- a. The CITY hereby retains CONTRACTOR to furnish goods and services as described in the Bid Documents and the proposal, which is attached hereto as Exhibit "A" and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in Exhibit "A" will be resolved in favor of the body of this Agreement.
- b. CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.
- c. CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the CITY, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, if applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.

3. **Commencement and completion/Term.** Contractor shall begin the job within 30 days of acceptance of this contract but in no event shall the work go beyond September 30, 2024, unless prohibited by the Florida Department of Environmental Regulation and/or Florida Fish and Wildlife Conservation Commission sea turtle nesting regulations. If construction is prohibited during sea turtle nesting Season, work shall commence on November 1, 2024 and completed within 150 days.

4. **Payment.**

- a. The CITY agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in Exhibit "A", which is attached hereto and incorporated herein by reference. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated amount set forth in Exhibit "A".
 - b. Progress payments, if any, will be made as set forth in Exhibit "A".
 - c. The CITY reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations. CONTRACTOR must, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.
5. **Acceptance, final payment, and performance guarantee.** Upon receipt of written notice that the work is ready for final inspection and acceptance, the CITY will promptly make such

inspection. When it finds the work acceptable under this Agreement and the contract fully performed, it will promptly issue a final certificate stating that the work provided for in this Agreement has been completed, and acceptance by the CITY under the terms and the conditions thereof, is recommended and the entire balance, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of the final certificate. Before issuance of final certificate, CONTRACTOR must submit an affidavit satisfactory to the CITY that all payrolls, subcontractors, materialmen, and other similar bills and indebtedness connected with the work have been paid. CONTRACTOR guarantees to repair, replace or otherwise make good to the satisfaction of the CITY any defect in workmanship or material appearing in the work; and further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment, by the CITY will relieve CONTRACTOR from its obligations to do and complete the work in accordance with this Agreement. If the CITY deems it inexpedient to require CONTRACTOR to correct deficient or defective work, the CITY will make an equitable deduction from the contract price, or, in the alternative, the CITY may seek damages.

6. Termination.

- a. Termination at Will: This Agreement may be terminated by the CITY in whole or in part at any time without cause by the CITY giving written notice to CONTRACTOR not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
- b. Termination for Cause: This Agreement may be terminated by either party for cause by the CITY or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7. Project management.

- a. The Project Managers for this project are as follows. Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 9 below and does not require an amendment to this Agreement.
 - i. CITY's Project Manager is: Steward Cruz, AICP, Community Services Director, City of Daytona Beach Shores.
 - ii. CONTRACTOR's Project Manager is: John Zemball, President

- 8. Notices.** All notices to the parties under this Agreement must be in writing and sent certified mail to:

- a. To CITY: Daytona Beach Shores City Commission, Attention: City Manager, 2990 S Atlantic Avenue, Daytona Beach Shores, FL 32118;
- b. To CONTRACTOR: East Coast Marine Construction & Design, Inc. Attention: John Zemball, President, 150 S. Palmetto Ave., Suite 201, Daytona Beach, FL 32114

9. **Insurance.**

- a. CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the CITY from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:
 - i. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;
 - ii. Commercial General Liability (CGL) insurance with a limit of not less than \$500,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project/work in the amount of \$1,000,000.00. Products and completed operations aggregate shall be \$1,000,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - iii. Commercial Automobile Liability Insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - iv. Fire damage liability shall be included at \$500,000.00.
- c. CONTRACTOR must furnish the CITY with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30 day notification clause in the event of

cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities.

- d. The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.

10. **General Provisions.** CONTRACTOR must comply with the following general provisions:

- a. **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the CITY, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the CITY to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the CITY. The CITY will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the faithful performance of the work is furnished in a manner and form satisfactory to the CITY.
- b. **Compliance with Laws.** In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- c. **Personal nature of Agreement; Assignment.**
 - i. The parties acknowledge that the CITY places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the CITY.
 - ii. If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the CITY Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- d. **Discrimination.**
 - i. CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in,

denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.

- ii. CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.

e. **Independent contractor.**

- i. CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the CITY. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the CITY. None of the benefits, if any, provided by the CITY to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the CITY to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the CITY and is subject to the CITY's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The CITY will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.
- ii. CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
- iii. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement.

f. **Indemnification.**

- i. CONTRACTOR must indemnify and hold the CITY harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the CITY, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the CITY against any claim that any

product purchased or licensed by the CITY from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the CITY by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all other legal remedies available to the CITY and not considered to be the CITY's exclusive remedy.

- ii. In the event that any claim in writing is asserted by a third party which may entitle the CITY to indemnification, the CITY must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does not timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the CITY decides to participate in the proceeding or defense, the CITY will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.
- iii. The indemnification provisions of this paragraph will survive the termination of this Agreement.

g. **Public records.**

- i. CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
 - 1. Keep and maintain public records required by the CITY to perform the service.
 - 2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
 - 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the Agreement if CONTRACTOR does not transfer the records to the CITY.

4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of this Agreement, CONTRACTOR must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- ii. "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
- iii. If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
- iv. CONTRACTOR consents to the CITY's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by CITY.
- v. CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the CITY.
- vi. Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118**

- h. **Public Records Compliance Indemnification.** CONTRACTOR agrees to indemnify and hold the CITY harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by CONTRACTOR's failure to

maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. CONTRACTOR authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against CONTRACTOR in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.

- i. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by CITY specified in the Agreement shall not be construed as a waiver of CITY's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by CITY in the Agreement in derogation hereof shall be void and of no force or effect.
- j. **E-Verify Compliance.** CONTRACTOR affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., CONTRACTOR is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, CONTRACTOR requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that CONTRACTOR is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat
- k. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with CITY for goods or services of any amount may be terminated at the option of CITY if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that

Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of CITY if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

1. **Disclosure Requirements for "Foreign Countries of Concern".** CONTRACTOR shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

11. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

- a. **Non-appropriation.** CITY's performance and obligation to pay under this Agreement is contingent upon an appropriation during the CITY's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the CITY subject to the CITY paying all invoices for services rendered during the period the Agreement was funded by appropriations.
- b. **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.

- c. **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the CITY staff do not suffice to legally bind the CITY in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized CITY representatives.
- d. **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
- e. **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
- f. **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
- g. **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
- h. **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the CITY's rights under this Agreement, or of any cause of action the CITY may have arising out of the performance of this Agreement.
- i. **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance

by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.

- j. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

12. **Special Provisions.**

- a. This Agreement may be signed in counterparts and electronic copies shall be treated as originals.

(SIGNATURE PAGE FOLLOWS)

East Coast Marine Construction, Inc.
St. Kitts Park
Signature Page

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

ATTESTED BY:

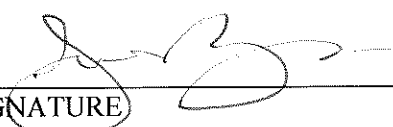
CITY OF DAYTONA BEACH SHORES:

By: Cheri Schwab, City Clerk

Nancy Miller, Mayor, and Chairperson
of the City Commission

Seal:

**EAST COAST MARINE CONSTRUCTION
& DESIGN, INC.**



SIGNATURE

Print Name: John Zembell

Title: President

Approved for form and content by:

Vose Law Firm, City Attorney

EXHIBIT A

St. Kitts Park Rock Revetment and Beach Access Stairs

Bid Proposal

East Coast Marine Construction & Design



East Coast Marine Construction & Design

150 S. Palmetto Ave. Suite 201

Daytona Beach, FL. 32114

Phone: 386-252-0020

Email: eastcoastmarineconstruciton@gmail.com

Contact: John Zemball/ President

Bid submitted: 3/18/24.

EXHIBIT A, cont...

St. Kitts Park Rock Revetment and Beach Access Stairs

Bid Proposal

East Coast Marine Construction & Design

Letter of Transmittal

East Coast Marine Construction & Design (ECMD) has reviewed the project specifications and project drawings regarding the St. Kitts Park Rock Revetment and Beach Access Stairs. ECMCD understands the contractor's scope and obligations. ECMCD is fully insured and bonded to handle the requirements of this project. ECMCD has no conflicts of interest with the City of Daytona Beach Shores. ECMCD is pleased to offer the following bid proposal with pricing breakdowns listed below.

Mobilization.....	\$ 7,213.00
Rock Revetment.....	\$ 62,663.00
Timber Walkway Access.....	\$ 63,571.00
Subtotal.....	\$ 133,447.00
Performance and Payment bonds	\$ 2,001.75

TOTAL LUMP SUM BID PROPOSAL.....\$ 135,448.75

One Hundred and Thirty-Five Thousand and Four Hundred and Forty-Eight Dollars and Seventy Five Cents.

EXHIBIT A, cont...

St. Kitts Park Rock Revetment and Beach Access Stairs

Bid Proposal

East Coast Marine Construction & Design

Proposed Workplan:

East Coast Marine Construction & Design (ECMCD) if awarded the project will perform the following tasks in the sequence listed below:

- Contract Execution/ Secure Permitting/NOC/ Submittals
- Fence off work area for public Safety.
- Survey and Layout work area and structural elements.
- Install posts for walkway.
- Install revetment.
- Install framing for walkway.
- Remove Heavy Equipment from site.
- Install decking and handrails.
- Clean and restore site.



CITY COMMISSION AGENDA MEMORANDUM APRIL 9, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM:

PREPARED BY: Stewart Cruz, Community Services Director

SUBJECT: Approval of Priority Sites Dune Walkover Reconstruction Agreement: Greg Reynolds Construction, LLC.

SYNOPSIS:

The City posted an invitation to bid for the reconstruction of five (5) priority beach access sites in need of new ADA dune walkovers located at 2403, 2515, 3245, 3343 and 3703 S. Atlantic Avenue. The City received proposals from five contractors. Greg Reynolds Construction, LLC provided the lowest bid and the best plan of action for reconstruction, considering the upcoming turtle nesting season. Staff reached out to the aforementioned contractor's listed references to verify experience and expertise and visited one site recently completed by the contractor. The City received FDEP permit approval for this project on April 1, 2024. The total cost of replacing the subject dune walkovers noted in the proposal is \$386,534, which is within the budgeted amount approved by the City Commission.

FISCAL IMPACT STATEMENT:

No fiscal impact as this item was budgeted for in the current 2023-24 budget.

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

Approval of Priority Sites Dune Walkover Reconstruction Agreement with Greg Reynolds Construction, LLC.

SUGGESTED MOTION:

Approval of Priority Sites Dune Walkover Reconstruction Agreement with Greg Reynolds Construction, LLC.

- ATTACHMENT:**
1. ICA- Greg Reynolds Construction- Dune Walkover
 2. EXHIBIT A- GREG REYNOLDS

**INDEPENDENT CONTRACTOR'S AGREEMENT BY AND BETWEEN
THE CITY OF DAYTONA BEACH SHORES, FLORIDA
AND GREG REYNOLDS CONSTRUCTION, LLC.**

THIS INDEPENDENT CONTRACTOR'S AGREEMENT (hereinafter this "Agreement") is made and entered into this ____ day of _____ 2024, by and between THE CITY OF DAYTONA BEACH SHORES, FLORIDA, a Florida municipality (hereinafter referred to as the "CITY"), and GREG REYNOLDS CONSTRUCTION, LLC., a Florida limited liability company (hereinafter referred to as the "CONTRACTOR"). The CITY and CONTRACTOR may be collectively referenced herein as the "Parties".

WITNESSETH

WHEREAS, the CITY has the full power and authority to enter into the transactions contemplated by this Agreement; and

WHEREAS, CONTRACTOR is competent and has sufficient manpower, training, and technical expertise to perform the services contemplated by this Agreement in a timely and professional manner consistent with the standards of the industry in which CONTRACTOR operates; and

WHEREAS, CONTRACTOR was the successful bidder of a project competitively bid in a manner which satisfies the CITY's Procurement Policy. The CITY's bid documents and CONTRACTOR's submittal is made a part hereof by reference; and

WHEREAS, Section 286.101, Florida Statutes contains a list of "foreign countries of concern" including, the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such "foreign country of concern". Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those "foreign countries of concern" to the Florida Department of Financial Services; and

WHEREAS, CONTRACTOR agrees to provide such goods and services as more particularly described in this Agreement, as well as in any bid, quotation, or proposal documents in connection with this project; and

WHEREAS, CONTRACTOR's services are required for the sites located at **2403, 2515, 3245, 3343 and 3703 South Atlantic Avenue.**

NOW THEREFORE in consideration of the premises, and in consideration of the mutual conditions, covenants, and obligations hereafter expressed, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct, constitute a material inducement to the parties to enter into this Agreement, and are hereby ratified and made a part of this Agreement.
2. **Description of Work.**
 - a. The CITY hereby retains CONTRACTOR to furnish goods and services as described in the Bid Documents and the proposal, which is attached hereto and highlighted in Exhibit "A" and incorporated herein by reference. Any conflict between the terms and conditions in the body of this Agreement and the terms and conditions set forth in Exhibit "A" will be resolved in favor of the body of this Agreement. More specifically, Contractor's scope of work is limited to the sites located at 2403, 2515, 3245, 3343 and 3703 South Atlantic Avenue.
 - b. CONTRACTOR must provide all permits, labor, materials, equipment, and supervision necessary for the completion of the Scope of Services, unless specifically excluded.
 - c. CONTRACTOR must also comply with, and abide by, all requirements as contained in any invitation to bid (ITB), request for proposals (RFP), request for qualifications (RFQ), bid specifications, engineering plans, shop drawings, material lists, or other similar documents issued for this project by the CITY, together with any addenda, hereinafter the "Bid Documents, as applicable." The Bid Documents, if applicable, are hereby incorporated into this Agreement by reference and are declared to be material part of this Agreement.
3. **Commencement and completion/Term.** Contractor shall begin the job within 30 days of acceptance of this contract but in no event shall the work go beyond September 30, 2024, unless prohibited by the Florida Department of Environmental Regulation and/or Florida Fish and Wildlife Conservation Commission sea turtle nesting regulations. If construction is prohibited during sea turtle nesting Season, work shall commence on November 1, 2024 and completed within 150 days.
4. **Payment.**
 - a. The CITY agrees to compensate CONTRACTOR, for work actually performed under this Agreement, at the rate or basis described in Exhibit "A", which is attached hereto and incorporated herein by reference. CONTRACTOR must perform all work required by the Scope of Services, but in no event will CONTRACTOR be paid more than the negotiated amount set forth in Exhibit "A".
 - b. Progress payments, if any, will be made as set forth in Exhibit "A".
 - c. The CITY reserves the right to ratably withhold amounts in the event of the nonperformance of all or part of CONTRACTOR's obligations. CONTRACTOR must, without additional compensation, correct and revise any errors, omissions, or other

deficiencies in its work product, services, or materials arising from the error or omission or negligent act of CONTRACTOR.

5. **Acceptance, final payment, and performance guarantee.** Upon receipt of written notice that the work is ready for final inspection and acceptance, the CITY will promptly make such inspection. When it finds the work acceptable under this Agreement and the contract fully performed, it will promptly issue a final certificate stating that the work provided for in this Agreement has been completed, and acceptance by the CITY under the terms and the conditions thereof, is recommended and the entire balance, found to be due to CONTRACTOR, will be paid to CONTRACTOR within thirty (30) days after the date of the final certificate. Before issuance of final certificate, CONTRACTOR must submit an affidavit satisfactory to the CITY that all payrolls, subcontractors, materialmen, and other similar bills and indebtedness connected with the work have been paid. CONTRACTOR guarantees to repair, replace or otherwise make good to the satisfaction of the CITY any defect in workmanship or material appearing in the work; and further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment, by the CITY will relieve CONTRACTOR from its obligations to do and complete the work in accordance with this Agreement. If the CITY deems it inexpedient to require CONTRACTOR to correct deficient or defective work, the CITY will make an equitable deduction from the contract price, or, in the alternative, the CITY may seek damages.

6. **Termination.**

- a. Termination at Will: This Agreement may be terminated by the CITY in whole or in part at any time without cause by the CITY giving written notice to CONTRACTOR not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
- b. Termination for Cause: This Agreement may be terminated by either party for cause by the CITY or CONTRACTOR giving written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations of this Agreement through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

7. **Project management.**

- a. The Project Managers for this project are as follows. Any subsequent changes to the Project Manager for either party may be provided by notice as described in paragraph 9 below and does not require an amendment to this Agreement.
 - i. CITY's Project Manager is: Steward Cruz, AICP, Community Services Director, City of Daytona Beach Shores.
 - ii. CONTRACTOR's Project Manager is: Greg Reynolds, MGM-Owner

8. **Notices.** All notices to the parties under this Agreement must be in writing and sent certified mail to:

- a. To CITY: Daytona Beach Shores City Commission, Attention: City Manager, 2990 S Atlantic Avenue, Daytona Beach Shores, FL 32118;
- b. To CONTRACTOR: Greg Reynolds Construction, LLC., Attention: Greg Reynolds, MGM-Owner, 1910 Alice Drive, Astor, FL 32102

9. **Insurance.**

- a. CONTRACTOR must maintain such insurance as will fully protect both CONTRACTOR and the CITY from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise from operations carried on under this Agreement, either by CONTRACTOR, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them.
- b. The insurance coverage required by this Agreement must not be less than the amounts described in the Bid Documents. If the Bid Documents do not state an insurance requirement or the amount of insurance, then the amount of insurance required by this Agreement must not be less than:
 - i. Workers' Compensation (unless exempt) with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;
 - ii. Commercial General Liability (CGL) insurance with a limit of not less than \$500,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location/project/work in the amount of \$1,000,000.00. Products and completed operations aggregate shall be \$1,000,000.00. CGL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury, and advertising injury. Damage to rented premises shall be included at \$100,000.00;
 - iii. Commercial Automobile Liability Insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage; and
 - iv. Fire damage liability shall be included at \$500,000.00.
- c. CONTRACTOR must furnish the CITY with Certificates of Insurance, which are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY

is to be specifically included as an additional insured and loss payee on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30 day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities.

- d. The insurance coverages procured by CONTRACTOR as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to CONTRACTOR, and any other insurance, or self-insurance available to CONTRACTOR will be considered secondary to, or in excess of, the insurance coverage(s) procured by CONTRACTOR as required herein.

10. **General Provisions.** CONTRACTOR must comply with the following general provisions:

- a. **Bond.** If a surety bond has been required by the Bid Documents for CONTRACTOR's faithful performance and payment, and if at any time the surety is no longer acceptable to the CITY, CONTRACTOR must, at its expense, within five (5) days after the receipt of notice from the CITY to do so, furnish an additional bond or bonds in such form and with such Surety or Sureties as are satisfactory to the CITY. The CITY will not make any further payment to CONTRACTOR, nor will any further payment be deemed to be due to CONTRACTOR, until such new or additional security for the faithful performance of the work is furnished in a manner and form satisfactory to the CITY.
- b. **Compliance with Laws.** In providing the Scope of Services, CONTRACTOR must comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted.
- c. **Personal nature of Agreement; Assignment.**
 - i. The parties acknowledge that the CITY places great reliance and emphasis upon the knowledge, expertise, training, and personal abilities of CONTRACTOR. Accordingly, this Agreement is personal and CONTRACTOR is prohibited from assigning or delegating any rights or duties hereunder without the specific written consent of the CITY.
 - ii. If CONTRACTOR requires the services of any subcontractor or professional associate in connection with the work to be performed under this Agreement, CONTRACTOR must obtain the written approval of the CITY Project Manager prior to engaging such subcontractor or professional associate. CONTRACTOR will remain fully responsible for the services of any subcontractors or professional associates.
- d. **Discrimination.**

- i. CONTRACTOR shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. CONTRACTOR shall not exclude any person, on the grounds of age, ethnicity, race, religious belief, disability, national origin, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under, this Agreement.
 - ii. CONTRACTOR shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- e. **Independent contractor.**
 - i. CONTRACTOR is, and will be deemed to be, an independent contractor and not a servant, employee, joint adventurer, or partner of the CITY. None of CONTRACTOR's agents, employees, or servants are, or will be deemed to be, the agent, employee, or servant of the CITY. None of the benefits, if any, provided by the CITY to its employees, including but not limited to, compensation insurance and unemployment insurance, are available from the CITY to the employees, agents, or servants of CONTRACTOR. CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Agreement. Although CONTRACTOR is an independent contractor, the work contemplated herein must meet the approval of the CITY and is subject to the CITY's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR must comply with all Federal, State and municipal laws, rules and regulations that are now or may in the future become applicable to CONTRACTOR, or to CONTRACTOR's business, equipment, or personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The CITY will not be held responsible for the collection of or the payment of taxes or contributions of any nature on behalf of CONTRACTOR.
 - ii. CONTRACTOR will bear all losses resulting to it on account of the amount or character of the work, or because of bad weather, or because of errors or omissions in its contract price.
 - iii. CONTRACTOR must utilize, and must expressly require all subcontractors to utilize, the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CONTRACTOR and any subcontractors during the Term of this Agreement.
- f. **Indemnification.**
 - i. CONTRACTOR must indemnify and hold the CITY harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the CITY, or its agents, officers, or employees, arising directly or indirectly from CONTRACTOR's performance under this Agreement or by any person on CONTRACTOR's behalf, including but not limited to those claims, losses,

penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors). CONTRACTOR must further indemnify the CITY against any claim that any product purchased or licensed by the CITY from CONTRACTOR under this Agreement infringes a United States patent, trademark, or copyright. CONTRACTOR acknowledges that CONTRACTOR has received consideration for this indemnification, and any other indemnification of the CITY by CONTRACTOR provided for within the Bid Documents, the sufficiency of such consideration being acknowledged by CONTRACTOR, by CONTRACTOR's execution of this Agreement. CONTRACTOR's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Agreement or otherwise. Such indemnification is in addition to any and all other legal remedies available to the CITY and not considered to be the CITY's exclusive remedy.

- ii. In the event that any claim in writing is asserted by a third party which may entitle the CITY to indemnification, the CITY must give notice thereof to CONTRACTOR, which notice must be accompanied by a copy of statement of the claim. Following the notice, CONTRACTOR has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If CONTRACTOR does not timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the CITY decides to participate in the proceeding or defense, the CITY will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days notice to CONTRACTOR, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.
- iii. The indemnification provisions of this paragraph will survive the termination of this Agreement.

g. **Public records.**

- i. CONTRACTOR is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and must comply with the public records provisions of Chapter 119, Florida Statutes, including the following:
 - 1. Keep and maintain public records required by the CITY to perform the service.
 - 2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the Agreement if CONTRACTOR does not transfer the records to the CITY.
 4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If CONTRACTOR transfers all public records to the CITY upon completion of this Agreement, CONTRACTOR must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- ii. "Public records" is defined in Section 119.011(12), Florida Statutes, as may, from time to time, be amended.
 - iii. If CONTRACTOR asserts any exemptions to the requirements of Chapter 119 and related law, CONTRACTOR will have the burden of establishing such exemption, by way of injunctive or other relief as provided by law.
 - iv. CONTRACTOR consents to the CITY's enforcement of CONTRACTOR's Chapter 119 requirements, by all legal means, including, but not limited to, a mandatory injunction, whereupon CONTRACTOR must pay all court costs and reasonable attorney's fees incurred by CITY.
 - v. CONTRACTOR's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by CONTRACTOR will be grounds for immediate unilateral cancellation of this Agreement by the CITY.
 - vi. Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CHERI SCHWAB, CITY CLERK
(386) 763-5353
CSCHWAB@CITYOFDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118**

- h. **Public Records Compliance Indemnification.** CONTRACTOR agrees to indemnify and hold the CITY harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by CONTRACTOR's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. CONTRACTOR authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against CONTRACTOR in Volusia County Circuit Court on an expedited basis to enforce the requirements of this section.
- i. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by CITY specified in the Agreement shall not be construed as a waiver of CITY's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by CITY in the Agreement in derogation hereof shall be void and of no force or effect.
- j. **E-Verify Compliance.** CONTRACTOR affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., CONTRACTOR is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, CONTRACTOR requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that CONTRACTOR is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat
- k. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to

section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with CITY for goods or services of any amount may be terminated at the option of CITY if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of CITY if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

1. **Disclosure Requirements for "Foreign Countries of Concern".** CONTRACTOR shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

11. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

- a. **Non-appropriation.** CITY's performance and obligation to pay under this Agreement is contingent upon an appropriation during the CITY's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the City Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to

the CITY subject to the CITY paying all invoices for services rendered during the period the Agreement was funded by appropriations.

- b. **Binding Nature of Agreement.** This Agreement is binding upon the successors and assigns of the parties hereto.
- c. **Entire Agreement.** This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. CONTRACTOR recognizes that any representations, statements, or negotiations made by the CITY staff do not suffice to legally bind the CITY in a contractual relationship unless they have been reduced to writing, authorized, and signed by the authorized CITY representatives.
- d. **Amendment.** No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document executed with the same formality as this Agreement.
- e. **Severability.** If any term or provision of this Agreement is held, to any extent, invalid or unenforceable, as against any person, entity, or circumstance during the Term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity will not affect any other term or provision of this Agreement, to the extent that the Agreement will remain operable, enforceable, and in full force and effect to the extent permitted by law.
- f. **Construction.** If any provision of this Agreement becomes subject to judicial interpretation, the court interpreting or considering such provision should not apply the presumption or rule of construction that the terms of this Agreement be more strictly construed against the party which itself or through its counsel or other agent prepared it. All parties hereto have participated in the preparation of the final form of this Agreement through review by their respective counsel, if any, or the negotiation of specific language, or both, and, therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.
- g. **Headings.** All headings in this Agreement are for convenience only and are not to be used in any judicial construction or interpretation of this Agreement or any paragraph.
- h. **Waiver.** The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement does not constitute a waiver of the provision or any portion of this Agreement, either at the time the breach or failure occurs or at any time throughout the term of this Agreement. The review of, approval of, or payment for any of CONTRACTOR's work product, services, or materials does not operate as a waiver, and should not be construed as a waiver, of any of the CITY's rights under this Agreement, or of any cause of action the CITY may have arising out of the performance of this Agreement.

- i. **Force Majeure.** Notwithstanding any provisions of this Agreement to the contrary, the parties will not be held liable if failure or delay in the performance of this Agreement arises from fires, floods, strikes, embargos, acts of the public enemy, unusually severe weather, out break of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. This provision does not apply if the "Scope of Services" of this Agreement specifies that performance by CONTRACTOR is specifically required during the occurrence of any of the events herein mentioned.
- j. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Volusia County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

12. **Special Provisions.**

- a. This Agreement may be signed in counterparts and electronic copies shall be treated as originals.

(SIGNATURE PAGE FOLLOWS)

Greg Reynolds Construction, LLC
Dune Walkovers
Signature Page

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement effective the date first written above.

ATTESTED BY:

CITY OF DAYTONA BEACH SHORES:

By: Cheri Schwab, City Clerk

Nancy Miller, Mayor, and Chairperson
of the City Commission

Seal:

GREG REYNOLDS CONSTRUCTION, LLC.

SIGNATURE

Print Name: _____

Title: _____

Approved for form and content by:

Vose Law Firm, City Attorney

EXHIBIT A

XII. BID SHEET

1. St. Maarten Walkover – 2403 S. Atlantic Avenue (LS): 85037.00
2. Bella Vista Walkover – 2515 S. Atlantic Avenue (LS): 74601.00
3. Palma Bella Walkover – 3245 S. Atlantic Avenue (LS): 65710.00
4. Marbella Walkover – 3343 S. Atlantic Avenue (LS): 69962.00
5. Ocean Villas – 3703 S. Atlantic Avenue (LS): 91224.00

ONLY THE HIGHLIGHTED SITES ARE INCLUDED IN THE SCOPE OF WORK



CITY COMMISSION AGENDA MEMORANDUM APRIL 9, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Stewart Cruz, Community Services Director
PREPARED BY: Stewart Cruz, Community Services Director
SUBJECT: Ordinance 2024-08: Voluntary Annexation, 3635 Cardinal Boulevard

SYNOPSIS:

IGS Holdings, LLC, property owner of the unincorporated Volusia County single-family residential property located at 3635 Cardinal Boulevard (Exhibit 1), has petitioned the City of Daytona Beach Shores for voluntary annexation into the City's corporate limits (Exhibit 2) pursuant to Section 171.044, Florida Statutes. The owner purchased the property in September 2022. If adopted, Ordinance 2024-08 will annex the subject property and adjacent right-of-way (to centerline) into the City limits of Daytona Beach Shores.

FISCAL IMPACT STATEMENT:

No fiscal impact for fiscal year 2023-24. If adopted, there would be an increase in ad valorem revenue for fiscal year 2025-26

BACKGROUND:

The subject property is approximately 0.23 of an acre with dimensions of 102' x 100'. The property contains a three-story four-unit residential structure (Exhibit 3). Each unit has a floor area of 1,998 square feet. Pursuant to Section 171.062, Florida Statutes, the owners have also submitted applications to amend the future land use and zoning classifications of the property in question to those of the City. The future land use amendment and rezoning ordinances will be adopted subsequent to the formal annexation of the subject property.

Exhibit 4 attached provides a general description of the subject property, while Exhibit 5 demonstrates compliance with the voluntary annexation requirements prescribed in Section 171.044, Florida Statutes.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2024-08 as presented.

SUGGESTED MOTION:

A City Commissioner may motion as follows:

"I move to approve Ordinance 2024-08 as presented."

- ATTACHMENT:**
1. Ord 2024-08-Voluntary Annexation-3635 Cardinal
 2. Ord 2024-08-Staff Report Exhibits

ORDINANCE NO. 2024-08

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, RELATING TO VOLUNTARY ANNEXATION OF REAL PROPERTY LOCATED AT 3215 LA PALOMA AVENUE (SHORT PARCEL IDENTIFICATION NUMBER 5335-01-05-0240) TOGETHER WITH ASSOCIATED RIGHT-OF-WAYS IN ACCORDANCE WITH SECTION 171.044, *FLORIDA STATUTES*; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; REDEFINING THE BOUNDARIES OF THE CITY; PROVIDING FOR LEGAL EFFECT AND IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY, PROVIDING FOR NON-CODIFICATION AND SETTING AN EFFECTIVE DATE.

WHEREAS, IGS Holdings Limited Liability Company, property owner, applied for annexation of property into the City of Daytona Beach Shores and is hereby determined to be the fee simple title owner of the real property described below; and

WHEREAS, the said applicant petitioned the City of Daytona Beach Shores, pursuant to Section 171.044, *Florida Statutes*, for annexation of said property into the municipal limits of the City of Daytona Beach Shores; and

WHEREAS, the subject property is currently addressed 3635 Cardinal Boulevard; and

WHEREAS, the subject property currently has a Short Tax Parcel Identification Number 6302-05-09-0041; and

WHEREAS, the City of Daytona Beach Shores has determined that all of the property which is proposed to be annexed into the City of Daytona Beach Shores is within an unincorporated area of Volusia County, is reasonably compact and contiguous to the corporate areas of the City of Daytona Beach Shores, Florida and it is further determined that the annexation of said property will not result in the creation of any enclave (and, indeed, logically fills in the City Limits of the City and is consistent with sound principles and practices relating to the delineating of jurisdictional boundaries thereby furthering sound management in terms of the provision of public facilities and services as well as sound land use planning), and it is further determined that the property otherwise fully complies with the requirements of State law and has, further, determined that associated rights-of-way should be annexed hereby; and

WHEREAS, the City Commission of the City of Daytona Beach Shores, Florida has taken all actions in accordance with the requirements and procedures mandated by State law; and

WHEREAS, the City Commission of the City of Daytona Beach Shores, Florida hereby determines that it is to the advantage of the City of Daytona Beach Shores and in the best interests of the citizens of the City of Daytona Beach Shores to annex the aforescribed property; and

WHEREAS, the provisions of Section 166.031(3), *Florida Statutes*, provide that [a] municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2); and

WHEREAS, the provisions of Section 171.091, *Florida Statutes*, provide as follows:

Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. A copy of such revision must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area.

; and

WHEREAS, the map attached hereto as Exhibit “A” shows, describes, and depicts the property and named associated rights-of-ways which are hereby annexed into the City of Daytona Beach Shores said Exhibit being incorporated into the substantive provisions of this Ordinance as if fully set forth herein verbatim.

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

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS/ANNEXATION OF PROPERTIES.

(a). The City Commission of the City of Daytona Beach Shores hereby finds that the recitations set forth are true and correct and that the requirements of Section 171.044, *Florida Statutes*, as well as all other requirements of controlling law, have been complied with in every respect.

(b). Under the authority of Section 166.031 (3), *Florida Statutes*, relating to city charter amendments, “[a] municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. . . . A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State . . .” This Ordinance shall amend the boundaries of the City to include the property annexed in this Ordinance.

SECTION TWO: ANNEXATION INTO THE CITY. The real property depicted and described by metes and bounds in Exhibit “A” appended hereto, which Exhibit is made part hereof and which property is owned by the petitioning property owners, and further described as set forth below, together with the associated rights-of-way as described below, is hereby annexed into the City Limits of the City of Daytona Beach Shores, said property being described as follows:

THE WEST 1/2 OF LOTS 4 AND 5, BLOCK 9, LYING
EASTERLY OF CARDINAL DRIVE, MAP OF OCEAN VIEW
SECTION OF HALIFAX ESTATES, ACCORDING TO THE
PLAT THEREOF, AS RECORDED IN MAP BOOK 11, 1
TOGETHER WITH THE EASTERLY 1/2 OF CARDINAL
DRIVE LYING SOUTHERLY OF THE NORTH LINE OF LOT
4 AND LYING NORTHERLY OF THE SOUTH LINE OF LOT
5, SAID BLOCK 9, MAP OF OCEAN VIEW SECTION OF
HALIFAX ESTATES, BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS:
BEGIN AT THE INTERSECTION OF THE NORTH LINE OF
SAID LOT 4 AND THE CENTERLINE OF CARDINAL DRIVE,
A 70 FOOT RIGHT OF WAY AS NOW LAID OUT; THENCE
EASTERLY ALONG THE NORTH LINE OF OF SAID LOT 4
TO THE EAST LINE OF THE WEST 1/2 OF LOT 4; THENCE
SOUTHERLY ALONG EAST LINE OF THE WEST 1/2 OF LOT
4 AND EAST LINE OF THE WEST 1/2 OF LOT 5 TO THE
SOUTH LINE OF LOT 5; THENCE WESTERLY ALONG SAID
SOUTH LINE TO THE SAID CENTERLINE OF CARDINAL
DRIVE; THENCE NORTHERLY ALONG SAID CENTERLINE
TO THE POINT OF BEGINNING. CONTAINING 0.316
ACRES, MORE OR LESS.

SECTION THREE: CHANGE IN CITY BOUNDARIES/LEGAL EFFECT OF ANNEXATION. The boundary lines of the City Limits of the City of Daytona Beach Shores are hereby redefined and, upon the effective date of this Ordinance shall also encompass the annexed property as described herein and depicted in Exhibit “A”. Upon this Ordinance becoming effective, the property owner of the annexed property shall be entitled to all the rights and privileges and immunities as are from time-to-time granted to property owners of the City as further provided in Chapter 171, *Florida Statutes*, and shall further be subject to the responsibilities of ownership as may from time-to-time be determined by the governing authority of the City and the provisions of said Chapter 171, *Florida Statutes*.

SECTION FOUR: ADMINISTRATIVE IMPLEMENTING ACTIONS.

(a). Within seven (7) days of the adoption of this Ordinance, the City Clerk shall file a copy of said Ordinance with the Clerk of the Court (Land Records/Recording), with the Chief Administrative Officer of Volusia County (the County Manager), with the Florida

Department of State, and with such other agencies and entities as may be required by law or otherwise desirable.

(b). The City Manager, or designees within City management staff, shall ensure that the property annexed by this Ordinance is incorporated into the City of Daytona Beach Shores *Comprehensive Plan* and the *Official Zoning Map* of the City of Daytona Beach Shores in an expeditious manner and, in accordance with, and pursuant to, the provisions of Under the authority of Section 166.031(3), *Florida Statutes*, the City Manager, or designees, shall amend the boundaries of the City to include the property annexed in this Ordinance and all previously annexed properties in all maps and geographical data relating to the City Limits said properties to include, but not be limited to, annexed rights-of-way and natural features.

SECTION FIVE: CONFLICTS. Any and all ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION SEVEN: NON-CODIFICATION. This Ordinance shall not be codified in the *City Code of the City of Daytona Beach Shores*, or the *Land Development Code of the City of Daytona Beach Shores*, or the *City of Daytona Beach Shores Comprehensive Plan* provided, however, that the actions taken herein shall be depicted on the pertinent maps of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION EIGHT: EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

KURT SWARTZLANDER, CITY MANAGER CHERI SCHWAB, CITY CLERK

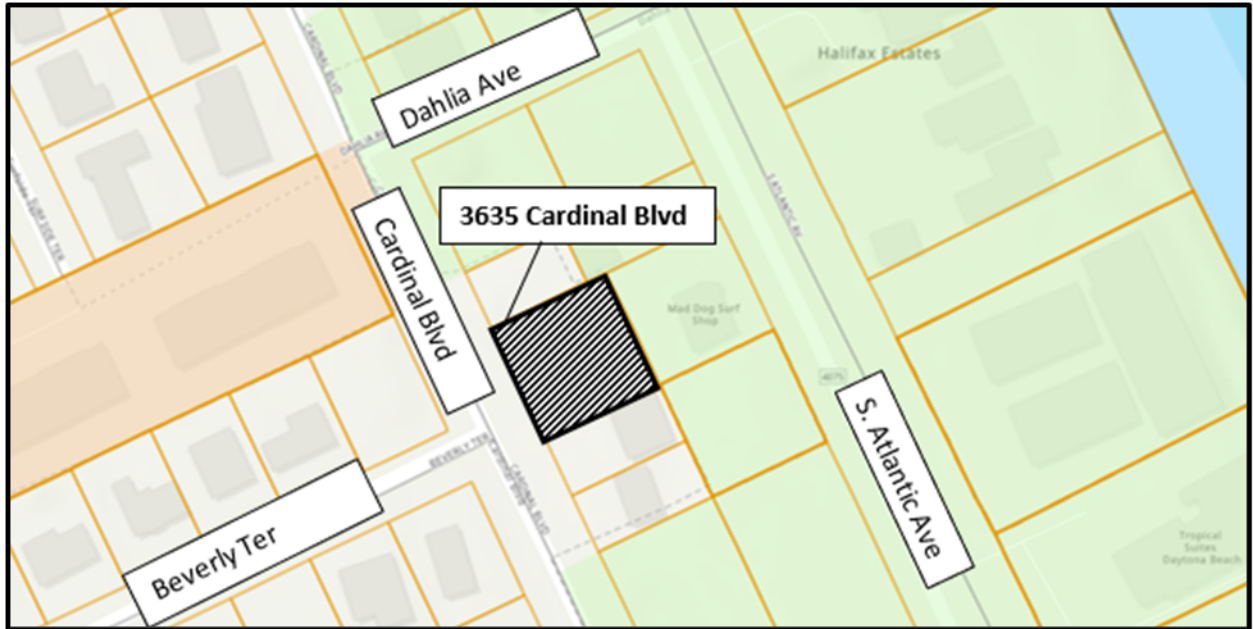
Approved as to form and legality:

GRETCHEN R.H. "BECKY" VOSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2024.
Adopted on second reading this _____ day of _____, 2024.

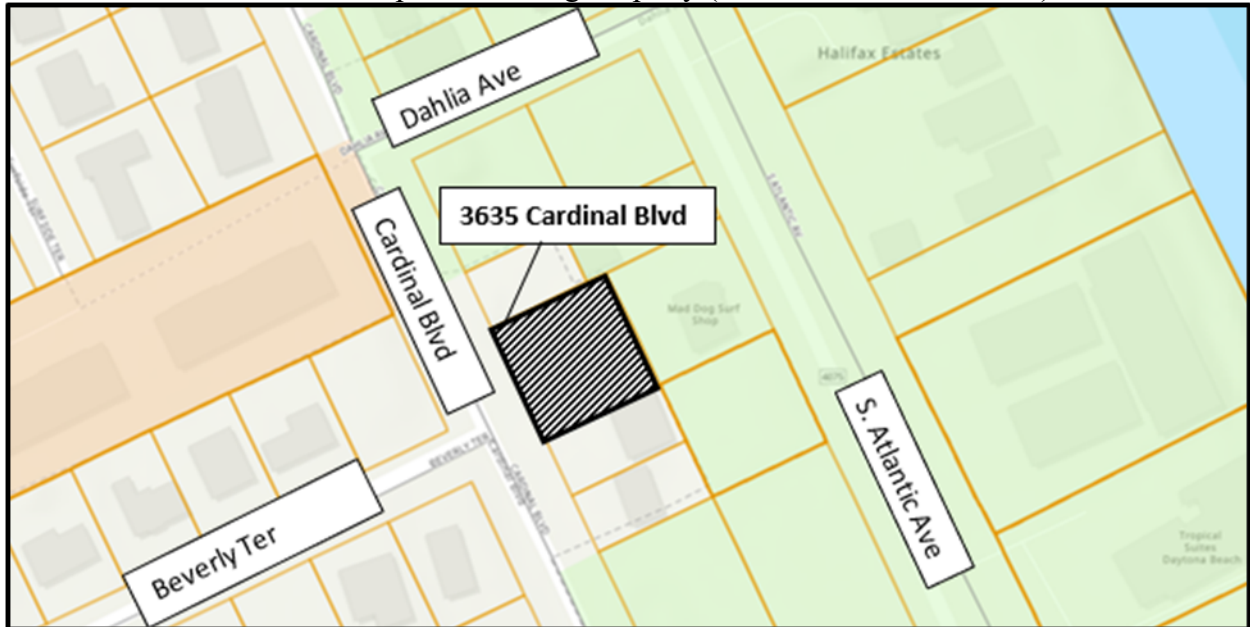
EXHIBIT A

(1) Location Map of Annexing Property (3635 Cardinal Boulevard)



(2) Metes and Bounds Description/Sketch (Attached)

EXHIBIT 1: Location Map of Annexing Property (3635 Cardinal Boulevard)



Source: Volusia County Property Appraiser Website, 2024

EXHIBIT 2
A: Annexation Application

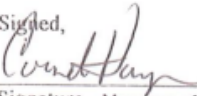
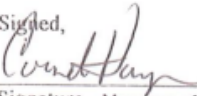
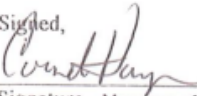
	RECEIVED JAN 04 2024 BUILDING AND CODES DIVISION CITY OF DAYTONA BEACH SHORES 150036									
	City of Daytona Beach Shores Building & Codes Division 2990 S. Atlantic Avenue Daytona Beach Shores, FL 32118 Telephone (386) 763-5377 Fax (386) 763-5370 12024001 REQUEST FOR ANNEXATION									
NOVEMBER 6, 2023 (Date) I (We) the undersigned am the sole property owner(s) of <u>3635 Cardinal Blvd</u>, Volusia County, Florida. (Street Address) By this letter, I (We) am requesting annexation into the City of Daytona Beach Shores, Florida. It is my (our) understanding that the fee for legal advertising has been waived by the City and that I (we) will not incur any costs for annexation.										
<table border="0" style="width: 100%;"><tr><td style="width: 33%; vertical-align: top;">Signed,  Signature Manager of IGS Holdings Limited Liability Company</td><td style="width: 33%; vertical-align: top;">Name (Printed or typed) <u>Cornelius Harper</u></td><td style="width: 33%; vertical-align: top;">Telephone <u>Same as Applicant</u></td></tr><tr><td style="vertical-align: top;">Signature _____</td><td style="vertical-align: top;">Name (Printed or typed) _____</td><td style="vertical-align: top;">Telephone _____</td></tr><tr><td style="vertical-align: top;">Signature _____</td><td style="vertical-align: top;">Name (Printed or typed) _____</td><td style="vertical-align: top;">Telephone _____</td></tr></table>		Signed,  Signature Manager of IGS Holdings Limited Liability Company	Name (Printed or typed) <u>Cornelius Harper</u>	Telephone <u>Same as Applicant</u>	Signature _____	Name (Printed or typed) _____	Telephone _____	Signature _____	Name (Printed or typed) _____	Telephone _____
Signed,  Signature Manager of IGS Holdings Limited Liability Company	Name (Printed or typed) <u>Cornelius Harper</u>	Telephone <u>Same as Applicant</u>								
Signature _____	Name (Printed or typed) _____	Telephone _____								
Signature _____	Name (Printed or typed) _____	Telephone _____								
SWORN to and subscribed before me this <u>6TH</u> day of <u>NOVEMBER</u>, 2023, by <u>CORNELIUS HARPER</u>, who is personally known to me _____ or produced Identification <u>X</u>. Type of Identification provided <u>KENTUCKY DRIVER'S LICENSE</u>  Notary Public – State of KENTUCKY <u>KENTUCKY</u> My Commission Expires: <u>11/08/2025</u>  Please return this form to: Annexation Committee c/o Planning Department City of Daytona Beach Shores 2990 S. Atlantic Avenue Daytona Beach Shores, FL 32118										

EXHIBIT 2
B: Property Appraiser Website Owner Information



VOLUSIA COUNTY PROPERTY APPRAISER

LARRY BARTLETT, JD, CFA

WE VALUE VOLUSIA

Agriculture

Maps

Tangible Prop

Search ▾

Downloads ▾

Home / Parcel Summary for 3569059

Summary

Tax Estimate

Permits

Map

Pictometry

Print

Alternate Key:

3569059

Parcel ID:

630205090041

Township-Range-Section:

16 - 33 - 02

Subdivision-Block-Lot:

05 - 09 - 0041

Physical Address:

3635 CARDINAL BLVD, PORT ORANGE 32118

Owner(s):

IGS HOLDINGS LIMITED LIABILITY COMPANY - FS - Fee Simple - 100%

Mailing Address On File:

629 S FORTH ST STE 302
LOUISVILLE KY 40202
[Update Mailing Address](#)

Building Count:

1

Living Units:

0

Neighborhood:

3109 - HALIFAX ESTATES (6302-01)----
[Neighborhood Sales](#)

Subdivision Name:

Property Use:

0800 - MFR <10 UNITS

Tax District:

200-UNINCORPORATED - NORTHEAST

2023 Final Millage Rate:

17.8598

Homestead Property:

No - [Apply for Homestead Online](#)

Agriculture Classification:

No - [Additional Information](#)

Short Description:

W 1/2 OF LOTS 4 & 5 BLK 9 OCEAN VIEW SEC HALIFAX ESTS PER OR
4348 PG 1353 PER OR 8311 PG 2889

EXHIBIT 3

A: Aerial View of Annexing Property (3635 Cardinal Boulevard)



Source: Volusia County Property Appraiser Website, 2021

B: Street View of Annexing Property (3635 Cardinal Boulevard)



Source: GoogleMaps, 2018

**EXHIBT 4
PRE-ANNEXATION FORM**

Name of Property Owner: IGS Holdings, LLC

Property Address/Tax Parcel ID: 3635 Cardinal Blvd. / 6302-05-09-0041

Lot Size: 102' x 100' = 10,200sf (0.23 acres)

According to Volusia County property records, does this property appear to meet Section 171.044 of Florida Statutes? Yes X No

How is property contiguous? East X West North X South

Property Appraiser Just/Market Value: \$1,063,103 (2023 Final)

Homesteaded Property: Yes No X

Special Flood Hazard Area? Yes No X

Improved Lot X Unimproved Lot (Vacant)

Existing Use: Residential (Quadplex)

Conforming Land Use: Non-Conforming Land Use: X Explain: Zoning and Future Land Use assigned will be comparable to existing Volusia County Two Single Family Residential district. Quadplex (4 units) are not permitted in the city's single family residential districts. Therefore, the property will be "grandfathered" and subject to the LDC, Chapter 14, Article VI "Nonconforming Provisions."

Existing County Zoning: R-6 Urban Two-Family Residential District

Existing County Land Use: Urban Low Intensity

Condition of Property: Poor Good X Excellent

Water: Port Orange X Daytona Beach

Sanitary: Sewer X Septic Tank

If septic tank on site, is sewer available? Yes No

Metes and Bounds Survey conducted? Yes X No

Property Subject To Code Enforcement Action? Yes No X

Prepared by: Stewart Cruz, Community Services Director Date: March 29, 2024

EXHIBIT 5: Voluntary Annexation Criteria pursuant to Section 171.044, *Florida Statutes*

Section	Annexation Criteria	Criteria Met	Comments
171.044(1)	Property must be contiguous to the City.	Yes	Per Sec. 171.031(11), subject property is contiguous to the City to the North and East.
171.044(1)	Property must be reasonably compact.	Yes	Per Sec. 171.031(12), subject property is reasonably compact and will not create new enclaves, pockets or finger areas in serpentine patterns. In addition, the annexation will aid in reducing the larger county enclave in the vicinity.
171.044(2)	Petition bears the signatures of all owners of property.	Yes	Yes.
171.044(2)	Meet publication requirements.	Yes	Evidence filed with the Office of the City Clerk.
171.044(3)	Ordinance shall be filed per statute.	Pending	Ordinance filing will occur per statutory deadline subsequent to the Ordinance's adoption.
171.044(3)	Ordinance shall include a map and legal description by metes and bounds.	Yes	See Ordinance 2024-08
171.044(4)	Annexation method shall be supplemental to any other procedure provided by general law.	N/A	
171.044(5)	Annexation shall not create enclaves.	Yes	Per Sec. 171.031(13), subject property does not create an enclave. In fact the annexation will reduce the larger County enclave that currently exists in this area.
171.044(6)	Provision of notice to County Commissioners per statute.	Yes	Notice provided via certified mail per statutory requirement.



CITY COMMISSION AGENDA MEMORANDUM APRIL 9, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Stewart Cruz, Community Services Director
PREPARED BY: Stewart Cruz, Community Services Director
SUBJECT: Ordinance 2024-09: Voluntary Annexation, 129 Esmeralda Avenue

SYNOPSIS:

Anne Bressan Harrington Trust, property owner of the unincorporated Volusia County single-family residential property located at 129 Esmeralda Avenue (Exhibit 1), has petitioned the City of Daytona Beach Shores for voluntary annexation into the City's corporate limits (Exhibit 2) pursuant to Section 171.044, Florida Statutes. The owner purchased the property in April 2023. If adopted, Ordinance 2024-09 will annex the subject property and adjacent right-of-way (to centerline) into the City limits of Daytona Beach Shores.

FISCAL IMPACT STATEMENT:

No fiscal impact for 2023-24 fiscal year. If adopted this property would be on the city's tax roll for the 2025-26 budget year.

BACKGROUND:

The subject property is approximately 0.18 of an acre with dimensions of 64' x 125'. The property contains a single-family residential structure (Exhibit 3) with a floor area of 1,580 square feet. Pursuant to Section 171.062, Florida Statutes, the owners have also submitted applications to amend the future land use and zoning classifications of the property in question to those of the City. The future land use amendment and rezoning ordinances will be adopted subsequent to the formal annexation of the subject property.

Exhibit 4 attached provides a general description of the subject property, while Exhibit 5 demonstrates compliance with the voluntary annexation requirements prescribed in Section 171.044, Florida Statutes.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2024-09 as presented.

SUGGESTED MOTION:

A City Commissioner may motion as follows:

"I move to approve Ordinance 2024-09 as presented."

- ATTACHMENT:**
1. Ord 2024-09-Voluntary Annexation-129 Esmeralda
 2. Ord 2024-09-Staff Report Exhibits

ORDINANCE NO. 2024-09

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, RELATING TO VOLUNTARY ANNEXATION OF REAL PROPERTY LOCATED AT 129 ESMERALDA AVENUE (SHORT PARCEL IDENTIFICATION NUMBER 5335-01-05-0360) TOGETHER WITH ASSOCIATED RIGHT-OF-WAYS IN ACCORDANCE WITH SECTION 171.044, *FLORIDA STATUTES*; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; REDEFINING THE BOUNDARIES OF THE CITY; PROVIDING FOR LEGAL EFFECT AND IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY, PROVIDING FOR NON-CODIFICATION AND SETTING AN EFFECTIVE DATE.

WHEREAS, Anne Bressan Harrington Trust, property owner, applied for annexation of property into the City of Daytona Beach Shores and is hereby determined to be the fee simple title owner of the real property described below; and

WHEREAS, the said applicant petitioned the City of Daytona Beach Shores, pursuant to Section 171.044, *Florida Statutes*, for annexation of said property into the municipal limits of the City of Daytona Beach Shores; and

WHEREAS, the subject property is currently addressed 129 Esmeralda Avenue; and

WHEREAS, the subject property currently has a Short Tax Parcel Identification Number 5335-01-05-0360; and

WHEREAS, the City of Daytona Beach Shores has determined that all of the property which is proposed to be annexed into the City of Daytona Beach Shores is within an unincorporated area of Volusia County, is reasonably compact and contiguous to the corporate areas of the City of Daytona Beach Shores, Florida and it is further determined that the annexation of said property will not result in the creation of any enclave (and, indeed, logically fills in the City Limits of the City and is consistent with sound principles and practices relating to the delineating of jurisdictional boundaries thereby furthering sound management in terms of the provision of public facilities and services as well as sound land use planning), and it is further determined that the property otherwise fully complies with the requirements of State law and has, further, determined that associated rights-of-way should be annexed hereby; and

WHEREAS, the City Commission of the City of Daytona Beach Shores, Florida has taken all actions in accordance with the requirements and procedures mandated by State law; and

WHEREAS, the City Commission of the City of Daytona Beach Shores, Florida hereby determines that it is to the advantage of the City of Daytona Beach Shores and in the best interests of the citizens of the City of Daytona Beach Shores to annex the aforescribed property; and

WHEREAS, the provisions of Section 166.031(3), *Florida Statutes*, provide that [a] municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2); and

WHEREAS, the provisions of Section 171.091, *Florida Statutes*, provide as follows:

Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. A copy of such revision must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area.

; and

WHEREAS, the map attached hereto as Exhibit “A” shows, describes, and depicts the property and named associated rights-of-ways which are hereby annexed into the City of Daytona Beach Shores said Exhibit being incorporated into the substantive provisions of this Ordinance as if fully set forth herein verbatim.

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

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS/ANNEXATION OF PROPERTIES.

(a). The City Commission of the City of Daytona Beach Shores hereby finds that the recitations set forth are true and correct and that the requirements of Section 171.044, *Florida Statutes*, as well as all other requirements of controlling law, have been complied with in every respect.

(b). Under the authority of Section 166.031 (3), *Florida Statutes*, relating to city charter amendments, “[a] municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. . . . A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State . . .” This Ordinance shall amend the boundaries of the City to include the property annexed in this Ordinance.

SECTION TWO: ANNEXATION INTO THE CITY. The real property depicted and described by metes and bounds in Exhibit “A” appended hereto, which Exhibit is made part hereof and which property is owned by the petitioning property owners, and further described as set forth below, together with the associated rights-of-way as described below, is hereby annexed into the City Limits of the City of Daytona Beach Shores, said property being described as follows:

DESCRIPTION:

THE EASTERLY 14-1/3 FEET OF LOT 35 AND ALL OF LOTS 36 AND 37, BLOCK E, RIOMAR BEACHES, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN MAP BOOK 6, PAGE 95, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH THE NORTHERLY 1/2 OF ESMERALDA AVENUE LYING EASTERLY OF THE EAST LINE OF EAST 14-1/3 FEET OF LOT 35 AND LYING WESTERLY OF THE EAST LINE OF LOT 37, SAID BLOCK E, RIOMAR BEACHES, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE EAST LINE OF SAID LOT 37 AND THE CENTERLINE OF ESMERALDA AVENUE, A 50 FOOT RIGHT OF WAY AS NOW LAID OUT; THENCE WESTERLY ALONG SAID CENTERLINE TO THE WESTERLY LINE OF THE EASTERLY 14-1/3 FEET OF LOT 35; THENCE NORTHERLY ALONG SAID WESTERLY LINE OF THE EASTERLY 14-1/3 FEET OF LOT 35 TO THE NORTHERLY LINE OF LOT 35; THENCE ALONG THE SAID NORTHERLY LINE OF LOT 35 AND THE NORTH LINE OF LOTS 36 AND 37 TO THE EASTERLY LINE OF LOT 37; THENCE SOUTHERLY ALONG THE SAID EASTERLY LINE OF LOT 37 TO THE POINT OF BEGINNING. CONTAINING 0.244 ACRES, MORE OR LESS.

SECTION THREE: CHANGE IN CITY BOUNDARIES/LEGAL EFFECT OF ANNEXATION. The boundary lines of the City Limits of the City of Daytona Beach Shores are hereby redefined and, upon the effective date of this Ordinance shall also encompass the annexed property as described herein and depicted in Exhibit “A”. Upon this Ordinance becoming effective, the property owner of the annexed property shall be entitled to all the rights and privileges and immunities as are from time-to-time granted to property owners of the City as further provided in Chapter 171, *Florida Statutes*, and shall further be subject to the responsibilities of ownership as may from time-to-time be

determined by the governing authority of the City and the provisions of said Chapter 171, *Florida Statutes*.

SECTION FOUR: ADMINISTRATIVE IMPLEMENTING ACTIONS.

(a). Within seven (7) days of the adoption of this Ordinance, the City Clerk shall file a copy of said Ordinance with the Clerk of the Court (Land Records/Recording), with the Chief Administrative Officer of Volusia County (the County Manager), with the Florida Department of State, and with such other agencies and entities as may be required by law or otherwise desirable.

(b). The City Manager, or designees within City management staff, shall ensure that the property annexed by this Ordinance is incorporated into the City of Daytona Beach Shores *Comprehensive Plan* and the *Official Zoning Map* of the City of Daytona Beach Shores in an expeditious manner and, in accordance with, and pursuant to, the provisions of Under the authority of Section 166.031(3), *Florida Statutes*, the City Manager, or designees, shall amend the boundaries of the City to include the property annexed in this Ordinance and all previously annexed properties in all maps and geographical data relating to the City Limits said properties to include, but not be limited to, annexed rights-of-way and natural features.

SECTION FIVE: CONFLICTS. Any and all ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION SEVEN: NON-CODIFICATION. This Ordinance shall not be codified in the *City Code of the City of Daytona Beach Shores*, or the *Land Development Code of the City of Daytona Beach Shores*, or the *City of Daytona Beach Shores Comprehensive Plan* provided, however, that the actions taken herein shall be depicted on the pertinent maps of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION EIGHT: EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

KURT SWARTZLANDER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**

Approved as to form and legality:

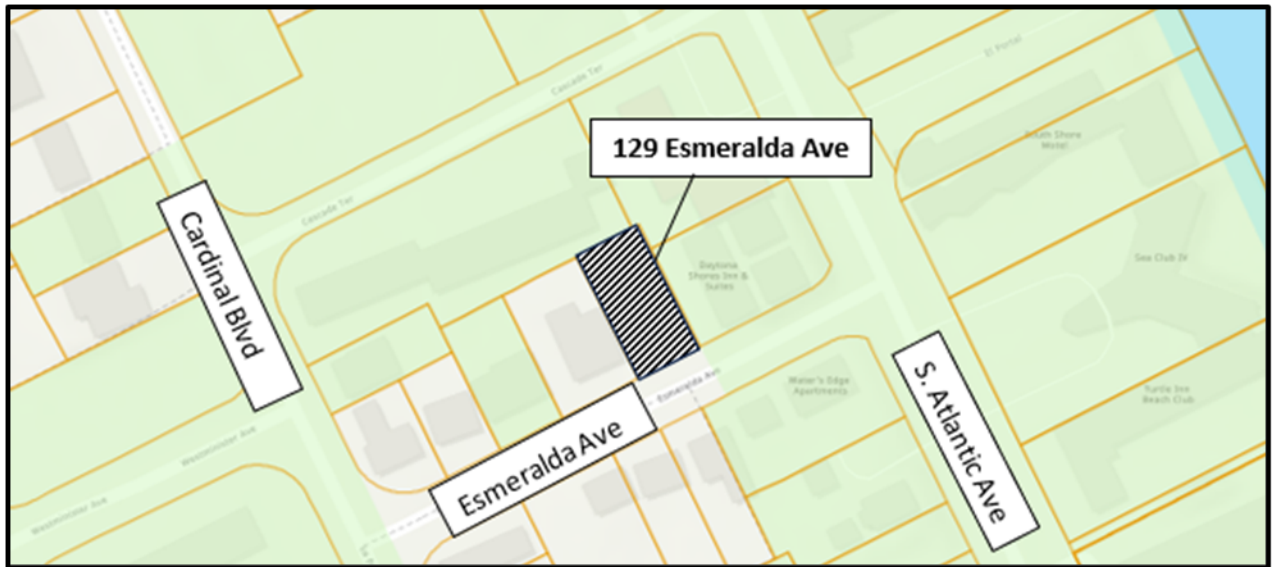
GRETCHEN R.H. “BECKY” VOSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2024.

Adopted on second reading this _____ day of _____, 2024.

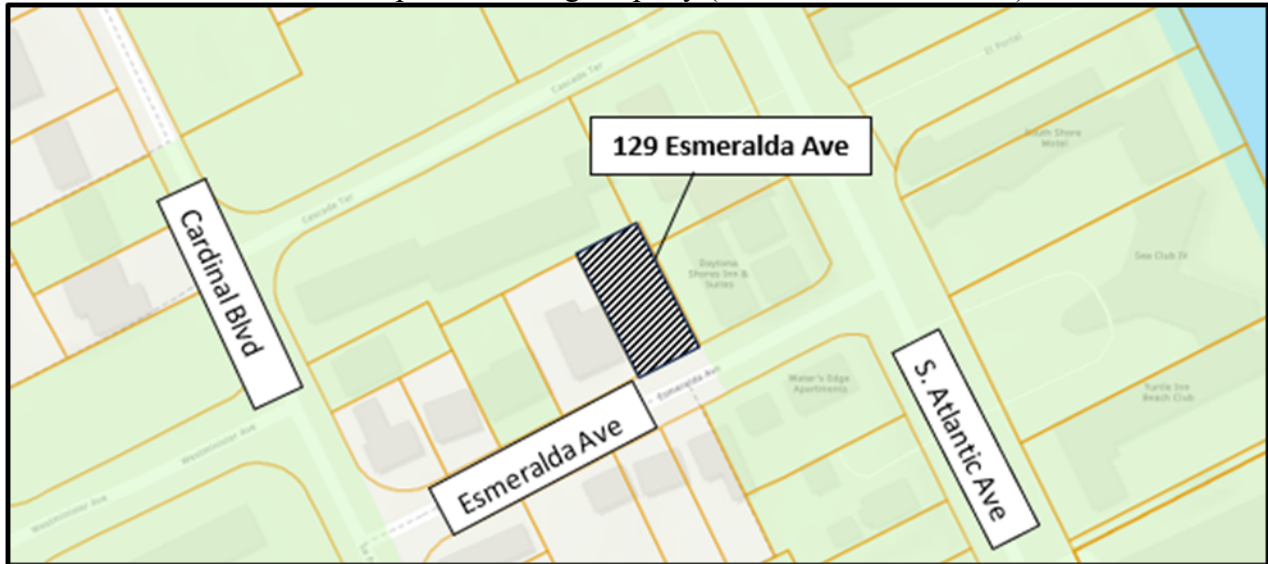
EXHIBIT A

(1) Location Map of Annexing Property (129 Esmeralda Avenue)



(2) Metes and Bounds Description/Sketch (Attached)

EXHIBIT 1: Location Map of Annexing Property (129 Esmeralda Avenue)



Source: Volusia County Property Appraiser Website, 2024

EXHIBIT 2
A: Annexation Application

	City of Daytona Beach Shores Building & Codes Division 2990 S. Atlantic Avenue Daytona Beach Shores, FL 32118 Telephone (386) 763-5377 Fax (386) 763-5370	250112 RECEIVED JAN 17 2024 BUILDING AND CODES DIVISION CITY OF DAYTONA BEACH SHORES
12024007 REQUEST FOR ANNEXATION		
1/17/2024 (Date)	I (We) the undersigned am the sole property owner(s) of <u>129 Esmeralda Avenue</u>, Volusia County, Florida. (Street Address) By this letter, I (We) am requesting annexation into the City of Daytona Beach Shores, Florida. It is my (our) understanding that the fee for legal advertising has been waived by the City and that I (we) will not incur any costs for annexation. 5335-01-05-0360	
Signed,		
Signature	<u>Anne Bressan Harrington</u> Name (Printed or typed)	<u>719-351-8578</u> Telephone
Signature	Name (Printed or typed)	Telephone
Signature	Name (Printed or typed)	Telephone
SWORN to and subscribed before me this <u>17</u> day of <u>Jan</u>, 20<u>24</u> by <u>Anne Harrington</u>, who is personally known to me <u> </u> or produced Identification <u>Y</u>. Type of Identification provided <u>FL Driver License</u>. <u>Cheryl Lee Thibault</u> Notary Public – State of Florida My Commission Expires:  Please return this form to: Annexation Committee c/o Planning Department City of Daytona Beach Shores 2990 S. Atlantic Avenue Daytona Beach Shores, FL 32118		

EXHIBIT 2

B: Property Appraiser Website Owner Information



LARRY BARTLETT, JD, CFA
VOLUSIA COUNTY PROPERTY APPRAISER
WE VALUE VOLUSIA

[Agriculture](#) [Maps](#) [Tangible Pr](#)

[Search ▾](#) [Downloads ▾](#)

[Home](#) / Parcel Summary for 3462718

Summary

[Tax Estimate](#)

[Permits](#)

[Map](#)

[Pictometry](#)

[Print](#)

Alternate Key:	3462718
Parcel ID:	533501050360
Township-Range-Section:	15 - 33 - 35
Subdivision-Block-Lot:	01 - 05 - 0360
Physical Address:	129 ESMERALDA AVE, DAYTONA BEACH 32118
Owner(s):	HARRINGTON ANNE BRESSAN TR - TR - Trust - 100% ANNE BRESSAN HARRINGTON TRUST 05-27-2016 - TR - Trust - 100%
Mailing Address On File:	129 ESMERALDA AVE DAYTONA BEACH FL 32118 Update Mailing Address
Building Count:	1
Neighborhood:	3107 - ORITA SUB Neighborhood Sales
Subdivision Name:	
Property Use:	0100 - SINGLE FAMILY
Tax District:	200-UNINCORPORATED - NORTHEAST
2023 Final Millage Rate:	17.8598
Homestead Property:	No - Apply for Homestead Online
Agriculture Classification:	No - Additional Information
Short Description:	E 14 1/3 FT OF LOT 35 & LOTS 36 & 37 BLK E RIOMAR BEACHES MB 6 PG 95 PER OR 5096 PG 1358 PER OR 7916 PG 0819 PER OR 8392 PG 2794

EXHIBIT 3

A: Aerial View of Annexing Property (129 Esmeralda Ave.)



Source: Volusia County Property Appraiser Website, 2021

B: Street View of Annexing Property (129 Esmeralda Avenue)



Source: Daytona Beach Shores, 2024

**EXHIBT 4
PRE-ANNEXATION FORM**

Name of Property Owner: Anne Bressan Harrington Trust

Property Address/Tax Parcel ID: 129 Esmeralda Avenue / 5335-01-05-0360

Lot Size: 64' x 125' = 8,000sf (0.18 acres)

According to Volusia County property records, does this property appear to meet Section 171.044 of Florida Statutes? Yes X No

How is property contiguous? East X West North X South

Property Appraiser Just/Market Value: \$280,149 (2023 Final)

Homesteaded Property: Yes No X

Special Flood Hazard Area? Yes No X

Improved Lot X Unimproved Lot (Vacant)

Existing Use: Single Family Residential

Conforming Land Use: X Non-Conforming Land Use: Explain:

Existing County Zoning: R-9 Urban Single-Family Residential District

Existing County Land Use: Urban Low Intensity

Condition of Property: Poor Average X Good

Water: Port Orange X Daytona Beach

Sanitary: Sewer X Septic Tank

If septic tank on site, is sewer available? Yes No

Metes and Bounds Survey conducted? Yes X No

Property Subject To Code Enforcement Action? Yes No X

Prepared by: Stewart Cruz, Community Services Director Date: March 29, 2024

EXHIBIT 5: Voluntary Annexation Criteria pursuant to Section 171.044, *Florida Statutes*

Section	Annexation Criteria	Criteria Met	Comments
171.044(1)	Property must be contiguous to the City.	Yes	Per Sec. 171.031(11), subject property is contiguous to the City to the North and East.
171.044(1)	Property must be reasonably compact.	Yes	Per Sec. 171.031(12), subject property is reasonably compact and will not create new enclaves, pockets or finger areas in serpentine patterns. In addition, the annexation will aid in reducing the larger county enclave in the vicinity.
171.044(2)	Petition bears the signatures of all owners of property.	Yes	Yes.
171.044(2)	Meet publication requirements.	Yes	Evidence filed with the Office of the City Clerk.
171.044(3)	Ordinance shall be filed per statute.	Pending	Ordinance filing will occur per statutory deadline subsequent to the Ordinance's adoption.
171.044(3)	Ordinance shall include a map and legal description by metes and bounds.	Yes	See Ordinance 2024-09
171.044(4)	Annexation method shall be supplemental to any other procedure provided by general law.	N/A	
171.044(5)	Annexation shall not create enclaves.	Yes	Per Sec. 171.031(13), subject property does not create an enclave. In fact the annexation will reduce the larger County enclave that currently exists in this area.
171.044(6)	Provision of notice to County Commissioners per statute.	Yes	Notice provided via certified mail per statutory requirement.



CITY COMMISSION AGENDA MEMORANDUM APRIL 9, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Stewart Cruz, Community Services Director
PREPARED BY: Stewart Cruz, Community Services Director
SUBJECT: Ordinance 2024-10: Voluntary Annexation, 110 Van Avenue

SYNOPSIS:

Three RE Holdings, LLC, property owner of the unincorporated Volusia County single-family residential property located at 110 Van Avenue (Exhibit 1), has petitioned the City of Daytona Beach Shores for voluntary annexation into the City's corporate limits (Exhibit 2) pursuant to Section 171.044, Florida Statutes. The owner purchased the property in May 2023. If adopted, Ordinance 2024-10 will annex the subject property and adjacent right-of-way (to centerline) into the City limits of Daytona Beach Shores.

FISCAL IMPACT STATEMENT:

No fiscal impact for fiscal year 2023-24. If adopted this property would be added to the city's tax roll for fiscal year 2025-26.

BACKGROUND:

The subject property is approximately 0.27 of an acre with dimensions of 78' x 150'. The property contains a single-family residential structure (Exhibit 3) with a floor area of 2,111 square feet. Pursuant to Section 171.062, Florida Statutes, the owners have also submitted applications to amend the future land use and zoning classifications of the property in question to those of the City. The future land use amendment and rezoning ordinances will be adopted subsequent to the formal annexation of the subject property.

Exhibit 4 attached provides a general description of the subject property, while Exhibit 5 demonstrates compliance with the voluntary annexation requirements prescribed in Section 171.044, Florida Statutes.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2024-10 as presented.

SUGGESTED MOTION:

A City Commissioner may motion as follows:

"I move to approve Ordinance 2024-10 as presented."

- ATTACHMENT:**
1. Ord 2024-10-Voluntary Annexation-110 Van Ave
 2. Ord 2024-10-Staff Report Exhibits

ORDINANCE NO. 2024-10

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, RELATING TO VOLUNTARY ANNEXATION OF REAL PROPERTY LOCATED AT 110 VAN AVENUE (SHORT PARCEL IDENTIFICATION NUMBER 5334-02-05-0020) TOGETHER WITH ASSOCIATED RIGHT-OF-WAYS IN ACCORDANCE WITH SECTION 171.044, *FLORIDA STATUTES*; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; REDEFINING THE BOUNDARIES OF THE CITY; PROVIDING FOR LEGAL EFFECT AND IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY, PROVIDING FOR NON-CODIFICATION AND SETTING AN EFFECTIVE DATE.

WHEREAS, Three RE Holdings, LLC, property owner, applied for annexation of property into the City of Daytona Beach Shores and is hereby determined to be the fee simple title owner of the real property described below; and

WHEREAS, the said applicant petitioned the City of Daytona Beach Shores, pursuant to Section 171.044, *Florida Statutes*, for annexation of said property into the municipal limits of the City of Daytona Beach Shores; and

WHEREAS, the subject property is currently addressed 110 Van Avenue; and

WHEREAS, the subject property currently has a Short Tax Parcel Identification Number 5334-02-05-0020; and

WHEREAS, the City of Daytona Beach Shores has determined that all of the property which is proposed to be annexed into the City of Daytona Beach Shores is within an unincorporated area of Volusia County, is reasonably compact and contiguous to the corporate areas of the City of Daytona Beach Shores, Florida and it is further determined that the annexation of said property will not result in the creation of any enclave (and, indeed, logically fills in the City Limits of the City and is consistent with sound principles and practices relating to the delineating of jurisdictional boundaries thereby furthering sound management in terms of the provision of public facilities and services as well as sound land use planning), and it is further determined that the property otherwise fully complies with the requirements of State law and has, further, determined that associated rights-of-way should be annexed hereby; and

WHEREAS, the City Commission of the City of Daytona Beach Shores, Florida has taken all actions in accordance with the requirements and procedures mandated by State law; and

WHEREAS, the City Commission of the City of Daytona Beach Shores, Florida

hereby determines that it is to the advantage of the City of Daytona Beach Shores and in the best interests of the citizens of the City of Daytona Beach Shores to annex the aforescribed property; and

WHEREAS, the provisions of Section 166.031(3), *Florida Statutes*, provide that [a] municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2); and

WHEREAS, the provisions of Section 171.091, *Florida Statutes*, provide as follows:

Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. A copy of such revision must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area.

; and

WHEREAS, the map attached hereto as Exhibit “A” shows, describes, and depicts the property and named associated rights-of-ways which are hereby annexed into the City of Daytona Beach Shores said Exhibit being incorporated into the substantive provisions of this Ordinance as if fully set forth herein verbatim.

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

SECTION ONE: LEGISLATIVE AND ADMINISTRATIVE FINDINGS/ANNEXATION OF PROPERTIES.

(a). The City Commission of the City of Daytona Beach Shores hereby finds that the recitations set forth are true and correct and that the requirements of Section 171.044, *Florida Statutes*, as well as all other requirements of controlling law, have been complied with in every respect.

(b). Under the authority of Section 166.031 (3), *Florida Statutes*, relating to city charter amendments, “[a] municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. . . . A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State . . .” This Ordinance shall amend the boundaries of the City to include the property annexed in this Ordinance.

SECTION TWO: ANNEXATION INTO THE CITY. The real property depicted and described by metes and bounds in Exhibit “A” appended hereto, which Exhibit is made part hereof and which property is owned by the petitioning property owners, and further described as set forth below, together with the associated rights-of-way as described below, is hereby annexed into the City Limits of the City of Daytona Beach Shores, said property being described as follows:

DESCRIPTION:

THE WEST 77.54 FEET OF LOTS 1, 2 AND 3, BLOCK 5, LYING EASTERLY OF ESPERANZA STREET AND SOUTHERLY OF VAN AVENUE, PLAT OF ORITA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN MAP BOOK 1, PAGE 115, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH THE EASTERLY 1/2 OF ESPERANZA STREET LYING NORTHERLY OF THE SOUTH LINE OF LOT 3 AND LYING SOUTHERLY OF THE CENTERLINE OF VAN AVENUE, AND THE SOUTHERLY 1/2 OF VAN AVENUE LYING EASTERLY OF THE CENTERLINE OF ESPERANZA STREET AND WESTERLY OF THE EASTERLY LINE OF THE WESTERLY 77.54 FEET OF LOTS 1, 2 AND 3 SAID BLOCK 5, PLAT OF ORITA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 3 AND THE CENTERLINE OF ESPERANZA STREET, A 50 FOOT RIGHT OF WAY AS NOW LAID OUT; THENCE NORTHERLY ALONG SAID CENTERLINE TO THE CENTERLINE OF VAN AVENUE A 50 FOOT RIGHT OF WAY AS NOW LAID OUT; THENCE EASTERLY ALONG SAID CENTERLINE TO THE EASTERLY LINE OF THE WESTERLY 77.54 FEET OF SAID LOT 1; THENCE SOUTHERLY ALONG SAID EASTERLY LINE AND ALONG EASTERLY LINE OF THE WESTERLY 77.54 FEET OF LOTS 2 AND 3 TO THE SOUTHERLY LINE OF LOT 3; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 3 TO THE POINT OF BEGINNING. CONTAINING 0.412 ACRES, MORE OR LESS.

SECTION THREE: CHANGE IN CITY BOUNDARIES/LEGAL EFFECT OF ANNEXATION. The boundary lines of the City Limits of the City of Daytona Beach Shores are hereby redefined and, upon the effective date of this Ordinance shall also encompass the annexed property as described herein and depicted in Exhibit “A”. Upon

this Ordinance becoming effective, the property owner of the annexed property shall be entitled to all the rights and privileges and immunities as are from time-to-time granted to property owners of the City as further provided in Chapter 171, *Florida Statutes*, and shall further be subject to the responsibilities of ownership as may from time-to-time be determined by the governing authority of the City and the provisions of said Chapter 171, *Florida Statutes*.

SECTION FOUR: ADMINISTRATIVE IMPLEMENTING ACTIONS.

(a). Within seven (7) days of the adoption of this Ordinance, the City Clerk shall file a copy of said Ordinance with the Clerk of the Court (Land Records/Recording), with the Chief Administrative Officer of Volusia County (the County Manager), with the Florida Department of State, and with such other agencies and entities as may be required by law or otherwise desirable.

(b). The City Manager, or designees within City management staff, shall ensure that the property annexed by this Ordinance is incorporated into the City of Daytona Beach Shores *Comprehensive Plan* and the *Official Zoning Map* of the City of Daytona Beach Shores in an expeditious manner and, in accordance with, and pursuant to, the provisions of Under the authority of Section 166.031(3), *Florida Statutes*, the City Manager, or designees, shall amend the boundaries of the City to include the property annexed in this Ordinance and all previously annexed properties in all maps and geographical data relating to the City Limits said properties to include, but not be limited to, annexed rights-of-way and natural features.

SECTION FIVE: CONFLICTS. Any and all ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION SEVEN: NON-CODIFICATION. This Ordinance shall not be codified in the *City Code of the City of Daytona Beach Shores*, or the *Land Development Code of the City of Daytona Beach Shores*, or the *City of Daytona Beach Shores Comprehensive Plan* provided, however, that the actions taken herein shall be depicted on the pertinent maps of the City of Daytona Beach Shores by the City Manager, or designee.

SECTION EIGHT: EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

KURT SWARTZLANDER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**

Approved as to form and legality:

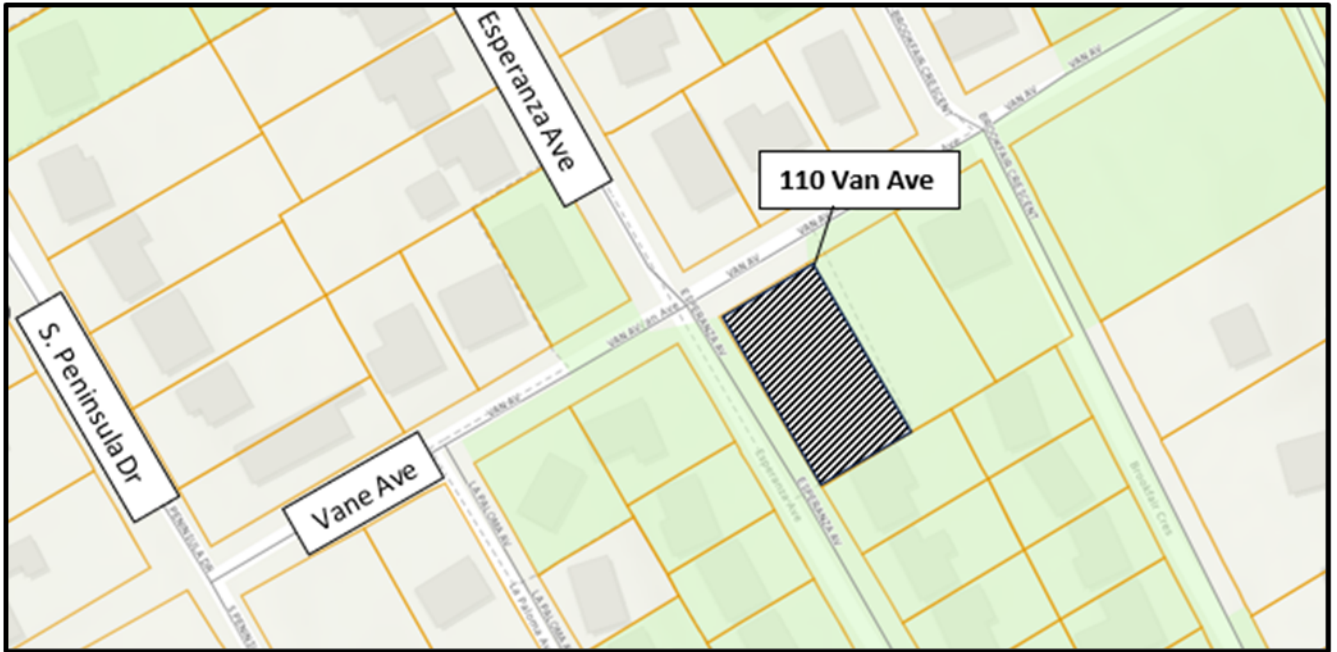
GRETCHEN R.H. “BECKY” VOSE, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2024.

Adopted on second reading this _____ day of _____, 2024.

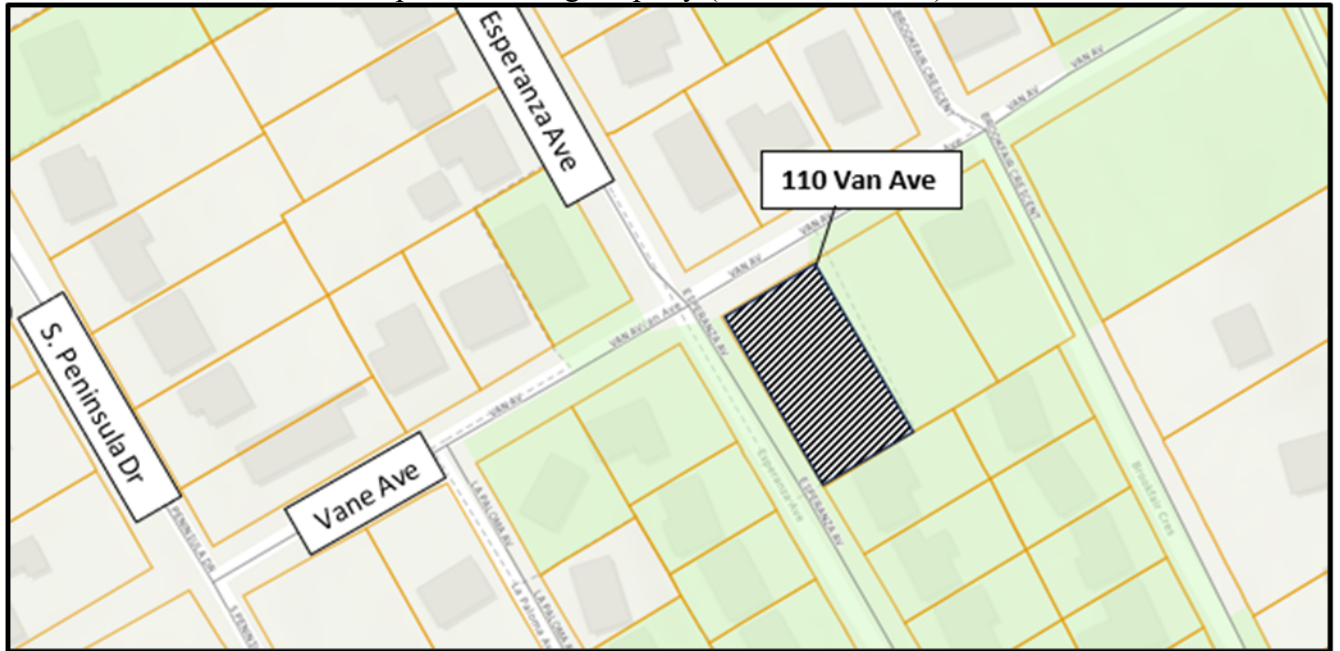
EXHIBIT A

(1) Location Map of Annexing Property (110 Van Avenue)



(2) Metes and Bounds Description/Sketch (Attached)

EXHIBIT 1: Location Map of Annexing Property (110 Van Avenue)



Source: Volusia County Property Appraiser Website, 2024

EXHIBIT 2
A: Annexation Application



City of Daytona Beach Shores
Building & Codes Division
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377 Fax (386) 763-5370

REQUEST FOR ANNEXATION

January 25, 2024
(Date)

I (We) the undersigned am the sole property owner(s) of 110 Van Ave., Volusia
County, Florida. (Street Address)

By this letter, I (We) am requesting annexation into the City of Daytona Beach Shores, Florida.
It is my (our) understanding that the fee for legal advertising has been waived by the City and
that I (we) will not incur any costs for annexation.

Signed,

Signature

Tom Cooper

Name (Printed or typed)

386-316-5965

Telephone

Signature

Alice Cooper

Name (Printed or typed)

386 316 5966

Telephone

Signature

Jessica Lovell

Name (Printed or typed)

386 882 1229

Telephone

SWORN to and subscribed before me this 25 day of January 2024 by
Tom Cooper, Alice Cooper, Jessica Lovell, who is personally known to me or produced
Identification _____. Type of Identification provided _____.

Cindy Paquet

Notary Public - State of Florida

My Commission Expires: 8/21/27



Please return this form to: Annexation Committee
c/o Planning Department
City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118

EXHIBIT 2
B: Property Appraiser Website Owner Information



LARRY BARTLETT, JD, CFA
WE VALUE VOLUSIA

[Agriculture](#) [Maps](#) [Tangible Proper](#)

[Home](#) / Parcel Summary for 3460545

[Search](#) ▾ [Downloads](#) ▾ [E](#)

Summary
Tax Estimate
Permits
Map
Pictometry
Print

Alternate Key:	3460545
Parcel ID:	533402050020
Township-Range-Section:	15 - 33 - 34
Subdivision-Block-Lot:	02 - 05 - 0020
Physical Address:	110 VAN AVE, DAYTONA BEACH 32118
Owner(s):	THREE RE HOLDINGS LLC - FS - Fee Simple - 100%
Mailing Address On File:	5927 ARUNA DR PORT ORANGE FL 32127 0917 Update Mailing Address
Building Count:	1
Neighborhood:	3107 - ORITA SUB Neighborhood Sales
Subdivision Name:	
Property Use:	0100 - SINGLE FAMILY
Tax District:	200-UNINCORPORATED - NORTHEAST
2023 Final Millage Rate:	17.8598
Homestead Property:	No - Apply for Homestead Online
Agriculture Classification:	No - Additional Information
Short Description:	W 77.54 FT OF LOTS 1 2 & 3 BLK 5 ROGERS NORTH ORITA PER OR 5 081 PG 4864 PER UNREC D/C PER OR 8412 PG 0905

EXHIBIT 3

A: Aerial View of Annexing Property (110 Van Ave.)



Source: Volusia County Property Appraiser Website, 2021

B: Street View of Annexing Property (110 Van Avenue)



Source: Daytona Beach Shores, 2024

**EXHIBT 4
PRE-ANNEXATION FORM**

Name of Property Owner: Three RE Holdings, LLC

Property Address/Tax Parcel ID: 110 Van Avenue / 5334-02-05-0020

Lot Size: 78' x 150' = 11,700sf (0.27 acres)

According to Volusia County property records, does this property appear to meet Section 171.044 of Florida Statutes? Yes X No

How is property contiguous? East X West X North South X

Property Appraiser Just/Market Value: \$381,043 (2023 Final)

Homesteaded Property: Yes No X

Special Flood Hazard Area? Yes No X

Improved Lot X Unimproved Lot (Vacant)

Existing Use: Single Family Residential

Conforming Land Use: X Non-Conforming Land Use: Explain:

Existing County Zoning: R-9 Urban Single-Family Residential District

Existing County Land Use: Urban Low Intensity

Visual Condition of Property: Poor Average X Excellent

Water: Port Orange X Daytona Beach

Sanitary: Sewer X Septic Tank

If septic tank on site, is sewer available? Yes No

Metes and Bounds Survey conducted? Yes X No

Property Subject To Code Enforcement Action? Yes No X

Prepared by: Stewart Cruz, Community Services Director Date: March 29, 2024

EXHIBIT 5: Voluntary Annexation Criteria pursuant to Section 171.044, *Florida Statutes*

Section	Annexation Criteria	Criteria Met	Comments
171.044(1)	Property must be contiguous to the City.	Yes	Per Sec. 171.031(11), subject property is contiguous to the City to the East, West & South.
171.044(1)	Property must be reasonably compact.	Yes	Per Sec. 171.031(12), subject property is reasonably compact and will not create new enclaves, pockets or finger areas in serpentine patterns. In addition, the annexation will aid in reducing the larger county enclave in the vicinity.
171.044(2)	Petition bears the signatures of all owners of property.	Yes	Yes.
171.044(2)	Meet publication requirements.	Yes	Evidence filed with the Office of the City Clerk.
171.044(3)	Ordinance shall be filed per statute.	Pending	Ordinance filing will occur per statutory deadline subsequent to the Ordinance's adoption.
171.044(3)	Ordinance shall include a map and legal description by metes and bounds.	Yes	See Ordinance 2024-10
171.044(4)	Annexation method shall be supplemental to any other procedure provided by general law.	N/A	
171.044(5)	Annexation shall not create enclaves.	Yes	Per Sec. 171.031(13), subject property does not create an enclave. In fact the annexation will reduce the larger County enclave that currently exists in this area.
171.044(6)	Provision of notice to County Commissioners per statute.	Yes	Notice provided via certified mail per statutory requirement.