



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COMMISSION MEETING JUNE 11, 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 May 28, 2024
- 7. CONSENT AGENDA:**
 - A. Amendment No. 2 To Interlocal Agreement For Fueling Services
- 8. OLD BUSINESS:**

- A. Ordinance 2024-19: Development Agreement Application 12024010 By Daytona Ocean Investment Corp & Hotel Motel, LLC. Address: 2601-2613 S. Atlantic Avenue

9. NEW BUSINESS:

- A. Resolution 2024-06: Authorization To Submit A Loan Application To The Clean Water State Revolving Fund Program With 100% Principal Forgiveness For Sanitary Sewer Resiliency Upgrades
- B. Resolution 2024-08 New Commission Monthly Meeting Schedule
- C. Hearing on Notice of Termination of Contract with Volusia County Towing
- D. Review City Manager Evaluations

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
May 28, 2024
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Mayor Miller called the meeting to order at 6:00 pm.

2. ROLL CALL BY CITY CLERK

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 Becky Vose, Community Services Director Stewart Cruz, Finance Director Lory Irwin, Economic Development and Public Affairs Director Nancy Maddox, and Public Safety Director Michael Fowler.

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Mayor Miller recognized as Hometown Hero

City Manager Kurt Swartzlander recognized Mayor Miller for receiving the Home Rule Hero award for the third year in a row. Community Services Director Stewart Cruz announced that Gwyn Herstein was promoted to City Planner.

6. APPROVAL OF MINUTES

A. City Commission Workshop Minutes May 14, 2024

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve the City Commission Workshop Minutes of May 14, 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

B. City Commission Minutes May 14, 2024

COMMISSIONER CHRIS CONOMOS moved, seconded by VICE MAYOR MICHAEL POLITIS to Approve the City Commission Minutes of May 14, 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. Public Safety April report
- B. Monthly Executive Financial Report-April 2024
- C. Community Services Department Monthly Report - April 2024
- D. Consideration to terminate Wrecker Service Agreement with Volusia County Towing
- E. Consideration to terminate membership with PACE Florida Green Finance Authority
- F. Consideration to Terminate the Limited Purpose Party Membership Agreement with Florida Resiliency and Energy District.

COMMISSIONER CHRIS CONOMOS moved, seconded by COMMISSIONER MARK CARD 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. Charter Amendment Ordinance 2024-17 3 terms

Attorney Vose read the ordinance by title. Mayor Miller stated that the citizens would be able

to vote on whether to extend term limits to three four-year terms. VM Politis felt this would allow for continuity on the commission.

COMMISSIONER MARK CARD moved, seconded by VICE MAYOR MICHAEL POLITIS to Adopt Charter Amendment Ordinance 2024-17 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. NEW BUSINESS:

- A. Ordinance 2024-19: Development Agreement Application 12024010 By Daytona Ocean Investment Corp & Hotel Motel, LLC. Address: 2601-2613 S. Atlantic Avenue

Attorney Vose read the ordinance by title. Community Services Director Stewart Cruz provided a brief staff report. There are four parcels on the site with approximately three acres. The proposed project would be a 101-unit, 8-story Cambria Hotel to include a restaurant, pool and parking. There would be three years allowed for permit issuance and 5 years to receive a final certificate of occupancy. There are four deviations requested from the City's Land Development Code. They are: 1) parking spaces from 102 required to 95 total; 2) building setbacks; 3) two loading zones to one and 4) green space from 20% minimum to 17%. The parking spaces include 20 spaces that would be double stacked. Aerial views of the property and concept renderings were shown. Director Cruz stated that all the requirements had been met and staff recommended approval. Attorney Joey Posey was in attendance for the developer, explaining the Cambria brand name and the amenities that would be included. He stated the permit for the sea wall was obtained, and they are willing to tie in to the Sherwin's seawall if they so desire. The valet parking would be for safety and efficiency on the site. He said that the developer would stipulate to contribute \$30,000 to be included in the beach walkway maintenance fund.

The following two audience members spoke: Steve Hopkins, who lives in the Sherwin Condo, stated that the team met with the owners and they supported the hotel project. They are glad to see that engineering has been done and would take care of some issues currently on the site. Elaine Shizkowski, who also lives in the Sherwin, was not happy. She felt she would lose her view and privacy.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve Ordinance 2024-19 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

- B. Discussion to include Live Meeting Manager to existing Civic Clerk software

Mayor Miller explained that the current agenda software had additional functions that were not being utilized. One is called Live Meeting Manager that would allow a commissioner to request to speak and provide online voting. After a brief discussion, it was decided to include that add-on.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER MARK CARD to Approve including the Live Meeting Manager to the existing Civic Clerk software.

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

C. Discussion on holding City Commission Meetings once per month

Mayor Miller explained that many cities only meet once per month. Beginning in January 2025, she would like to institute that practice here. City Commission meetings would move to the first Tuesday of the month and the third Tuesday would be reserved if a second meeting or a workshop was required. After a brief discussion, the commission was in agreement.

VICE MAYOR MICHAEL POLITIS moved, seconded by COMMISSIONER CHRIS CONOMOS to Approve bringing a Resolution forward to hold one City Commission Meeting per month.

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. CITY ATTORNEY COMMENTS

The City Attorney had no additional comments.

11. CITY MANAGER COMMENTS

City Manager Swartzlander explained that City Hall had a flooring project in progress. Some employees will be relocated to the Community Center for the duration.

12. COMMISSION COMMENTS:

Mayor Miller thanked everyone who attended the Armed Forces Day event. She reported that she attended the American Flood conference last week in Washington, DC. One of the main topics was sea level rise and its prevention. The County of Volusia is currently doing a feasibility study with hopes it will assist with obtaining the Army Corp. of Engineers to work on the beach. VM Politis provided an update on the recent TPO meeting he attended. FDOT has many projects in the works including updating highway interchanges and additional truck parking on Interstate 4.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

Dan Morris from the PO/SD Chamber announced Civic Youth Day would occur next week. He thanked Mayor Miller for assisting.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

There were no additional items added to the next agenda.

15. ADJOURNMENT:

The meeting ended at 7:16 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
KURT D. SWARTZLANDER**

ATTEST:

CITY CLERK, CHERI SCHWAB



**CITY COMMISSION AGENDA MEMORANDUM
JUNE 11, 2024 AGENDA**

TO: Honorable Mayor and Members of the City Commission
FROM:
PREPARED BY: Lory Irwin, Finance Director
SUBJECT: Amendment No. 2 To Interlocal Agreement For Fueling Services

SYNOPSIS:

Amendment No. 2 to the Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by the City of Daytona Beach Shores to the County of Volusia to modify the terms for an additional three-year term; October 1, 2024 through September 30, 2027.

FISCAL IMPACT STATEMENT:

The fiscal impact is minimal at \$0.16/gallon for unleaded and \$0.28/gallon for diesel.

BACKGROUND:

The City of Daytona Beach Shores and the County of Volusia entered into an interlocal agreement for fleet fuel services in October 2018 for three years. Amendment No. 1 extended that contract for an additional 3 years to September 30, 2024. Amendment No. 2 will extend the existing contract to September 30, 2027.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends the approval of Amendment No. 2 to the Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by the City of Daytona Beach Shores to the County of Volusia.

SUGGESTED MOTION:

ATTACHMENT: 1. 2024.05.23_DAYTONA BEACH SHORES_Amendment 2 to Interlocal Agreement for Municipal Fleet Fueling Services_COMBINED

**AMENDMENT NO. 2
TO
INTERLOCAL AGREEMENT FOR THE PROVISION OF MUNICIPAL FLEET
FUELING SERVICES BY CITY OF DAYTONA BEACH SHORES TO COUNTY OF
VOLUSIA**

THIS AMENDMENT No. 2 (“Amendment”) to the Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by City of Daytona Beach Shores to County of Volusia (“**Agreement**”), is made and entered into by and between the **COUNTY OF VOLUSIA (“County”)**, a body corporate and politic and a political subdivision of the State of Florida, located at 123 West Indiana Avenue, DeLand, FL 32720, and the **CITY OF DAYTONA BEACH SHORES (“City”)**, a municipal corporation duly incorporated pursuant to the laws of the State of Florida, with administrative offices at 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118. Collectively, the County and the City are referred to herein as the “**Parties.**”

WHEREAS, on or about October 16, 2018, the County and the City entered into the Agreement, for an initial term through September 30, 2021;

WHEREAS, in accordance with Part I, Section 7 (Term) of the Agreement, on or about September 28, 2021, the Parties amended the Agreement (“**Amendment No. 1**”), extending the term of the Agreement through September 30, 2024, and making other changes to the Agreement’s terms and exhibits; and

WHEREAS, Part I, Section 7 (Term) of the Agreement, as amended by Amendment No. 1, allows the Parties to renew the Agreement by mutual agreement; and

WHEREAS, the County and the City desire and agree to renew the Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and other consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree to amend the Agreement as follows:

1. The Parties agree that the foregoing recitals are true, correct and material to this Amendment.
2. The Parties agree to amend Part I, Section 7 (Term) of the Agreement to read, in whole, as follows:

Term. This Agreement took effect on October 16, 2018, for an initial term through September 30, 2021; was timely renewed in accordance with this section through September 30, 2024; and is hereby renewed for a second renewal term through September 30, 2027. The parties may, by mutual agreement, renew this Agreement upon the same or modified terms for additional renewal terms of an agreed-upon duration. To renew this Agreement, the City should notify the County in writing no later than February 1 of that Agreement year of the City’s desire to renew, and the parties must execute an addendum or amendment stating the renewal terms. The County Manager may approve and execute such addendum or

amendment on behalf of the County.

3. This Amendment sets forth the entire modification to the Agreement, as previously amended, unless the Agreement is otherwise amended or modified in accordance with the terms of the Agreement. This Amendment supersedes all prior proposals, agreements, and communications, both written and oral, regarding the matter described herein.
4. This Amendment is incorporated by reference into the Agreement, as previously amended, as if fully set forth therein. Except as provided above, all other terms and conditions of the Agreement, as previously amended, shall remain unchanged and in full force and effect and are hereby ratified and reaffirmed by the Parties. In the event of any conflict or inconsistency between the provisions set forth in this Amendment and the Agreement, this Amendment shall govern and control.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties to this Amendment No. 2 to the Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by City of Daytona Beach Shores to County of Volusia have caused the same to be signed by their duly authorized representatives as set forth below.

CITY OF DAYTONA BEACH SHORES

COUNTY OF VOLUSIA, FLORIDA

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Jeffrey S. Brower
County Chair
Date: _____

Attest:

Attest:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
George Recktenwald
County Manager
Date: _____

CC Date: _____

AMENDMENT NO. 1

TO

**INTERLOCAL AGREEMENT FOR THE PROVISION OF MUNICIPAL FLEET
FUELING SERVICES BY CITY OF DAYTONA BEACH SHORES TO COUNTY OF
VOLUSIA**

THIS AMENDMENT No. 1 (“Amendment”) to the Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by City of Daytona Beach Shores to County of Volusia (“**Agreement**”), is made and entered into by and between the **COUNTY OF VOLUSIA (“County”)**, Florida, a body corporate and politic and a political subdivision of the State of Florida, located at 123 West Indiana Avenue, DeLand, FL 32720, and the **CITY OF DAYTONA BEACH SHORES (“City”)**, a **municipal corporation duly incorporated pursuant to the laws of the State of Florida**, with administrative offices at 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118. Collectively, the County and the City are referred to herein as the “**Parties.**”

WHEREAS, on or about October 16, 2018, the County and the City entered into the Agreement;

WHEREAS, the term of the Agreement is approximately three (3) years, beginning on October 16, 2018, and terminating September 30, 2021;

WHEREAS, the Agreement permits the Parties to renew the Agreement by mutual agreement; and

WHEREAS, through this Amendment, the County and the City desire and agree to renew the Agreement and to make other amendments to the Agreement as indicated herein.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and other consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree to amend the Agreement as follows:

1. The Parties agree that the foregoing recitals are true, correct and material to this Amendment.
2. The Parties agree to amend Part I, Section 7 (Term) of the Agreement to read, in whole, as follows:

Term. This Agreement shall be renewed and take effect on October 1, 2021, and shall terminate on September 30, 2024, unless renewed or otherwise terminated as set forth in this section and Part I, Section 9, respectively. The parties may, by mutual agreement, renew this Agreement upon the same or modified terms. Should the COUNTY desire to renew this Agreement, it shall make application in writing therefore to the CITY no later than August 1 of that contract year.

3. The Parties further agree to amend Part I, Section 9 (Notice) to read, in whole, as follows:

Notice. If notice is required under this Agreement, it must be provided to the following persons:

COUNTY:

County of Volusia
Attn: County Manager
123 W. Indiana Ave.
DeLand, FL 32720

CITY:

City of Daytona Beach Shores,
Florida
2990 S. Atlantic Ave.
Daytona Beach Shores, FL
32118
Attn: City Manager

Copy to:

County of Volusia
Attn: Fleet Management Director
1270 Indian Lake Road
Daytona Beach, FL 32124

4. The Parties also agree the attached Attachment 1-A (Scope of Services, Schedule of Charges) is hereby substituted for and takes the place of the original Attachment 1 to the Agreement; Attachment 1-A is hereby incorporated into the Agreement.
5. This Amendment sets forth the entire modification to the Agreement, unless the Agreement is otherwise amended or modified in accordance with the terms of the Agreement, and this Amendment supersedes all prior proposals, agreements, and communications, both written and oral, regarding the matter described herein.
6. This Amendment is incorporated by reference into the Agreement as if fully set forth therein. Except as provided above, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect and are hereby ratified and reaffirmed by the Parties. In the event of any conflict or inconsistency between the provisions set forth in this Amendment and the Agreement, this Amendment shall govern and control.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties to this Amendment No. 1 to the Interlocal Agreement for the Provision of Municipal Fleet Fueling Services by City of Daytona Beach Shores to County of Volusia have caused the same to be signed by their duly authorized representatives as set forth below.

CITY OF DAYTONA BEACH SHORES

By: [Signature]
Name: Michael T. Parker
Title: City Manager
Date: 8/26/21

Attest:

By: [Signature]
Name: Cheri Schwab
Title: City Clerk
Date: 8/26/2021

COUNTY OF VOLUSIA, FLORIDA

By: [Signature]
Jeffrey S. Brower
County Chair
Date: 9/21/2021

Attest:

By: [Signature]
George Recktenwald
County Manager
Date: 9/22/2021

CC Date: 9/21/2021

ATTACHMENT 1-A

SCOPE OF SERVICES SCHEDULE OF CHARGES

City of Daytona Beach Shores (City) fleet fueling services available to the County of Volusia (County) are as follows:

I. FUELING SERVICES

- A-1. Maintenance of fuel inventories and operations of fuel facilities for in-house fueling of vehicles/equipment.
- A-2. Issuance of vehicle identification and employee identification codes for easy processing and security of in-house fueling.

Financial and Information Services

- B-1. Monthly billing report including utilization data.
- B-2. Annual utilization report.

Extra Costs

- C-1. Damage to City fuel station facility or equipment – cost of repair.

II. FLEET MANAGEMENT FUELING FACILITIES

Daytona Beach Shores Public Safety Department, 3050 S. Atlantic Avenue, Daytona Beach, FL, phone number 386-763-5328. This site is available twenty-four (24) hours.

III. CHARGING FOR SERVICES AND BILLING

A. CHARGES FOR SERVICES

Direct Charge for Service Method

All direct costs will be accounted for by vehicle identification. Fuel rates are current cost at the time of fuel consumption by Beach, plus sixteen (16¢) cents per gallon, unleaded and twenty-eight (28¢) cents per gallon, diesel. See also C-1 for extra costs.

B. BILLING

Billing shall be done monthly. Bills are to be itemized and sent to:

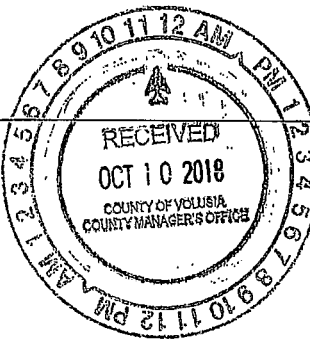
**Attention: Lynea Lewis,
Volusia County Beach Safety
1270 Indian Lake Road
Daytona Beach, FL 32724**

C. PAYMENT

The County shall promptly process journal vouchers for payment of the preceding month's services.

SEE INFO BELOW FOR
 DATE, SIGNATURE &
 PICKUP PERSON
 Page 1 of 1

File Number: 6028

Date: 10/16/2018		AGENDA ITEM		Item: H	
☐ Ordinance		☐ Resolution		☐ Budget Resolution	
☒ Other					
County Goals					
☐	Thriving Communities	☐	Economic & Financial Vitality	☐	Excellence in Government
				☒	NA
Department: Business Services					
Division: Central Services					
Subject: Agreement with City of Daytona Beach Shores to provide fueling services for beach safety division.					
Rhonda Orr Director Business Services <i>Rhonda C. Orr</i> Department Approval		Legal John Chumley Assistant County Attorney <i>[Signature]</i> Approved as to Form and Legality		County Manager's Office Donna de Peyster Deputy County Manager <i>Donna de Peyster</i>	
George Baker <i>[Signature]</i> Division Approval					
Council Action:					
Modification:					
Fund Number(s): 001 General Fund		Description: Expenditure Beach Safety 001-570-8000-5220		Amount: \$69,000.00	
Total Item Budget: \$69,000.00					
Staff Contact(s): Rhonda Orr George Baker		Phone: 386 822 5738 386 254 1595		Ext. 15738 11359	
Summary/Highlights: Staff requests approval of the attached agreement with the City of Daytona Beach Shores, which enables the county beach safety division to purchase fuel for vehicles and equipment from the city at approximately the same pricing as at county fuel sites, instead of purchasing fuel at commercial fueling stations at higher prices. This agreement is for the three year period from October 1, 2018 until September 30, 2021.					
Recommended Motion: Approval.					

FOR PICKUP:

MICHELLE LEIGH

EXT. 11268

CELL PHONE: 566-4507

PLEASE INSERT DATE OF

COUNCIL MEETING FOR

SIGNATURE DATE 10/16/18

Budget 2-2

H-1

**INTERLOCAL AGREEMENT
FOR THE PROVISION OF
MUNICIPAL FLEET FUELING SERVICES
BY CITY OF DAYTONA BEACH SHORES
TO COUNTY OF VOLUSIA**

THIS AGREEMENT is entered into by and between the CITY OF DAYTONA BEACH SHORES, a municipal corporation duly incorporated pursuant to the laws of the State of Florida, with administrative offices at 2990 South Atlantic Avenue, Daytona Beach Shores, FL 32118, hereinafter referred to as "**CITY**", and COUNTY OF VOLUSIA, a body corporate and politic and a political subdivision of the State of Florida, with administrative offices at 123 West Indiana Avenue, DeLand, Florida 32720-4612, hereinafter referred to as "**COUNTY**."

RECITALS

WHEREAS, the COUNTY is authorized by §125.01(1)(p), Florida Statutes, to "enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for the joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions;" and

WHEREAS, public agencies (including CITY and COUNTY) are authorized by §163.01(14), Florida Statutes, to "enter into contracts for the performance of service functions of [such] public agencies, but shall not be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers." The parties expressly deny any intent, express or implied, in this Agreement to provide for a delegation by COUNTY of such constitutional or statutory duties to CITY or vice versa; and

WHEREAS, the foregoing authorization for such agreements is granted to counties and public agencies for the purpose of permitting "local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities." §163.01(2), Florida Statutes; and

WHEREAS, COUNTY after evaluation of options for the provision, has made a determination that it will be best served by contracting with CITY for provision of such services, which services will be performed by CITY personnel; and

WHEREAS, CITY certifies that it either currently has, or will employ, a sufficient number of personnel, appropriately qualified to perform the services enumerated therein, and CITY is willing to provide such services to COUNTY.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

PART I. General Provisions

1. Legislative Findings/Representations. The foregoing recitals are hereby adopted and incorporated herein as a material part of this Agreement.

2. Purpose. The purpose of this Agreement is for the CITY to provide specified fleet refueling services to COUNTY (hereinafter, the "Contract Services"), at agreed upon levels of service "LOS") as established herein.

3. CITY Departments. CITY shall manage the delivery of the Contract Services by allocating service task responsibilities along the organization line of the CITY's Departments (hereinafter, "Departments"), as stated in PART II hereof. The Director of the applicable Department or his/her designee shall be the CITY'S liaison to COUNTY for purposes of performance, interpretation and implementation of this Agreement.

4. No Pledge of Ad Valorem Taxes. The parties agree that this Agreement does not constitute a general indebtedness of either party within the meaning of any constitutional statutory, or charter provision or limitation, and the parties expressly agree that the neither shall have the right to require or compel the exercise of ad valorem taxing power of the other or taxation of any real or personal property therein for providing the services described herein for payment of any monetary obligations due under the terms of this Agreement. It is further agreed that this Agreement and any funds called for to be paid hereunder shall not constitute a lien upon any real or personal property of either party or any part thereof, and that the obligation for monetary payments called for to be made hereunder shall be deemed to exist for less than a year at any point in time and shall be entirely subject to the legislative budgetary discretion of the parties respectively. The parties' monetary obligations to one another pursuant to this Agreement is limited to the budgeted amount for the then current fiscal year of this Agreement and is otherwise limited to legally available non ad-valorem tax revenues.

5. Level of Service (LOS). CITY agrees to provide the Contract Services at the LOS established herein. Should the COUNTY desire the CITY to provide services either different in kind, or at a higher level than that contemplated herein, the COUNTY Manager shall make written request therefore to the CITY Manager. Any Agreement modification to an LOS established pursuant to this Agreement shall be reduced to writing and approved by both parties. Any reduction in LOS desired by the COUNTY shall be effective only at the beginning of a new fiscal year unless both parties agree otherwise.

6. Personnel Matters. CITY shall allocate manpower and equipment for the performance of the Contract Services on an "as needed" basis. This Agreement shall not require any particular CITY employee to be dedicated fulltime to the Contract Services. All CITY personnel assigned to perform Contract services shall remain subject to CITY merit rules and regulations for all purposes contemplated merit and cost-of-living raises, annual leave and sick leave and disciplinary actions. Any claim of a disciplinary nature by the COUNTY regarding a CITY employee shall be referred to the appropriate CITY Department Director, who shall remain the "appointment authority" for such employee, for all purposes designated under the CITY Merit Rules. Such CITY employees shall have no right to elect or choose any procedures available to COUNTY employees.

7. Term. This Agreement shall take effect on the upon execution by both parties, and shall terminate on September 30, 2021, unless renewed or otherwise terminated as set forth in this section and Part I, Section 9 respectively. The parties may, by mutual agreement, renew this Agreement upon the same or modified terms. Should the COUNTY desire to renew this

Agreement, it shall make application in writing therefore, to CITY no later than August 1st of that contract year.

8. Termination. Either party may terminate this Agreement without cause or further liability to the other, upon written notice to the party representative specified in Part I, Section 10, given no less than one hundred eighty (180) days prior to the requested termination date. Such notice shall be the date the receipt therefore is signed by an official or authorized representative of the other party.

9. Notice. Notice as required to be given in this Agreement shall be provided to the following persons:

County:

City:

County of Volusia
123 W. Indiana Avenue
DeLand, FL 32720-4612
Attention: County Manager

City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Attn: City Manager

Copy to: Central Services Director
1270 Indian Lake Road
Daytona Beach, FL 32124

10. Third Parties. In no event shall any of the terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any of the parties to this Agreement arising from the performance of the obligations and responsibilities of the parties herein or for any other reason.

11. Dispute Resolution. Any disputes concerning non-performance, or other aspects of this Agreement for which either party initiates litigation to enforce its rights hereunder, shall be subject to the provisions of Chapter 164, Florida Statutes, "Florida Governmental Conflict Resolution Act."

12. Severability. If any provision of this Agreement is found to be unconstitutional, illegal, or otherwise unenforceable by judgment of a court of competent jurisdiction, such judgment shall not invalidate the remainder of this Agreement, unless such judgment renders the purpose or performance of this Agreement no longer practical for either party.

PART II. Services and Billing

1. Services

- a. Except as provided in subsection (b) hereof, the CITY shall provide the facilities, personnel, and supplies necessary and desirable to provide the Contract Services (*i.e.*, fleet refueling services) to vehicles and equipment owned by COUNTY.
- b. In the event of an emergency, the COUNTY acknowledges and understands that CITY cannot guarantee provision of the goods and services described in paragraph (a) above, and COUNTY shall make alternative provision for these

goods and services during such an event. Thus, the CITY's provision of fuel to the COUNTY pursuant to this Agreement shall be subject to fuel availability.

- c. Attached hereto and incorporated by reference are **Attachment 1** Schedule of Charges.

2. Billing

All direct costs will be accounted for by vehicle identification.

Billing shall be done monthly and the bills are to be itemized and sent to:

**Attn: Lynea Lewis
Volusia County Beach Safety
1270 Indian Lake Road
Daytona Beach, FL 32724**

Invoicing, payments, and penalties, including interest, shall be in accordance with the applicable provisions of Part VII of Chapter 218, Florida Statutes, and the Volusia County Code of Ordinances and the Purchasing Procedures Manual.

PART III. Miscellaneous

1. Sovereign Immunity. Each participating party expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Unless otherwise pre-empted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Notwithstanding anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity and/or the limits of liability of either party beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature. Nothing in this section shall be deemed to relieve or limit the amounts to be paid by either party for services rendered by the other party. Nor shall anything in this Agreement be construed or interpreted as requiring or allowing one party to this Agreement to indemnify or insure the other party to this Agreement for the other party's negligence or to assume any liability for the other party's negligence in contravention of § 768.28, Florida Statutes. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against either party, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

2. Indemnification/Hazards. Both parties agree to indemnify, defend, and hold each other harmless from each party's own respective negligent acts related to or arising from this Agreement. COUNTY shall be further responsible for promptly notifying the proper response authorities, environmental agency or agencies, and the CITY of any Hazardous Materials ("HAZMAT"), fuel, or pollutant spills and/or releases caused by COUNTY and undertaking diligent and reasonable efforts to contain and clean any such spills or releases upon the occurrence thereof. This section shall survive the expiration or termination of this Agreement.

3. Authorized Users/Vehicles. COUNTY shall provide an initial list of vehicles and users authorized to use fuel services with key holder assignment and provide written updates to this list in the same format as they occur and before any new user or vehicle will be recognized for fuel service at the fueling facilities.

4. Fuel Keys. COUNTY agrees to immediately report any lost fuel key(s) or access cards to the CITY to help to prevent unauthorized fuel usage.

5. Entire Agreement. This Agreement reflects the full and complete understanding of the parties and may be modified or amended only by a document in writing executed by all the parties, with the same formalities as this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties to this Interlocal Agreement for the Provisions of Municipal Fleet Fueling Services by City of Daytona Beach Shores to the County of Volusia have caused the same to be signed by their duly authorized representatives this 16 day of October, 2018.

COUNTY OF VOLUISA

By: Ed Kelley
Name: Ed Kelley
Title: County Chair
Date: 10/16/18

ATTEST: [Signature]
By: [Signature]
Name: George Recktenwald
Title: Interim County Manager
Date: 10/16/18

CITY OF DAYTONA BEACH SHORES

By: [Signature]
Name: Harry H. Jennings
Title: Mayor
Date: June 26, 2018

ATTEST: [Signature]
By: [Signature]
Name: Michael T. Booker
Title: City Manager
Date: June 26, 2018

ATTACHMENT 1

FLEET MAINTENANCE SERVICES OPTIONS SCHEDULE OF CHARGES

FMS available to CITY are as follows:

I. FUELING SERVICES

- A-1. Maintenance of fuel inventories and operations of fuel facilities for in-house fueling of vehicles/equipment.
- A-2. Issuance of vehicle identification and employee identification keys for easy processing and security of in-house fueling.

Financial and Information Services

- B-1. Monthly billing report including utilization data by vehicle identification
- B-2. Annual utilization report.

Extra Charge Services

- C-1. Replacement of lost or stolen fuel keys \$10.00 each.
- C-2. Damage to COUNTY fuel station facility or equipment. Cost of repair.

II. FLEET MANAGEMENT FUELING FACILITIES

Deland R&B- 2560 W. State Road Highway 44, DeLand, FL
New Smyrna Beach R&B - 530 Old North Dixie Highway, New Smyrna Beach, FL
Osteen R&B - 200 N. State Road Highway 415, Osteen, FL
Daytona Beach Indian Lake Road - 1336 Indian Lake Road, Daytona Beach, FL
Daytona Beach Landfill - 1990 Tomoka Farms Road, Daytona Beach, FL
Holly Hill R&B - 455 Walker St., Holly Hill, FL
Transfer Station – 261 DeLand Crossings Blvd. DeLand, FL

III. HOURS OF OPERATION AND KEY PHONE NUMBERS

All fueling locations are open 24 hours a day, except Deland Road and Bridge and the Tomoka Landfill.

Deland Road and Bridge:	7:30 am – 6:00 pm weekdays
Tomoka Landfill:	7:00 am - 5:30 pm Monday through Saturday

IV. CHARGING FOR SERVICES

Direct Rates for Service Method

All direct costs will be accounted for by vehicle identification. Fuel rates are current County cost at the time of fuel consumption by CITY, plus sixteen (16¢) cents per gallon, unleaded and twenty eight (28¢) cents per gallon, diesel. Special Service rates for special services shall be negotiated at the time of the request done in accordance with Part I, Sections 6 and 7 of the Agreement. See also C-1 and C-2 for extra charge services. Any labor provided shall be at the then current rate. All rates are current and may be modified yearly or upon renewal of this agreement.



CITY COMMISSION AGENDA MEMORANDUM JUNE 11, 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 2024-19: Development Agreement Application 12024010 By Daytona Ocean Investment Corp & Hotel Motel, LLC. Address: 2601-2613 S. Atlantic Avenue

SYNOPSIS:

If approved, Development Agreement Application 12024010 ("Agreement") between the City of Daytona Beach Shores and the Daytona Ocean Investment Corp & Hotel Motel, LLC. would provide for the development of the properties located at 2601 – 2613 S. Atlantic Avenue. The development would contain a 101-unit, 8-story Cambria Hotel with accessory uses, including, but not limited to, a restaurant open to the public. The Cambria Hotel will be built on the Seascape Motel property and the two southerly nonconforming vacant lots in between the Seascape Motel and the Emerald Shores Hotel. In addition, the northern property line of the Emerald Shores Hotel would also be shifted 11.7 feet south to accommodate the Cambria Hotel development. Among other things, the development agreement addresses the site development concept, entitlements and the grant of four Land Development Code deviations. The applicant is not seeking any economic development incentives from the City and the Emerald Shores Hotel will remain as is. Adoption of Ordinance 2024-19 (Exhibit A) would approve the subject development agreement (Exhibit B) as proposed.

If the agreement is approved, the applicant will subsequently submit detailed site development plans to the City for review. These site development plans will require public hearings for a recommendation and approval by the Planning and Zoning Board and the City Commission, respectively.

NOTE: At the first reading of this ordinance, the property owner's agent voluntarily stipulated, on behalf of the owner, a \$30,000 beach maintenance fund contribution. This stipulation has been incorporated into the development agreement in Section 4 "Public Benefits" and Section 12 "Terms and Conditions Relative to the Premises" of the Development Agreement.

FISCAL IMPACT STATEMENT:

BACKGROUND:

I. PROPERTY DESCRIPTION

The subject development agreement relates to four properties located at 2601 through 2613 S. Atlantic Avenue. These properties include the Seascope Motel property, two nonconforming vacant lots, each 25-foot wide, and the Emerald Shores Hotel. The Emerald Shores Hotel property has been developed since the 1990s while the Seascope Motel was a product of the 1970s. The City does not have any development records for the two vacant parcels. The entire site is 3+/- acres of real property with both the Cambria and Emerald Shores development containing 1.2 upland acres and 0.3 acres east of the seawall to the mean high watermark, respectively.

II. PROPOSED AGREEMENT

The highlights of the proposed Agreement are:

1. Development Permitted: The Agreement provides a general development framework that would facilitate removal of an outdated 1970s motel and replace it with a new 101-unit, 8-story Cambria Hotel and accessory uses, including, but not limited to, a restaurant open to the public. If approved, any substantial changes thereafter will require City Commission approval.
2. Density: Measured from the Mean High Water Line.
3. Agreement Duration: Three (3) years for building permit issuance and payment of permit fees for the development and five (5) years to receive a final certificate of occupancy.
4. Deviations: To realize number 1 above, four (4) deviations from the City's Land Development Code are requested for the Cambria Hotel. These deviations have been summarized in the Planning Analysis (Exhibit C).
5. Administrative Adjustment: City Staff may allow for modifications of up to 10% to any of the dimensional or landscaping requirements. This provision and staff authority excludes building height, density and other standards regulated by the Comprehensive Plan.
6. Waiver of Public Beach Access Requirement: Sec. 14-21.4 of the LDC requires that the breezeway/visual corridor shall include a seven-foot dedicated concrete public walkway, constructed by the applicant, from the sidewalks to the beach. Per Sec. 3.1.f of the Development Agreement, under the development of the Emerald Shores Hotel, a public beach access was previously dedicated to the City. This beach access immediately abuts the Emerald Shores Hotel to the south. The Emerald Shores Hotel property is subject to the proposed development. **NOTE: At the first reading of this ordinance, the property owner's agent voluntarily stipulated, on behalf of the owner, a \$30,000 beach maintenance fund contribution. This stipulation has been incorporated into the development agreement in Section 4 "Public Benefits" and Section 12 "Terms and Conditions Relative to the Premises" of the Development Agreement.**

III. ECONOMIC DEVELOPMENT INCENTIVES

No economic development incentives are requested.

IV. PLANNING & ZONING BOARD

On May 13, 2024, the Daytona Beach Shores Planning and Zoning Board voted to recommend approval of the proposed development agreement.

V. PLANNING ANALYSIS

A planning analysis of the development agreement is attached as Exhibit C to this staff memo.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Ordinance 2024-19 as presented.

SUGGESTED MOTION:

A City Commissioner may motion as follows:

1. "I move to approve Ordinance 2024-19 as presented."

OR

2. "I move to approve Ordinance 2024-19, with the following conditions..."

OR

3. "I move to deny Ordinance 2024-19, on the basis of ..."

- ATTACHMENT:**
1. Exhibit A-Ordinance 2024-19 Cambria DA-2601-2613 S. Atlantic Ave
 2. Exhibit B-Ord. 2024-19-DA Cambria Emerald Shores 6-5-24
 3. DA Exhibit A-Legal Description of Cambria Property
 4. DA Exhibit B-Legal Description of Emerald Shores Property
 5. DA Exhibit C-Cambria Hotel Construction Plans
 6. DA Exhibit D-Conceptual Architectural Elevations
 7. Additional Building Elevations
 8. Exhibit C-Planning Analysis

ORDINANCE 2024-19

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF A DEVELOPMENT AGREEMENT PERTAINING TO PROPERTIES OWNED BY DAYTONA OCEAN INVESTMENT CORP AND HOTEL MOTEL, LLC IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 15 OF THE LAND DEVELOPMENT CODE AND THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT” AS SET FORTH IN SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER’S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Daytona Ocean Investment Corp & Hotel Motel, LLC and the City of Daytona Beach Shores have considered and processed and the City Commission of the City of Daytona Beach Shores hereby approves and enacts the Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein verbatim), all of said actions occurring pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; and

WHEREAS, Daytona Ocean Investment Corp & Hotel Motel, LLC are the owners of the properties that are subject to this Development Agreement set forth in the Exhibit to this Ordinance; and

WHEREAS, the City of Daytona Beach Shores and Daytona Ocean Investment Corp & Hotel Motel, LLC have complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*.

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

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Commission of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Commission agenda memorandum relating to the application relating to the proposed land use approvals and authorization of zoning entitlements pertaining to the property referenced in the Development Agreement as well as the recitals (whereas clauses) to this Ordinance.

(b). The findings of the provisions of the subject Development Agreement between the City of Daytona Beach Shores and Daytona Ocean Investment Corp & Hotel Motel, LLC are hereby adopted, ratified and affirmed.

SECTION TWO: APPROVAL AND ENACTMENT OF DEVELOPMENT AGREEMENT.

The Development Agreement between the City of Daytona Beach Shores and Daytona Ocean Investment Corp & Hotel Motel, LLC as set forth in the Exhibit to this Ordinance is hereby approved and enacted. The said Exhibit attached to this Ordinance is hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance.

SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona Beach Shores and Daytona

Ocean Investment Corp & Hotel Motel, LLC as set forth in the Exhibit to this Ordinance, and involving the subject property, are hereby ratified and affirmed.

SECTION FOUR: NON-CODIFICATION AND IMPLEMENTATION; SCRIVENER'S ERRORS.

- (a). The provisions of this Ordinance shall not be codified and made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* or the *Land Development Code of the City of Daytona Beach Shores, Florida*.
- (b). The City Manager, or designee(s), is hereby authorized to take any and all actions necessary to implement the provisions of this Ordinance.
- (c). The City Attorney shall assist the City Manager in the implementation of this Ordinance as may be necessary and required.
- (d). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.
- (e). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION FIVE: CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION SEVEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately as provided by law.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

KURT SWARTZLANDER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form:

GRETCHEN “BECKY” VOSE, CITY ATTORNEY

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

Enacted on second reading this ____ day of _____, 2024.

This Instrument Prepared By:
Glenn D. Storch, Esq.
420 S. Nova Rd.
Daytona Beach, Florida 32114

Return To:
Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

CAMBRIA AND EMERALD SHORES HOTELS
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between DAYTONA OCEAN INVESTMENT CORP, a Florida corporation, registered and authorized to conduct business in the State of Florida, hereinafter referred to as the “CAMBRIA HOTEL” and “HOTEL MOTEL, INC.” a Florida corporation, registered and authorized to conduct business in the State of Florida, hereinafter referred to as the “EMERALD SHORES HOTEL” or jointly as the “PROPERTY”, and the CITY OF DAYTONA BEACH SHORES, FLORIDA, a municipal corporation of the State of Florida, holding tax exempt status, hereinafter referred to as “CITY”.

W I T N E S S E T H:

WHEREAS, DAYTONA OCEAN INVESTMENT CORP, a Florida corporation, registered and authorized to conduct business in the State of Florida is the owner of real property located at 2601 and 2605 South Atlantic Avenue, Daytona Beach Shores, Florida identified as Volusia County Tax Parcel Identification Numbers 5322-00-04-0010, 5322-00-04-0031, 5322-00-04-0030 as further described on Exhibit “A” attached hereto (referred to from time to time as the “CAMBRIA HOTEL” in this Development Agreement and which is the subject of the exhibits referenced herein); and

WHEREAS, HOTEL MOTEL, INC., a Florida corporation, registered and authorized to conduct business in the State of Florida, is the owner of real property located at 2613 South Atlantic Avenue, Daytona Beach Shores, Florida identified as Volusia County Tax Parcel Identification Number 5322-00-04-0040, as further described on Exhibit “B” attached hereto (referred to from time to time as the “EMERALD SHORES HOTEL” in this Development Agreement and which is the subject of the exhibits referenced herein); and

WHEREAS, HOTEL MOTEL, INC., a Florida corporation, registered and authorized to conduct business in the State of Florida, and DAYTONA OCEAN INVESTMENT CORP, a Florida corporation, registered and authorized to conduct business in the State of Florida, jointly agree as the owners of adjoining property to request and agree to the following terms together as “PROPERTY OWNER” which affects four parcels provided herein and the four parcels are now referred to as “the Property”; and

WHEREAS the PROPERTY OWNER and the CITY wish to enter into a Development Agreement to allow for development of the Property for commercial hotel uses; and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in the development of the property in accordance with the CITY's comprehensive plan, official zoning map and *Land Development Code* to allow for commercial hotels and related uses; and

WHEREAS the CITY desires to provide for the orderly development of land within the CITY in order to maintain a high quality of life for residents and businesses; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the CITY shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

WHEREAS, pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*, local governments are authorized to adopt, by ordinance, procedures and requirements whereby a local government may consider and enter into a development agreement with any person having a legal or equitable interest in real property located within the local government's jurisdiction and the CITY enacted Ordinance 2013-10, codified as Chapter 15, *Land Development Code*, to implement the provisions of the referenced statutory provisions; and

WHEREAS, the lack of certainty in the approval of development can result in a waste of economic and land resources; discourage sound capital improvement planning and financing; escalate the cost of housing and development; and discourage commitment to comprehensive planning and the CITY and the PROPERTY OWNER desire to engage in sound and long range planning with regard to the Property in a manner that protects the investment backed expectations and rights of the PROPERTY OWNER while providing for an array of benefits to the citizens of the CITY; and

WHEREAS, development agreements entered into pursuant to the *Florida Local Government Development Agreement Act*, strengthen the public planning process, encourage sound capital improvement, planning and financing; assist in assuring that there are adequate capital facilities to support development; encourage private participation in comprehensive planning; and reduce the economic cost of a development by providing assurances to a developer that, upon receipt of a development permit, the developer may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement; and

WHEREAS development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project and, although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body (the CITY's City Commission) through its general plan, and consistent with any applicable specific plan; and

WHEREAS, neither the PROPERTY OWNER nor the CITY, as the local government with land use regulatory authority over lands located within the CITY, is required to enter into a development agreement and, when entered, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the CITY's ultimate approval, but while a development agreement must advance the CITY's local planning policies, it may also contain

provisions that vary from otherwise applicable zoning standards and land use requirements; and

WHEREAS, development agreements are, essentially, a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways and, as such, development agreements may be viewed as an alternative to the traditional development approval process which, in practice, it is commonly used in conjunction with; and

WHEREAS the City Commission of the CITY finds it is in the best interest and welfare of the citizens of the CITY to approve this Development Agreement with the terms and conditions set forth herein; and

WHEREAS, the City Commission of the CITY has determined that the terms and conditions of this Development Agreement are in the best interests of the public health, safety and welfare of the citizens of the CITY and provide for specific public benefits; and

WHEREAS, the City Commission of the CITY hereby finds and concludes that the provisions of this Development Agreement are consistent with the CITY's *Comprehensive Plan* and will result in the provision of enhanced economic development within the City and is consistent with the general purpose and intent of the land development regulations of the CITY and no amendments are required to the CITY's *Comprehensive Plan* or land development regulations in order to approve the development set forth in this Development Agreement; although some flexibility in the land development code provisions are required and waivers requested herein, and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*.

NOW, THEREFORE, in consideration of the foregoing, and the premises and the promises, covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties the PROPERTY OWNER and CITY agree as follows:

SECTION 1. RECITALS/FINDINGS.

a) The recitals, set forth above, are true and correct and form a material part of this Development Agreement upon which the parties have relied.

b) The findings set forth above are, and constitute, the findings of the City Commission of the CITY and form a material part of this Development Agreement upon which the parties have relied.

SECTION 2. PREMISES.

a.) The property subject to this Agreement consists of real property described in Exhibit "A" (proposed Cambria hotel) and real property described in Exhibit "B" (existing Emerald

Shores hotel), for a total land area of approximately 3.00+/- acres of real property attached hereto and by reference made a part hereof. The Cambria hotel site shows 1.2 upland acres west of the seawall and 0.3 acres east of the seawall to the Mean High Waterline for a total of 1.50 acres. The Emerald Shores hotel site shows 1.2 upland acres west of the seawall and 0.3 acres east of the seawall to the Mean High Waterline for a total of 1.50 acres.

- b.) The legal entity having legal or equitable ownership of the premises is the PROPERTY OWNER.

SECTION 3. DEVELOPMENT STANDARDS.

1. Development Criteria. The Property shall be developed in accordance with the City's Land Development Code (LDC), and the terms and provisions set forth in this Agreement. In the event of a conflict between this Agreement and the LDC or other ordinances, this Agreement shall control. If this Agreement fails to address a particular subject or requirement, the applicable requirements of the LDC or other City ordinances shall control.
 - a) The overall Property shall be developed consistent with the Construction Plans for Cambria Hotel Daytona Beach Shores, Florida June 2023 prepared by Mark Dowst and Associates, Inc, [which also provides a site plan for the Emerald Shores Hotel], as provided in the attached Exhibit "C" and in accordance with the following standards:

Density Lot area to be measured to the mean high-water line on the Property.	Cambria Hotel: 67.33 hotel rooms per acre of total property. Emerald Shores: 56.67 hotel rooms per acre of total property.
Building Height	Cambria Hotel: maximum 98 ft. Emerald Shores Hotel: 80'
Loading Zone	Cambria Hotel: Minimum of 1 stall Emerald Shores: Minimum of 1 stall [Existing Building]
Green Space	Cambria Hotel: 17% overall.
Minimum Setbacks	Cambria Hotel: Side (South): 11 ft. Emerald Shores Hotel: Rear (Oceanfront): Primary Structure 42'ft. [existing building] Side (North): 20 ft. [existing building] Side (South): 25 ft. [existing building]

Parking	Cambria Hotel: 75 parking spaces with an additional 20 parking spaces to be provided by parking lifts for a total of 95 parking spaces. All parking shall be required to be via Valet Parking for efficiency and safety.
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b) Permitted Uses: Permitted uses for the Property shall include the following: Hotel, Parking Garage Use, and customary accessory uses for Hotel, including but not limited to restaurants, bars, conference and convention space, pool side structures, spas and health services, and related resort amenities, along with supporting retail or commercial services that do not exceed the intensity limitations set forth above. Such supporting retail or commercial services, such as a small store for hotel guests are only ancillary to the hotel use and not intended for standalone activities. An active roof is permitted, so long as any architectural feature or enclosed space shall not exceed 12' feet in height. Approximately one half of the roof area shall feature a bar and food service area overlooking the beach.

c) Parking:

1. Development of the Cambria Hotel shall include the provision of a minimum of 75 parking spaces to support the proposed development. This provision shall control over the language set forth in Section 14-48.6 of the City's Land Development Code. Hotel development shall provide a parking ratio of 0.74 spaces/room.
2. Development of the Emerald Shores Hotel shall include the provision of a minimum of 71 parking spaces to support the proposed development. This provision shall control over the language set forth in Section 14-48.6 of the City's Land Development Code. Hotel development shall provide a parking ratio of 0.83 spaces/room.
3. Any portion of the Property may be used for interim parking during construction of the necessary parking facilities designed to meet the requirements of the LDC, as modified herein. All unpaved and/or improved portions of the property used for interim parking during construction must be restored to a leveled, graded and hydro-seeded or sodded lot before final approval of the certificate of occupancy associated therewith will be granted.

- d) Development Footprint: The Property may be developed in multiple phases, so long as the development standards set forth in Section 3.1 are met.
- e) For density purposes, the parcels are measured to the Mean High Water line and any other requirement for bulkhead use in calculations is specifically waived.
- f) An existing beach access has been built and is maintained on the south side of the property. Any additional requirement for an additional 7ft. public access is waived.

SECTION 4. PUBLIC BENEFITS.

Numerous public benefits derive from the terms and conditions of this Development Agreement, to include:

a) The development of the Property as set forth in this Development Agreement shall provide for additional hotel and commercial opportunities within Daytona Beach Shores that will result in greater tax revenue to the City, job production and revitalization and redevelopment of this portion of the City.

b) New hotel development supports dining, retail and entertainment for the area. The hotel, and the guests that it will generate, will provide much needed support for businesses on the west side of SR A1A and encourage additional businesses in this area.

c) The development will allow for the redevelopment and beautification of a currently underused property and will create a modern destination center for visitors with more rooms and activities.

d) The new Cambria hotel is an investment in the City of Daytona Beach that will be worth no less than 10 times the value of the current antiquated motel on the site.

e) The Emerald Shores hotel has built a beach access walkway and has worked with the city to maintain the walkway as a safe and convenient public access to the beach.

f) PROPERTY OWNER shall contribute \$30,000 to the Daytona Beach Shores public beach access maintenance fund at issuance of a certificate of occupancy for the Cambria Hotel. This contribution shall be used solely for the repair and maintenance of the public beach access located immediately south of the Emerald Shores Hotel for years one through five subsequent to the issuance of the Cambria Hotel receipt of a certificate of occupancy. Thereafter, any remaining amount of this contribution may be used for any City public beach access repair and maintenance.

g) In addition, the proposed redevelopment of the Property is consistent with several of the Goals, Policies and Objectives of the Comprehensive Plan, as outlined below. This Development Agreement will allow development of the property to allow for additional residential uses within a growing sector of the City.

GOAL 1-1: Effectively manage future development by designating appropriate areas for new growth that does not compromise environmental integrity, is responsive to market needs and is consistent with sound land planning practices.

Finding: The proposed project allows for flexibility in development for properties located in appropriate areas for urban development. The proposed project will direct additional growth to areas that have already faced development and will lessen impacts on environmentally sensitive areas.

Objective 1-1.2: Future redevelopment activities shall take the form of replacing the outmoded and inefficient existing hotels and motels that were built in the 1950s and early 1960s. These uses are found primarily on the east side of S.R. A1A, north of Florida Shores Boulevard to the City limits at the north end, and south of Van Avenue to the south City limits ending at the Wilbur-by-the-Sea area.

Finding: These redevelopment activities shall be consistent with the goals, objectives, and policies set forth in this Element

SECTION 5. IMPACT FEES AND PERMITTING.

a) Impact fees and other funding requirements for the project on the Property are as established by controlling law and shall be met in the normative course and processes of development.

b) All development permits normatively needed to be approved for the development of the Property shall be subject to the review and approval processes during the course of the development of the premises; provided, however, that, it is noted that no changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the Property.

- c) The failure of the agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.

SECTION 6. REASONABLE APPROVAL.

In those instances, in this Development Agreement in which a party's responsiveness, compliance, approval, consent or satisfaction is required, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

SECTION 7. REMEDIES.

Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Development Agreement.

SECTION 8. HEADINGS/CAPTIONS.

All sections and descriptive headings in this Development Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

SECTION 9. FORCE MAJEURE.

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force Majeure*. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 10. DEVELOPMENT AGREEMENT BINDING; RUNS WITH THE LAND.

a) This Development Agreement shall be binding upon and inure to the benefit and burden of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Development Agreement, and that it has the legal authority to enter into this Development Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to

execute this Development Agreement and bind the respective parties herein.

b) This Development Agreement touches and concerns the premises and shall run with the land and shall be binding upon and inure to the benefit and burden of the parties hereto and their respective successors and assigns.

SECTION 11. EXHIBITS.

All exhibits to this Development Agreement are hereby incorporated into this Development Agreement by this reference thereto. The exhibits included herein are hereby approved by the terms and conditions of this Development Agreement. Any changes to the exhibits shall be approved by the City Commission. A comprehensive list of the exhibits is included below:

Exhibit A: Property Legal Description of Cambria Hotel property.

Exhibit B: Property Legal Description of Emerald Shores Hotel property

Exhibit C: Construction Plans for Cambria Hotel, prepared by Mark Dowst and Associates, LLC

Exhibit D: Conceptual Architectural Elevations for Cambria Hotel

SECTION 12. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.

a) In addition to all other covenants, obligations, duties, and responsibilities set forth herein, the PROPERTY OWNER is approved for the following development on the premises in accordance with the conceptual site plan for the development of the premises (Exhibit "C").

b) The development uses, including parking, and green area, as set forth on the conceptual site plan approved in Section 11 and attached as Exhibit "C" comply with the criteria for development in the applicable provision in the land development regulations of the CITY applicable to this development project on the premises as modified in this Development Agreement.

c) PROPERTY OWNER shall contribute \$30,000 to the Daytona Beach Shores public beach access maintenance fund at issuance of a certificate of occupancy for the Cambria Hotel. This contribution shall be used solely for the repair and maintenance of the public beach access located immediately south of the Emerald Shores Hotel for years one through five subsequent to the issuance of the Cambria Hotel receipt of a certificate of occupancy. Thereafter, any remaining amount of this contribution may be used for any City public beach access repair and maintenance.

SECTION 13. DEVIATIONS GRANTED FROM CODE OF ORDINANCES.

This Development Agreement is intended to comply with the applicable provision in the land development regulations of the CITY as modified in this Development Agreement. The CITY has approved the following deviations from the standard land development regulations in association with this Development Agreement:

1. LDC Section 14-48.6: The CITY is providing a deviation from the standard requirements for parking for the development.
 - a. The Cambria Hotel parcel parking: 75 spaces in lieu of 102. However, the Cambria Hotel will be required to provide a minimum of 20 parking lifts that provide for an additional 20 parking spaces providing a total of 95 parking spaces. Further, the Cambria Hotel will be required to provide a mandatory Valet parking requirement for efficiency and safety.
2. LDC Section 14-21.4: The CITY is providing the following deviations to allow for compact development within the Property and to preserve view corridors along the sides of the Property and encourage redevelopment and beautification:
 - a. The Cambria Hotel parcel south side setback: 11ft. in lieu of 35 ft.
 - b. The Emerald Shores parcel south side setback: 25ft. in lieu of 28ft. [existing building]
 - c. The Emerald Shores parcel north side setback: 20ft. in lieu of 28 ft. [existing building]
 - d. The Emerald Shores parcel rear setback: 42ft. in lieu of 50ft. [existing building]
3. LDC Section 14-48.9: The CITY is providing a deviation from the requirement that two loading zones for a structure over 100,000 sq. ft. in gross floor area. The Cambria Hotel site is granted a deviation to permit 1 loading zone in lieu of 2 required.
4. LDC Section 14-21.4: The CITY is providing a deviation from the requirement of green area provided that plantings in accordance with the LDC is provided in the proposed Green Area as to the following deviation from the green area requirement:
 - a. The Cambria Hotel parcel will have green space of 17% in lieu of 20% required.

SECTION 14. PUBLIC RECORDS.

The PROPERTY OWNER shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and other controlling law and which have been made or received by the PROPERTY OWNER in conjunction with this Development Agreement and shall adhere to the controlling provisions of State law relating to public records.

SECTION 15. EQUAL OPPORTUNITY.

The PROPERTY OWNER agrees that it will not discriminate against any employee or applicant for employment for work relating to the services provided under this Development Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demoting or transfer; recruitment advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

SECTION 16. CONFLICT OF INTEREST.

The PROPERTY OWNER agrees that it will not commit any act that would cause or create a conflict of interest as defined by Chapter 112, *Florida Statutes*, to exist or occur in the performance of its obligations pursuant to this Development Agreement with the CITY.

SECTION 17. COMPLIANCE WITH LAWS AND REGULATIONS.

In performing pursuant to this Development Agreement, the PROPERTY OWNER shall abide by all statutes, ordinances, rules, and regulations pertaining to regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. This provision shall include, but not be limited to, the provisions of the CITY'S Comprehensive Plan, the provisions of the CITY's land development regulations and the codes and ordinances of the CITY.

SECTION 18. NOTICES.

a) Whenever either party desires to give notice unto the other, notice may be sent to:

For the **CITY**:

Kurt Swartzlander

City Manager

City of Daytona Beach Shores

2990 South Atlantic Avenue

Daytona Beach Shores, Florida 32118

With Copy to:

Gretchen R.H. ("Becky") Vose, Esq.

City Attorney

Vose Law Firm, LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

For the **PROPERTY OWNER**:

Daytona Ocean Investment Corp.

Jai Motwani, President

2601 South Atlantic Ave.

Daytona Beach Shores, FL 32118

Hotel Motel, Inc.

Jai Motwani, President

2231 North Ocean Blvd.

Daytona Beach Shores, FL 32118

With Copy to:

Glenn D. Storch,

420 S. Nova Rd.

Daytona Beach, Florida 32114

b) Either party may change the address for notification by providing notice of such change to the other party.

SECTION 19. INTERPRETATION/APPLICABLE LAW/VENUE.

The laws of the State of Florida shall govern this Development Agreement. Any legal action necessary arising out of the Development Agreement will have its venue in Volusia County and the Development Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults. The specific provisions of this Development Agreement shall prevail over the generality of the foregoing. In any action or proceeding required to enforce or interpret the terms of this Development Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 20. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.

This Development Agreement is the result of *bona fide* arm's length negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against any one (1) party than against any other party both parties having participated in the drafting of this Development Agreement. Whenever a decision is provided for herein which is to be made by the CITY, such decision must be in writing in order to be binding upon the CITY.

SECTION 21. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.

a) This Development Agreement constitutes the complete, integrated and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein, except as provided in this subsection a. This Development Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by all parties to this Development Agreement.

b) If the City Commission of the CITY finds, on the basis of substantial competent evidence, that there has been a material failure to comply with the terms of this Development Agreement, this Development Agreement may be revoked or modified by the City Commission upon affording the PROPERTY OWNER administrative due process rights in accordance with controlling law.

c) A substantial modification of this Development Agreement shall, in the CITY's sole discretion, require approval by the City Commission in accordance with the procedures set forth in Chapter 15, *Land Development Code*. This Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest;

provided, however, that a substantial modification of this Development Agreement shall, in the City's sole discretion, require approval by the City Commission in accordance with the procedures set forth in Chapter 15, *Land Development Code*.

d) City Staff may, as an administrative adjustment reviewed and approved at the staff level, allow for modifications of up to 10% to any of the dimensional or landscaping requirements set forth herein and associated Exhibit revisions, where such modifications are necessary to address minor Exhibit errors or unanticipated conditions that reasonably need to be addressed to ensure the development plan can be implemented. This provision and staff authority excludes building height, density and standards regulated by the comprehensive plan.

e) If State or Federal laws are enacted after the execution of this Development Agreement, which are applicable to and preclude the parties' compliance with the terms of this Development Agreement, this Development Agreement shall be modified as necessary to comply with the relevant State or Federal laws.

SECTION 22. THIRD PARTY BENEFICIARIES/TRANSFERABILITY.

a) The CITY shall not be liable to any person, firm or corporation who contracts with or provides goods or services to the PROPERTY OWNER in connection with services provided by the PROPERTY OWNER to the CITY; and there is no contractual relationship, either expressed or implied, between the CITY and any other person, firm, or corporation supplying any work, labor, services, goods or materials to the PROPERTY OWNER as a result of its services to the CITY hereunder. This Development Agreement is solely for the benefit of the formal parties to this Development Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any other third party not a formal party hereto. Nothing in this Development Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Development Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns as set forth herein.

b) This Development Agreement is transferable. However, so long as the land or structure or any portion thereof covered under the Development Agreement continues to be used for the purposes for which it was issued, then no person (including successors and assigns of the person(s) or entity(ies) who obtained the development agreement) may make use of the land except in accordance with the conditions and requirements of this Development Agreement. The provisions of this Development Agreement run with and burden the real property to which it relates until release or amended in accordance with formal action of the City.

SECTION 23. ATTORNEYS FEES AND COSTS.

In any action or proceeding to enforce or interpret any provision of this Development Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs, and expenses.

SECTION 24. SEVERABILITY.

If any one or more of the covenants or provisions of this Development Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Development Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Development Agreement.

SECTION 25. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.

a) This Development Agreement shall take effect on the date that this Development Agreement is fully executed by the parties and is recorded in the Official Records (Land Records) of Volusia County, Florida.

b) This Development Agreement shall be in effect for the following period: Three (3) years for building permit issuance and payment of permit fees for the development and Five (5) years to receive a final certificate of occupancy.

c) Such effective dates may be extended by mutual consent of the CITY and the PROPERTY OWNER. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said Development Agreement; provided, however, that the City has concluded that the vested rights of the PROPERTY OWNER and the investment backed expectations of the PROPERTY OWNER warrant a renewal and continuation of the development approved for the premises herein.

d) Prior to the completion of the project and at the issuance of a certificate of completion by the City, the City shall review this Development Agreement as well as at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

SECTION 27. COUNTERPARTS.

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Development Agreement on the date stated below their signature.

Attest:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

Nancy Miller, Mayor
Date: _____

Kurt Swartzlander, City Manager

Approved as to form and legality:

Gretchen R.H. (“Becky”) Vose, Esq.
City Attorney

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

Witness 1:

HOTEL MOTEL, LLC

Signature of Witness

Signature of Managing Member

Printed name of witness:

Printed name of Managing Member:

Address of Witness:

Witness 2:

DAYTONA OCEAN INVESTMENT CORP

Signature of Witness

Signature of Managing Member

Printed name of witness:

Printed name of Managing Member:

Address of Witness:

Acknowledgment

State of _____

)

County of _____

)

I Hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____ and he acknowledged executing the same in the presence of a subscribing witness freely and voluntarily and they are personally known to me or provided _____ as identification.

Witness my hand and official seal in the County and State last aforesaid this ____ day of _____, 2024.

(Affix Notary Seal)

Notary Public; State of Florida

Print name: _____

Exhibit A – Cambria Hotel
Cambria Hotel Legal Description

Exhibit B -Emerald Shores
Emerald Shores Legal Description

Exhibit C
Cambria Hotel Construction Plan

Exhibit D

Cambria Hotel Conceptual Architectural Elevations

Exhibit A

BOOK: 7027 PAGE: 3441

THAT PART OF GOVERNMENT LOT 4 OF SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 4, THENCE RUN SOUTHERLY ALONG THE MEANDER LINE OF ATLANTIC OCEAN A DISTANCE OF 100 FEET TO A POINT; THENCE RUN WEST AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 4 TO THE EASTERLY RIGHT OF WAY LINE OF OCEAN SHORE BOULEVARD (SOUTH ATLANTIC AVENUE) AS NOW LAID OUT AND ESTABLISHED; THENCE RUN NORTHERLY ALONG THE SAID EAST RIGHT OF WAY LINE TO THE INTERSECTION OF SAID RIGHT OF WAY WITH THE NORTH LINE OF SAID GOVERNMENT LOT 4; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 4 TO THE POINT OF BEGINNING.

AND

THE NORTH 1/2 OF A PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 2447, PAGE 0838 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, BEING A PORTION OF GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE MEANDER LINE OF SAID GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, A DISTANCE OF 100 FEET SOUTHERLY FROM THE NORTHEAST CORNER OF SAID LOT 4, AS MEASURED ALONG THE MEANDER LINE OF THE ATLANTIC OCEAN AND TO THE POINT OF BEGINNING; THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 4 TO THE EAST RIGHT OF WAY LINE OF ATLANTIC AVENUE FORMERLY OCEAN SHORE BOULEVARD, AN 80 FOOT RIGHT OF WAY; THENCE RUN SOUTHERLY ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 24.75 FEET TO A POINT; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 4 TO THE EAST LINE OF SAID GOVERNMENT LOT 4, WHICH IS THE MEANDER LINE OF THE ATLANTIC OCEAN BEACH; THENCE NORTHERLY ALONG SAID MEANDER LINE A DISTANCE OF 25 FEET TO THE POINT OF BEGINNING, INCLUDING ANY AND ALL RIPARIAN RIGHTS AND ACCRETIONS THERETO ON THE ATLANTIC OCEAN.

BOOK: 6945 PAGE: 4428

PARCEL C:

THE SOUTH 1/2 OF A PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 2447, PAGE 838, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING A PORTION OF GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE MEANDER LINE OF SAID GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, A DISTANCE OF 125 FEET SOUTHERLY FROM THE NORTHEAST CORNER OF SAID LOT 4, AS MEASURED ALONG THE MEANDER LINE OF THE ATLANTIC OCEAN; THENCE RUN WEST AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 4 TO THE EAST RIGHT OF WAY LINE OF ATLANTIC AVENUE (FORMERLY OCEAN SHORE BOULEVARD) AN 80 FOOT RIGHT OF WAY AS NOW LAID OUT; THENCE RUN SOUTHERLY ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 24.75 FEET TO A POINT; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 4 TO THE EAST LINE OF SAID GOVERNMENT LOT 4, WHICH IS THE MEANDER LINE OF THE ATLANTIC OCEAN BEACH; THENCE NORTHERLY ALONG SAID MEANDER LINE, A DISTANCE OF 25 FEET TO THE POINT OF BEGINNING.

Exhibit B

PARCEL A:

PARCEL 1:

A PORTION OF GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, GOVERNMENT LAND SURVEYS OF FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE MEANDER LINE OF THE ATLANTIC OCEAN OF SAID LOT 4 OF SAID SECTION 22, A DISTANCE OF 225 FEET MEASURED ALONG SAID MEANDER LINE SOUTH FROM THE NORTHEAST CORNER OF SAID LOT 4, SECTION 22; THENCE RUNNING WEST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 400 FEET MORE OR LESS A TO POINT IN THE EAST LINE OF OCEAN SHORE BOULEVARD, AN 80 FOOT STREET AS NOW LAID OUT; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID OCEAN SHORE BOULEVARD, A DISTANCE OF 99.03 FEET; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 4, 390 FEET MORE OR LESS TO AN INTERSECTION WITH THE SAID MEANDER LINE OF SAID ATLANTIC OCEAN; THENCE NORTHWESTERLY ALONG SAID MEANDER LINE OF SAID ATLANTIC OCEAN A DISTANCE OF 100 FEET MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH ANY AND ALL RIPARIAN AND LITTORAL RIGHTS APPERTAINING

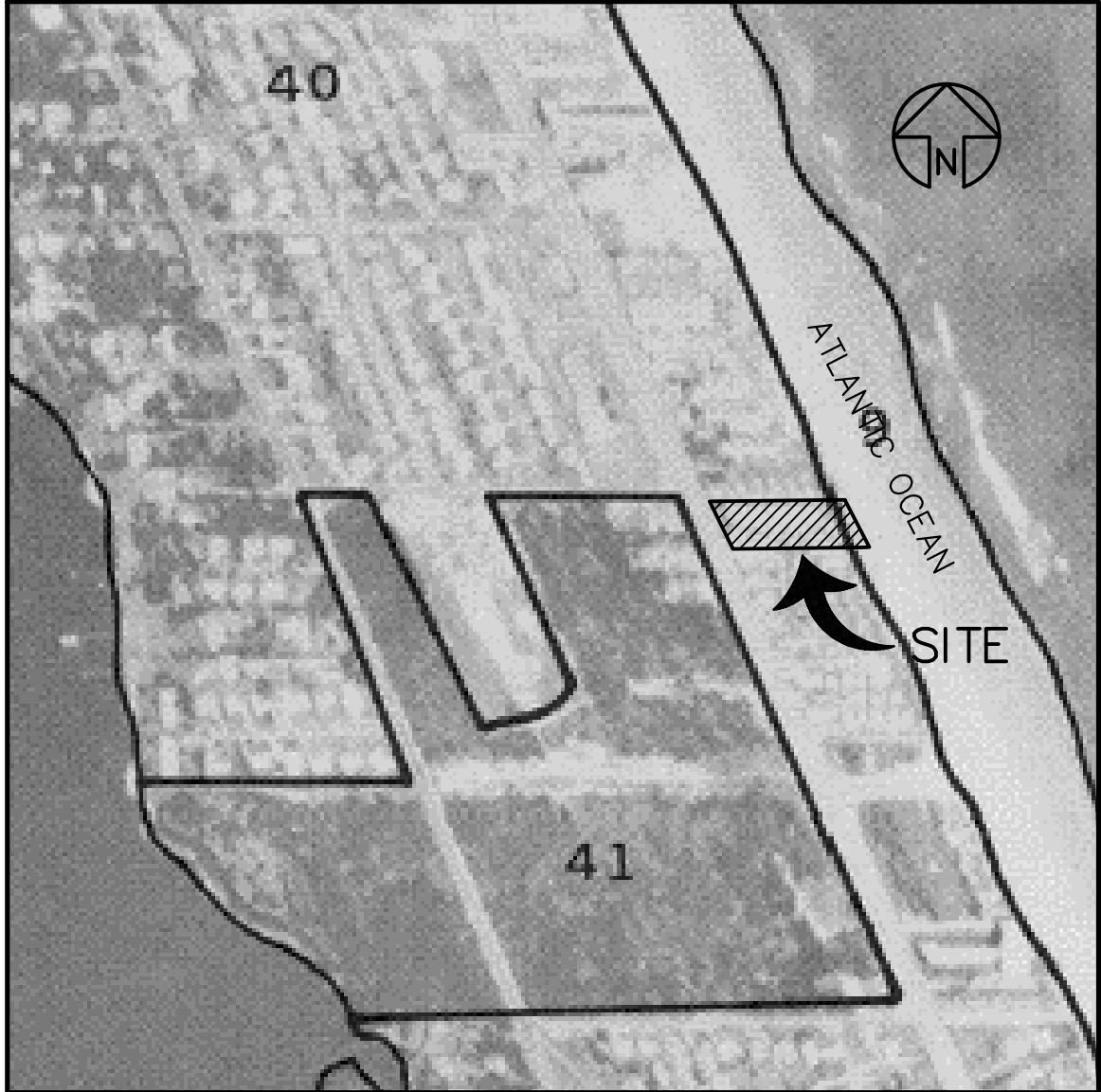
PARCEL 2:

A PORTION OF LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, DESCRIBED AS FOLLOWS:

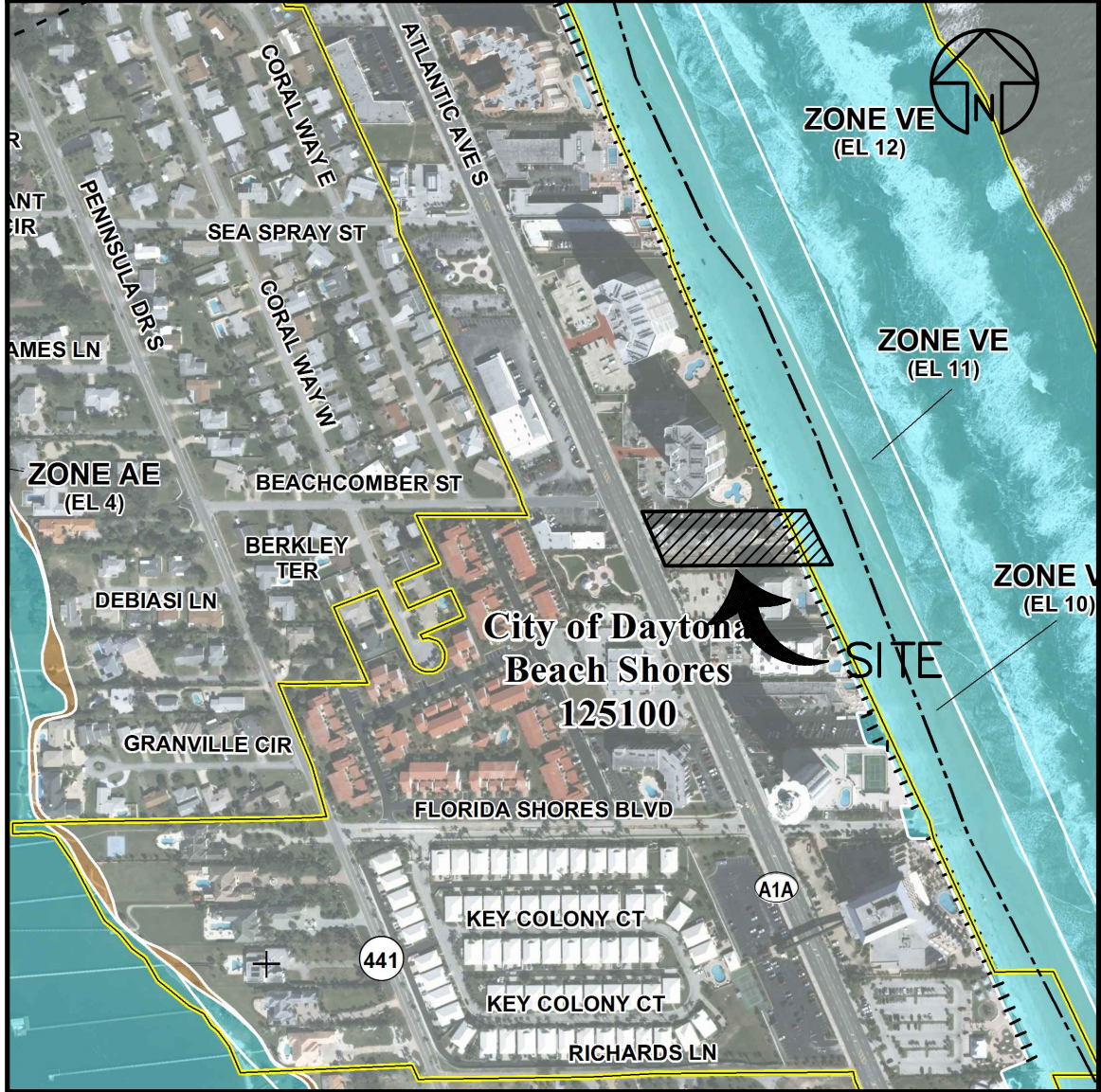
BEGINNING AT A POINT IN THE MEANDER LINE OF SAID LOT 4, SECTION 22, TOWNSHIP 15 SOUTH, RANGE 33 EAST, SAID POINT BEING 150 FEET SOUTHERLY MEASURED ALONG THE MEANDER LINE OF THE ATLANTIC OCEAN FROM THE NORTHEAST CORNER OF SAID LOT 4, THEN RUN WEST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 4 TO THE EAST RIGHT-OF-WAY LINE OF ATLANTIC AVENUE (FORMERLY OCEAN SHORE BLVD.) THEN RUN SOUTHERLY ALONG SAID RIGHT-OF-WAY LINE AND PARALLEL WITH THE ATLANTIC OCEAN BEACH A DISTANCE OF 75 FEET TO A POINT; THENCE RUN EAST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 4 TO THE EAST LINE OF SAID LOT 4 WHICH IS THE MEANDER LINE ALONG THE ATLANTIC OCEAN BEACH, TO A POINT WHICH IS 75 FEET SOUTH AS MEASURED ALONG SAID MEANDER LINE FROM THE POINT OF BEGINNING; THEN NORTHERLY MEASURED ALONG THE MEANDER LINE OF THE ATLANTIC OCEAN BEACH, A DISTANCE OF 75 FEET TO THE PLACE OF BEGINNING; INCLUDING ANY AND ALL RIPARIAN RIGHTS AND ACCRETIONS THERETO ON THE ATLANTIC OCEAN.

CONSTRUCTION PLANS
FOR
CAMBRIA HOTEL
DAYTONA BEACH SHORES, FLORIDA
JUNE 2023

SOILS MAP SCALE: 1" = 500'



FLOOD MAP SCALE: 1" = 500'



PREPARED BY:

MARK DOWST & ASSOCIATES, INC.
ENGINEERS * PLANNERS * SURVEYORS

OWNERS AND DEVELOPERS
DAYTONA OCEAN INVESTMENT CORP
JAI MOTWANI, PRESIDENT
2601 SOUTH ATLANTIC AVE
DAYTONA BEACH SHORES, FL 32118
PHONE: (954) 818-6719
E-MAIL: motwanij@bellsouth.net

HOTEL MOTEL INC
JAI MOTWANI, PRESIDENT
2231 NORTH OCEAN BLVD
DAYTONA BEACH SHORES, FL 32118
PHONE: (954) 818-6719
E-MAIL: motwanij@bellsouth.net

ENGINEER
MARK DOWST AND ASSOCIATES, INC.
536 N. HALIFAX AVENUE, SUITE 100
DAYTONA BEACH, FLORIDA 32118
PHONE: (386) 258-7999 FAX: (386) 257-4310
E-MAIL: mdowst@mdaeng.com

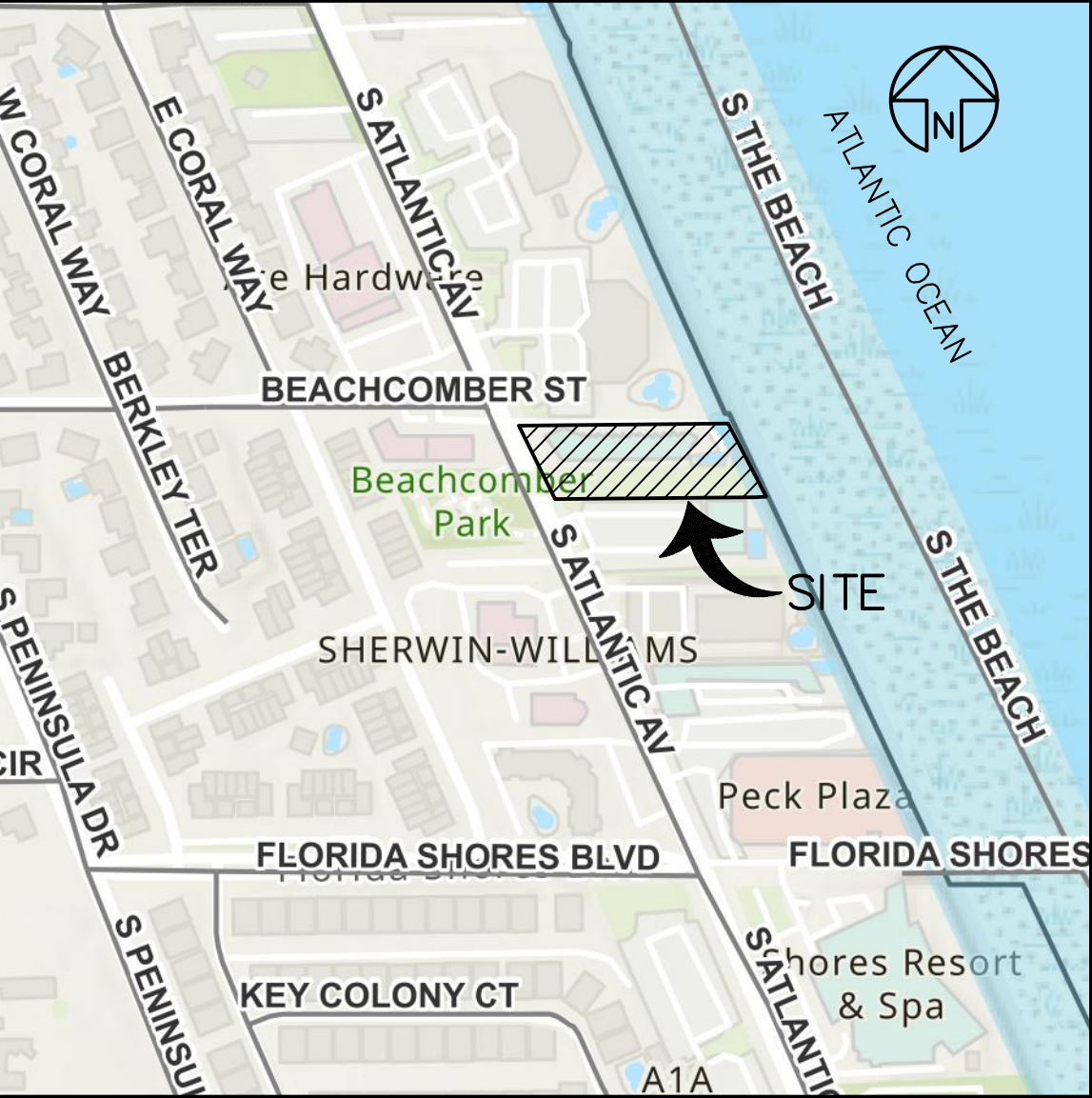
ARCHITECT
BPF DESIGN
BRIAN FREDLEY
207 FAIRVIEW AVENUE
DAYTONA BEACH, FLORIDA 32114
PHONE: (386) 257-0502 FAX: (386) 257-1050
E-MAIL: bpfdesign@cfl.rr.com

SITE ADDRESS: 2601 S. ATLANTIC AVENUE
TAX PARCEL No. 5322-00-04-0010

LEGAL DESCRIPTION

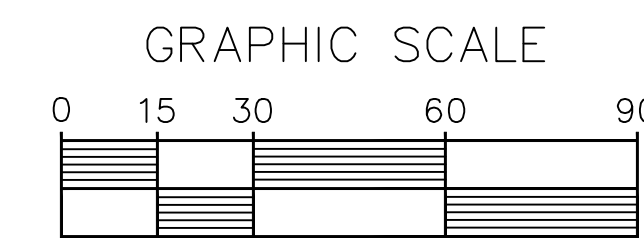
BROOK TEST PAGE: 2041
THAT PART OF CONVEYANCE LOT 4 OF SECTION 25, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLusia COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS BEGINNING AT THE NORTHEAST CORNER OF SAID CONVEYANCE LOT 4, THENCE S80°00'00"E ALONG THE MEASURED LINE OF ATLANTIC OCEAN A DISTANCE OF 100 FEET TO A POINT THENCE S80°00'00"E PARALLEL WITH THE NORTH LINE OF SAID CONVEYANCE LOT 4 TO THE EASTERN RIGHT OF WAY LINE OF SAID CONVEYANCE LOT 4, THENCE S00°00'00"E PARALLEL WITH THE NORTH LINE OF SAID CONVEYANCE LOT 4 TO THE POINT OF BEGINNING.
AND
THE NORTH 1/2 OF A PART OF A PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 2041, PAGE 808, IN THE PUBLIC RECORDS OF VOLusia COUNTY, BEING A PORTION OF CONVEYANCE LOT 4, SECTION 25, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLusia COUNTY, FLORIDA, DESCRIBED AS FOLLOWS BEGINNING AT A POINT IN THE MEASURED LINE OF SAID CONVEYANCE LOT 4, SECTION 25, TOWNSHIP 15 SOUTH, RANGE 33 EAST, A DISTANCE OF 100 FEET CONVEYANCE FROM THE NORTHEAST CORNER OF SAID LOT 4, AS DESCRIBED ABOVE, THE MEASURED LINE OF THE ATLANTIC OCEAN AND TO THE POINT OF BEGINNING, THENCE S80°00'00"E PARALLEL WITH THE NORTH LINE OF SAID LOT 4 TO THE EASTERN RIGHT OF WAY LINE OF ATLANTIC AVENUE FORMERLY OCEAN SHORES BOULEVARD, AS AN EIGHT HUNDRED OF SAID TRACED RUN SOUTHERLY ALONG THE RIGHT OF WAY LINE, A DISTANCE OF 147.5 FEET TO A POINT THENCE S80°00'00"E PARALLEL WITH THE NORTH LINE OF SAID CONVEYANCE LOT 4 TO THE EAST LINE OF SAID CONVEYANCE LOT 4, WHICH IS THE MEASURED LINE OF THE ATLANTIC OCEAN BEACH, THENCE NORTHERLY ALONG SAID MEASURED LINE A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING, INCLUDING ANY AND ALL REVENUE RIGHTS AND ACCESSORY RIGHTS ON THE ATLANTIC OCEAN.
BEACH MAP PAGE: 1000
PARCEL C:
THE SEVEN 1/2 OF A PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 2041, PAGE 808, PUBLIC RECORDS OF VOLusia COUNTY, BEING A PORTION OF CONVEYANCE LOT 4, SECTION 25, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLusia COUNTY, FLORIDA, DESCRIBED AS FOLLOWS BEGINNING AT A POINT IN THE MEASURED LINE OF SAID CONVEYANCE LOT 4, SECTION 25, TOWNSHIP 15 SOUTH, RANGE 33 EAST, A DISTANCE OF 100 FEET CONVEYANCE FROM THE NORTHEAST CORNER OF SAID LOT 4, AS DESCRIBED ABOVE, THE MEASURED LINE OF THE ATLANTIC OCEAN THENCE RUN WEST AND PARALLEL WITH THE NORTH LINE OF SAID CONVEYANCE LOT 4 TO THE EAST LINE OF SAID CONVEYANCE LOT 4, THENCE S80°00'00"E PARALLEL WITH THE NORTH LINE OF SAID CONVEYANCE LOT 4 TO THE EAST LINE OF SAID CONVEYANCE LOT 4, WHICH IS THE MEASURED LINE OF THE ATLANTIC OCEAN BEACH, THENCE NORTHERLY ALONG SAID MEASURED LINE A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING.

VICINITY MAP SCALE: 1" = 200'



SHEET INDEX

No.	DESCRIPTION
C1	COVER SHEET
C2	EXISTING SITE CONDITIONS
C3	DIMENSION PLAN
C4	SOUTH PROPERTY EXHIBIT



SCALE: 1" = 30'



PROPERTY OWNERSHIP
DAYTONA OCEAN
INVESTMENT CORP

PROPERTY OWNERSHIP
HOTEL MOTEL, LLC

NO.	DATE	APPR.	REVISION
1	11-03-23	MSD	REVISED PER CITY COMMENTS

MARK DOWST & ASSOCIATES, INC.

ENGINEERS * PLANNERS * SURVEYORS

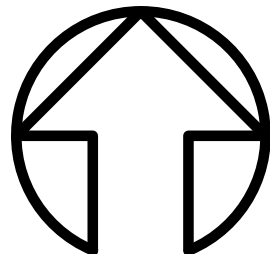
ENGINEERS * PLANNERS * SURVEYORS
EB 4335 LB 4335
536 N. HALIFAX AVENUE, SUITE # 100 * DAYTONA BEACH, FLORIDA 32118 * (386) 258-7999

EXISTING SITE CONDITIONS

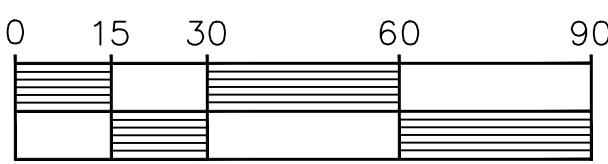
CAMBRIA HOTEL

DAYTONA BEACH SHORES, FLORIDA

PROJECT NO.	C2
835A	
835A-SITE-4	



GRAPHIC SCALE



SCALE: 1" = 30'

NCS CONTROL POINTS
CONTROL POINT NAME: 79 78 A 49 FLDNR
RECOVERED N.D. #3612
N: 1764728.34
E: 659615.00

COASTAL CONSTRUCTION
CONTROL LINE - VOLUSIA
COUNTY, RECORDED 1/24/91 IN
O.R. BOOK 3579, PAGES
1550-1576; M.O.R. CCCL BOOK
30, PAGE 20 IN THE PUBLIC
RECORDS OF VOLUSIA COUNTY,
FLORIDA.

APPROXIMATE FLOOD ZONE
BOUNDARY LINE, AS SCALED
FROM THE FLOOD INSURANCE
RATE MAPS

FLOOD ZONE VE

FLOOD ZONE X

SITE DATA

EXISTING ZONING: T-RMF-1
PROPOSED USE: MOTEL

PROPOSED CAMBRIA HOTEL (NORTH PROPERTY)

ALLOWABLE DENSITY: 70 UNITS / ACRE
PROPOSED DENSITY: 101 UNITS / 1.50 ACRES = 67.33 UNITS / ACRE
SITE AREA TO MHWL: 1.20 ACRES + 0.30 ACRES = 1.50 ACRES

DESCRIPTION	S.F.	ACRES	%
SITE AREA TO BULKHEAD:	52,415	1.20	100
PROPOSED BUILDING:	17,143	0.39	33
CONCRETE AND ASPHALT:	25,463	0.58	48
TOTAL IMPERVIOUS AREA:	42,576	0.98	81
TOTAL PERVIOUS (GREEN) AREA:	9,839	0.23	19

MINIMUM GREEN SPACE REQUIRED: 20% > 19% GREEN SPACE PROVIDED

REQUIRED SETBACKS

FRONT: 30'
REAR: 50'
SIDE: 35', PROPOSED BUILDING HEIGHT = 96'-3"
(MINIMUM 7' FOR BUILDING UP TO 20' OF HEIGHT,
AN ADDITIONAL 1' FOR EACH 3' OF HEIGHT FROM
20' TO 65', AN ADDITIONAL 1' FOR EACH
2.5' OF HEIGHT FROM 65' AND UP.)

PROVIDED SETBACKS

FRONT: 30'
REAR: 50'
NORTH SIDE YARD: 69'
SOUTH SIDE YARD: 11.5'

PROVIDED GREEN SPACE AREA

FRONT: 1,420 S.F. = 32% > 30% (OK)
NORTH 35' SIDE YARD: 2,657 S.F. = 28% > 25% (OK)
SOUTH 11.5' SIDE YARD: 4,185 S.F. = 100% > 25% (OK)

BREEZEWAY CALCULATIONS

MINIMUM BREEZEWAY REQUIRED: 30%
PROVIDED BREEZEWAY: (148.2'-67.0') / 148.2' PROPERTY WIDTH = 55%

MAXIMUM NORTH/SOUTH BUILDING WIDTH CALCULATIONS

MAXIMUM BUILDING WIDTH ALLOWED: 65%
PROVIDED BUILDING WIDTH: 67' BUILDING WIDTH / 160.5' FRONTAGE = 42%

PARKING REQUIRED: (101 UNITS x 1 SPACE / UNIT + 1 SPACE
FOR MANAGER) = 102 SPACES
PARKING PROVIDED: 95 SPACES (INCLUDES 20 DOUBLE STACKED SPACES)

HANDICAP PARKING REQUIRED: 5 SPACES
HANDICAP PARKING PROVIDED: 6 SPACES

BICYCLE PARKING REQUIRED: 5 SPACES
BICYCLE PARKING PROVIDED: 5 SPACES

MARK DOWST & ASSOCIATES, INC.

ENGINEERS * PLANNERS * SURVEYORS

536 N. HALIFAX AVENUE, SUITE # 100 * DAYTONA BEACH, FLORIDA 32118 * (386) 258-7999

SCALE 1" = 30' DESIGNED MSD DRAWN RCM CHECKED MSD BY DATE 06-21-23

DIMENSION PLAN

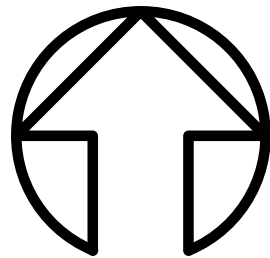
CAMBRIA HOTEL

DAYTONA BEACH SHORES, FLORIDA

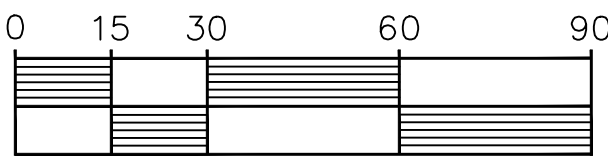
PROJECT NO.
835A

C3

835A-SITE-5



GRAPHIC SCALE



SCALE: 1" = 30'

NCS CONTROL POINTS
CONTROL POINT NAME: 79 78 A 49 FLDNR
RECOVERED N.D. #3612
N: 1764728.34
E: 659615.00

COASTAL CONSTRUCTION
CONTROL LINE - VOLUSIA
COUNTY, RECORDED 1/24/91 IN
O.R. BOOK 3579, PAGES
1550-1576; M.O.R. CCCL BOOK
30, PAGE 20 IN THE PUBLIC
RECORDS OF VOLUSIA COUNTY,
FLORIDA.

APPROXIMATE FLOOD ZONE
BOUNDARY LINE, AS SCALED
FROM THE FLOOD INSURANCE
RATE MAPS

FLOOD ZONE VE

FLOOD ZONE X

SITE DATA

EXISTING ZONING: T-RMF-1
PROPOSED USE: MOTEL

EXISTING EMERALD SHORES HOTEL (SOUTH PROPERTY)

SITE AREA TO MHWL: 1.33 ACRES + 0.34 ACRES = 1.67 ACRES

EXISTING DENSITY: 85 UNITS / 1.67 ACRES = 50.90 UNITS / ACRE

PROPOSED SITE AREA TO MHWL: 1.18 ACRES + 0.32 ACRES = 1.50 ACRES

PROPOSED DENSITY: 85 UNITS / 1.50 ACRES = 56.67 UNITS / ACRE

DESCRIPTION	S.F.	ACRES	%
SITE AREA TO BULKHEAD:	51,431	1.18	100
EXISTING BUILDING:	6,534	0.15	13
CONCRETE AND ASPHALT:	32,833	0.75	63
TOTAL IMPERVIOUS AREA:	39,367	0.90	76
TOTAL PERVIOUS (GREEN) AREA:	12,481	0.28	24

REQUIRED SETBACKS

FRONT: 30'
REAR: 50'
SIDE: 28', EXISTING BUILDING HEIGHT = 79.4'
(MINIMUM 7' FOR BUILDING UP TO 20' OF HEIGHT,
AN ADDITIONAL 1' FOR EACH 3' OF HEIGHT FROM
20' TO 65', AN ADDITIONAL 1' FOR EACH
2.5' OF HEIGHT FROM 65' AND UP.)

PROVIDED GREEN SPACE AREA

FRONT: 1,984 S.F. (43%)
NORTH 21.5' SIDE YARD: 4,363.37 S.F. = 58% > 25% (OK)
SOUTH 26' SIDE YARD: 5,793 S.F. = 61% > 25% (OK)

PROVIDED SETBACKS

FRONT: 211'
REAR: 50'
NORTH SIDE YARD: 21.5'
SOUTH SIDE YARD: 26'

BREEZEWAY CALCULATIONS

MINIMUM BREEZEWAY REQUIRED: 30%
PROVIDED BREEZEWAY: (141.5' - 93.9') / 141.5' PROPERTY WIDTH = 34%

MAXIMUM NORTH/SOUTH BUILDING WIDTH CALCULATIONS

MAXIMUM BUILDING WIDTH ALLOWED: 65%
PROVIDED BUILDING WIDTH: 93.9' BUILDING WIDTH / 154.7' FRONTAGE = 60.7%

MARK DOWST & ASSOCIATES, INC.

ENGINEERS * PLANNERS * SURVEYORS

536 N. HALIFAX AVENUE, SUITE # 100 • DAYTONA BEACH, FLORIDA 32118 • (386) 258-7999

SCALE 1" = 30' DESIGNED MSD DRAWN RCM CHECKED MSD DATE 06-21-23

SOUTH PROPERTY EXHIBIT

CAMBRIA HOTEL

DAYTONA BEACH SHORES, FLORIDA

PROJECT NO.
835A

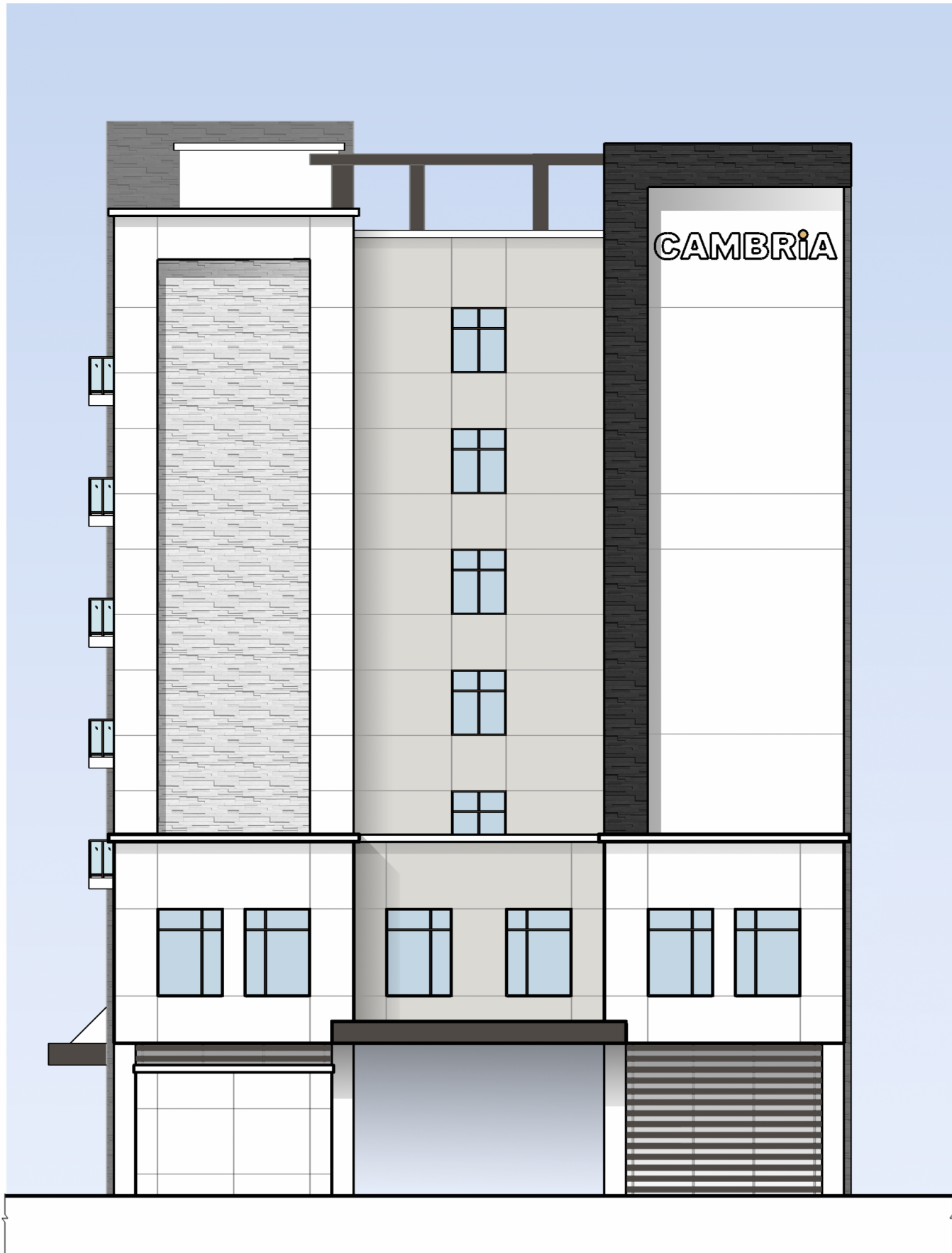
C4

835A-SITE-5

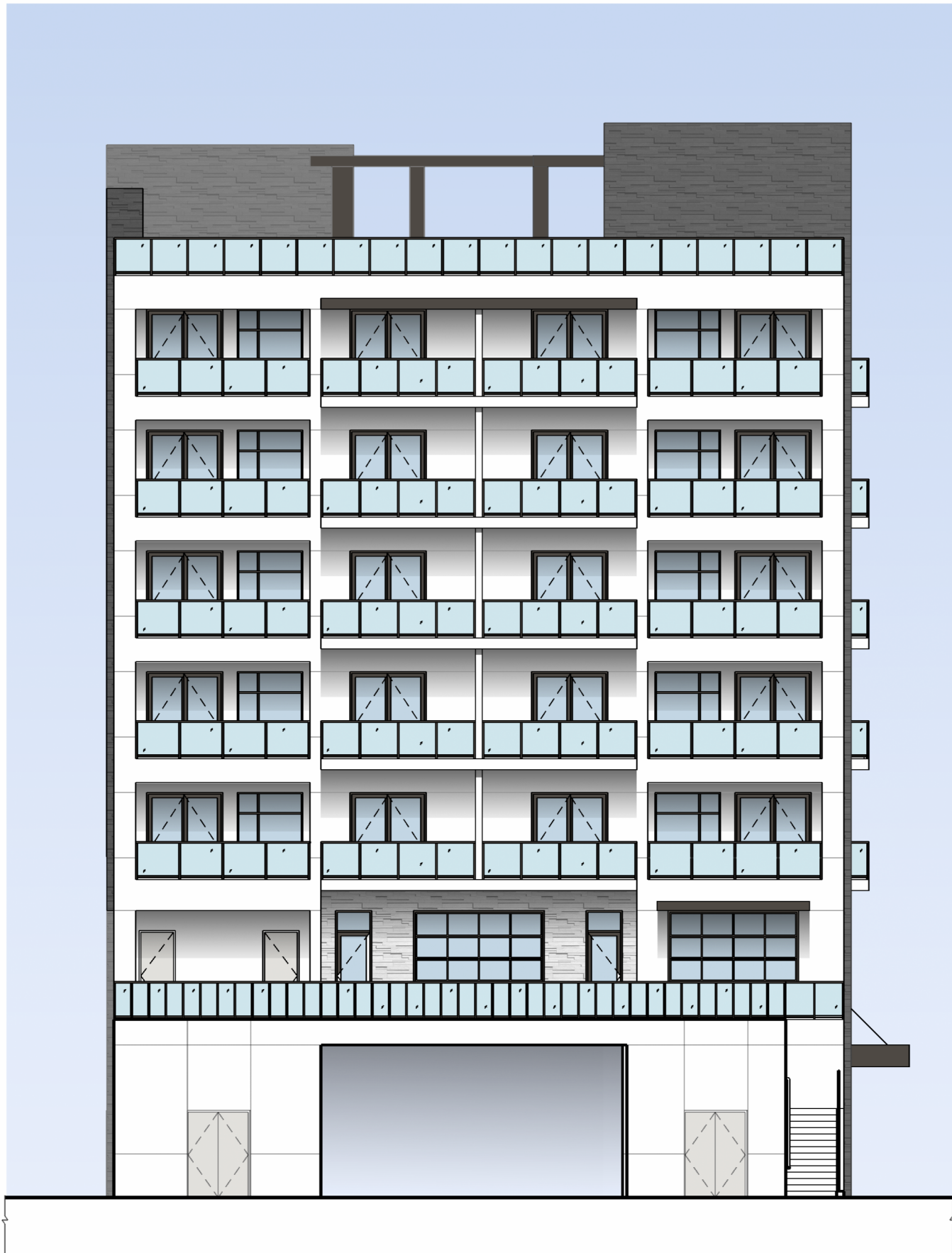




A. Otlich '23



WEST FACADE
FACING A1A



EAST FACADE
FACING BEACH

REVISIONS

HOTEL
RESORT

MOTEL
LODGING

HMRL
GROUP

CAMBRIA DAYTONA BEACH SHORES:

OWNER/REP.: JAI MOTWANI, PRESIDENT, HOTEL MOTEL, INC., 2231 NORTH OCEAN BOULEVARD, FORT LAUDERDALE, FL 33305
PROJECT LOCATION: 2601 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FL 32118
GENERAL CONTRACTOR: TO BE DETERMINED

BPF
DESIGN INCORPORATED
Building Design and Architecture

BRIAN P. FREDLEY, ASSOCIATE AIA, PROJECT MANAGER
DALLAS B. PEACOCK, ARCHITECT
#AR 0009706
207 FAIRVIEW AVENUE
DAYTONA BEACH, FL 32114 PH: (386) 257-6502 FX: (386) 257-1050
EMAIL: bfredley@bpfdesign.com WEBSITE: bpfdesign.com

E & W COLORED ELEVATIONS			
DRAWN BY:	TEM	CHECKED BY:	DBP & BPF
DATE:	APRIL 17, 2024	SHT NO.	
SCALE:			

ARCHITECT'S / ENGINEER'S SEAL



SOUTH FACADE
FACING EMERALD SHORES



NORTH FACADE
FACING SHERWIN CONDOMINIUM

REVISIONS

HOTEL MOTEL
RESORT

HMRL

GROUP

LODGING

CAMBRIA DAYTONA BEACH SHORES:

OWNER/REP.: JAI MOTWANI, PRESIDENT, HOTEL MOTEL, INC., 2231 NORTH OCEAN BOULEVARD, FORT LAUDERDALE, FL 33305
PROJECT LOCATION: 2601 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FL 32118
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DESIGN INCORPORATED

Building Design and Architecture

BRIAN P. FREDLEY, ASSOCIATE AIA, PROJECT MANAGER

DALLAS B. PEACOCK, ARCHITECT

#AR 0009706

207 FAIRVIEW AVENUE

DAYTONA BEACH, FL 32114 PH: (386) 257-6502 FX: (386) 257-1050

EMAIL: bfredley@bpfdesign.com WEBSITE: bpfdesign.com

N & S COLORED ELEVATIONS

DRAWN BY: TEM	CHECKED BY: DBP & BPF
DATE: APRIL 17, 2024	SHT NO.
SCALE:	

ARCHITECT'S / ENGINEER'S SEAL

Planning Analysis

SUBJECT: Hotel Motel, LLC and Ocean Investment Corporation propose for the development of a 101-unit, 8-story Cambria Hotel with accessory uses, including, but not limited to, a restaurant open to the public.

ADDRESS: 2601-2613 S. Atlantic Avenue.

PROPERTY OWNER: Daytona Ocean Investment Corporation & Hotel Motel, Inc.

OWNER'S AGENT: Mark Dowst & Associates, Inc.

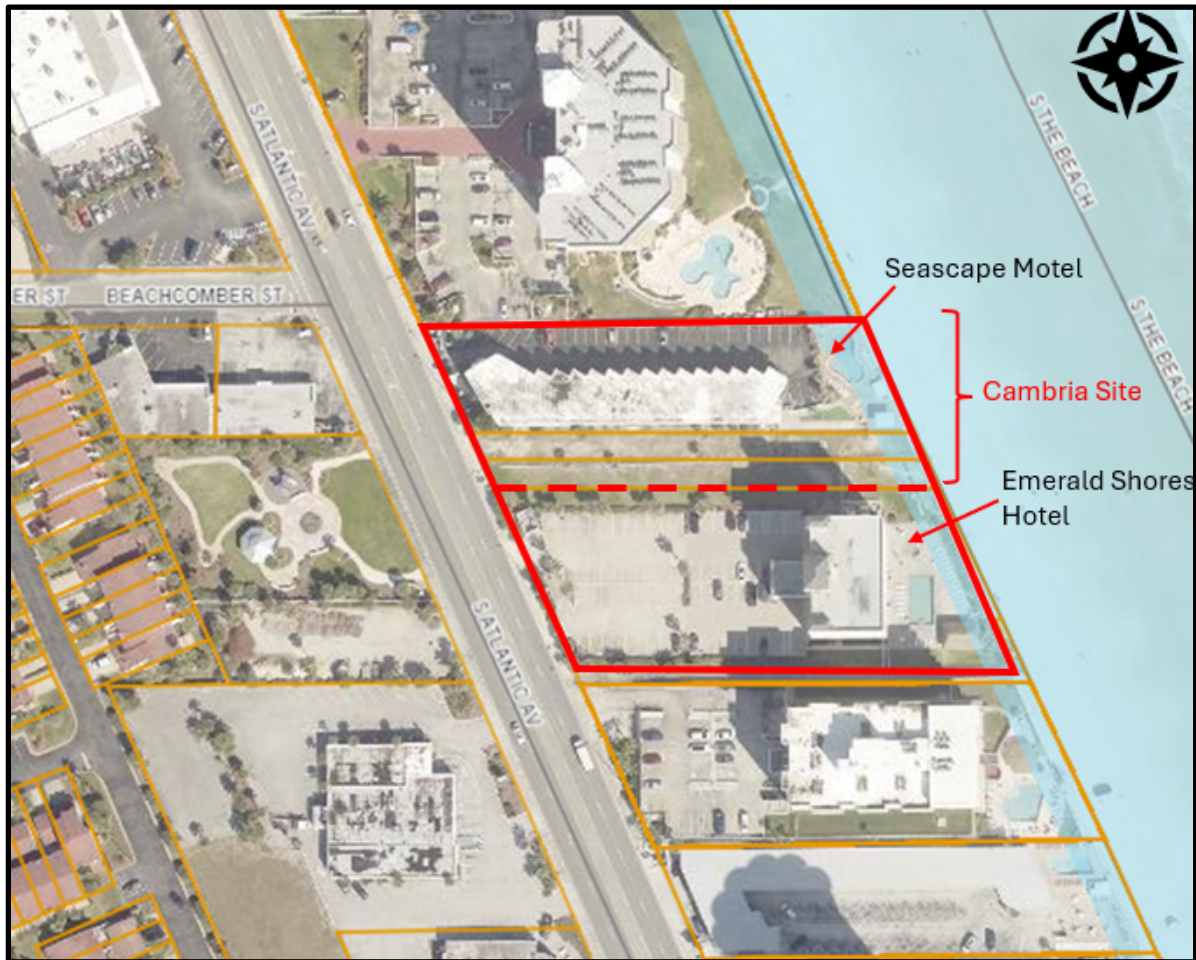
APPLICATION NUMBER: DA12024010

I. INTRODUCTION:

This is a request for a Development Agreement (herein after "Agreement") between the City of Daytona Beach Shores and the Daytona Ocean Investment Corporation/Hotel Motel, LLC. would provide for the development of the properties located at 2601 – 2613 S. Atlantic Avenue (Figure 1). The development would contain a 101-unit, 8-story Cambria Hotel with accessory uses, including, but not limited to, a restaurant open to the public. The Cambria Hotel will be built on the Seascape Motel property and the two southerly nonconforming vacant lots in between the Seascape Motel and the Emerald Shores Hotel. In addition, the northern property line of the Emerald Shores Hotel would also be shifted 11.7 feet south to accommodate the Cambria Hotel development. Among other things, the development agreement addresses the site development concept, entitlements, and the grant of four Land Development Code deviations. The applicant is not seeking any economic development incentives from the City.

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FIGURE 1: Aerial view of 2601-2613 S. Atlantic Avenue.



Source: Pictometry December 2023

II. BACKGROUND

The property is designated as “High Intensity” on the City’s Future Land Use Map (FLUM) and has a dual zoning designation of T (Hotel/Motel)-RMF-1 (Multifamily Residential District (High Density)) on the City’s Official Zoning Map. Both the assigned land use and zoning allow for the proposed hotel use. The adjacent land uses and zoning designations are as follows in Table 1 below:

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TABLE 1: Abutting Land Uses & Zoning:

	Current Land Uses	Future Land Use Designation	Zoning
North	Sherwin COA	High Intensity	T-RMF-1 (Hotel/Motel - Multifamily Residential District (High Density))
South	Sandpoint COA	High Intensity	T-RMF-1 (Hotel/Motel - Multifamily Residential District (High Density))
East	Atlantic Ocean	NA	NA
West	(a) Chery Hill Ice Cream (b) Beachcomber Park	Tourist Oriented Commercial	(a) GC-RD (General Commercial Redevelopment District) (b) P (Public Quasi Public District)

If the Agreement is approved, the applicant will subsequently submit detailed site development plans to the City for review. These site development plans will require public hearings for a recommendation and approval by the Planning and Zoning Board and the City Commission, respectively.

The highlights of the proposed Agreement are:

1. Development Permitted: The Agreement provides a general development framework that would facilitate the development of a 101-unit, 8-story Cambria Hotel with accessory uses, including, but not limited to, a restaurant open to the public. The final site plan and development may vary provided they remain in substantial compliance with the framework, consistent with the City's Land Development Code (LDC). Any substantial changes will require City Commission approval.
2. Density: Measured from the Mean High Water Line.
3. Agreement Duration: Three (3) years for building permit issuance and payment of permit fees for the development and five (5) years to receive a final certificate of occupancy.
4. Deviations: To realize number 1 above, four (4) deviations from the City's Land Development Code are requested.
5. Administrative Adjustment: City Staff may allow for modifications of up to 10% to any of the dimensional or landscaping requirements. This provision and staff

authority excludes building height, density and other standards regulated by the Comprehensive Plan.

6. Waiver of Public Beach Access Requirement: Sec. 14-21.4 of the LDC requires that the breezeway/visual corridor shall include a seven-foot dedicated concrete public walkway, constructed by the applicant, from the sidewalks to the beach. An irrigated landscape area of no less than three (3) feet in depth shall be provided along the entire length of the walkway. Under a typical development scenario, the City Commission may waive the requirement to construct a dedicated concrete public walkway from the sidewalks to the beach and the three-foot surrounding landscape area requirement upon making findings that:

- a. The developer shall provide compensation to the city, equal to the cost estimated to construct the public walkway and irrigated landscape from the sidewalks to the beach plus the city's legal costs for the review of this transaction. The construction costs estimated shall be provided by the applicant and conducted by an estimator approved by the city; and
- b. At least one (1) public beach access exists within one thousand (1,000) feet of the proposed development.

NOTE: Per Sec. 3.1.f of the Development Agreement, under the development of the Emerald Shores Hotel, a public beach access was previously dedicated to the City. This beach access immediately abuts the Emerald Shores Hotel to the south. The Emerald Shores Hotel property is subject to the proposed development.

III. EVALUATION CRITERIA

The decision to approve or deny a development agreement application is a legislative/discretionary process that does not consider specific standards/criteria however, Section 15-4 of the City's LDC outlines the requirements that shall be contained in any development agreement. Below are the required provisions and the way in which the applicant fulfilled the requirements of this section:

(1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

Requirement met? Yes, The legal description and survey of development site has been provided as exhibits "A" and "B" of the development agreement. The property owners have been identified on the first page of the agreement.

(2) The duration of the development agreement, which duration shall not exceed thirty (30) years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said development agreement.

Requirement met? Yes, the duration of the development agreement can be found in SECTION 25. of the agreement. The proposed duration is three (3) years for building

permit issuance and payment of permit fees for the development and five (5) years to receive a final certificate of occupancy.

(3) The development uses permitted on the land, including population densities, building intensities and building heights.

Requirement met? Yes, the development uses permitted, population densities, building intensities and building heights can be found in SECTION 3. DEVELOPMENT STANDARDS and SECTION 13. DEVIATIONS GRANTED FROM CODE OF ORDINANCES.

(4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

Requirement met? Yes, a concept plan has been provided as Exhibit "C" to the agreement which demonstrates compliance with the applicable land development code regulations, notwithstanding the four deviations (Sec. 13 of the agreement) proposed as part of this agreement.

(5) A description of the public facilities that will service the development including the designation of the entity that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required hereunder.

Requirement met? Yes, the property currently has direct access to existing public facilities. Any cost to improve public facilities to support the development will be borne by the developer.

(6) The applicant may be required to provide a performance bond, letter of credit, or similar instrument, to be deposited with the City to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any site development or building permits or other development permissions. In the event that the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

Requirement met? Yes, there are no new public facilities proposed as part of this development. No performance bond or letter of credit is required.

(7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

Requirement met? Yes, SECTION 5. IMPACT FEES AND PERMITTING of the agreement provides that impact fees and other funding requirements for the project on the Property are as established by controlling law and shall be met in the normative course and processes of development. There is no dedication of land for public access proposed.

(8) In the event that land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

Requirement met? Yes. No land is proposed to be conveyed to the City.

(9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include, but not be limited to, the following:

- a. Any required comprehensive plan amendments or changes in land use designations or changes in zoning classifications/districts assigned to property.*
- b. Any required submissions to or approvals from Volusia County; the State of Florida, Departments of Economic Opportunity (DEO), Environmental Protection (DEP), Transportation (DOT), or such other department or agency of the State as may be applicable; the United States Army Corps of Engineers; the St. Johns River Water Management District; the United States Environmental Protection Agency or any other federal departments or agencies with competent jurisdiction over any aspect of the proposed development.*

Requirement met? Yes, SECTION 5. IMPACT FEES AND PERMITTING of the agreement provides that “All development permits normatively needed to be approved for the development of the Property shall be subject to the review and approval processes during the course of the development of the premises; provided, however, that, it is noted that no changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the Property.” Receipt of applicable approvals for other agencies will be required as part of the formal regular site plan application/approval process.

(10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the general purpose and intent of the land development regulations of the city. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement and the agreement may be contingent upon those amendments being made and approved by the appropriate governmental agencies.

Requirement met? Yes, SECTION 17. COMPLIANCE WITH LAWS AND REGULATIONS of the agreement provides such finding as the following: “In performing pursuant to this

Development Agreement, the PROPERTY OWNER shall abide by all statutes, ordinances, rules, and regulations pertaining to regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. This provision shall include, but not be limited to, the provisions of the CITY's Comprehensive Plan, CITY's land development regulations, codes and ordinances of the CITY."

No amendments to the comprehensive plan or land development code are required.

(11) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

Requirement met? Yes, the statement has been provided in SECTION 5.c. as follows: "Failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction."

(12) A finding that the terms and conditions of the development agreement benefit the public interest.

Requirement met? Yes, public benefits have been listed in SECTION 4. PUBLIC BENEFITS of the agreement along with findings consistent with the comprehensive plan.

(13) A description of any deviations that have been granted with regard to the provisions of the city's land development regulations.

Requirement met? Yes, four (4) proposed deviations from the LDC requirements are found in SECTION 13 of the agreement. **Table 2** below summarizes the deviations requested.

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TABLE 2: Summary of LDC Deviations in Development Agreement

Deviation #	LDC Section	Description of Deviation	Standard Required by LDC	Deviation/Standard proposed (requested)
1.	Section 14-48.6	A deviation from the standard requirements for required parking spaces.	Cambria Development: 102 spaces	Cambria Development: 75 regular spaces provided (note: owner commits to and plans show an additional 20 parking spaces on lifts (double stacked) providing for a total of 95 spaces on site)
2.	Section 14-21.4	A deviation from building setbacks	Cambria: South-35ft Emerald Shores: North-28ft South-28ft East-50ft	Cambria Development: South-11ft Emerald Shores (Existing): North-20ft South-25ft East-42ft
3.	Section 14-48.9	A deviation from the requirement that two loading zones for structures over 100,000 sq. ft. in gross floor area.	Cambria Development: 2 loading zones	Cambria Development: 1 loading zone (+/- 103,341 SF GFA)
4.	Section 14-18.4	A deviation from the requirement of minimum green area on the site.	Cambria Development: 20% minimum	Cambria Development: 17% minimum

(14) A description of any vested rights in the property which is the subject of the development agreement which have been recognized and affirmed by the city.

Requirement met? Yes, not applicable to this property.

(15) Any other pertinent information that may be found necessary and required by the city.

Requirement met? Yes, the city has reviewed and provided recommended changes to the Development Agreement through the review process. No additional information has been found necessary or required.

Based on staff's interpretation of the information and language provided in the proposed development agreement, **Table 3** below was derived to assist the Board's decision-making process:

TABLE 3: Development Agreement Requirement Summary (per Section 15-4.a.)

Requirement	1.	2.	3.	4.	5.	6.	7.	8.	9.	10	11.	12.	13.	14.	15.	Total
Requirement Met	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	15
Requirement Not Met																
Requirement Partially Met																

Staff Recommendation:

1. The Community Services Department is recommending approval of the development agreement including the four (4) proposed deviations from the Land Development Code.
2. Waiver of seven (7) foot public walkway requirement (Sec. 14-21.4, LDC) subject to City Commission approval.



CITY COMMISSION AGENDA MEMORANDUM JUNE 11, 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: Resolution 2024-06: Authorization To Submit A Loan Application To The Clean Water State Revolving Fund Program With 100% Principal Forgiveness For Sanitary Sewer Resiliency Upgrades

SYNOPSIS:

If approved, Resolution 2024-06 would authorize the City of Daytona Beach Shores to apply for a loan from the Florida Department of Environmental Protection's Clean Water State Revolving Fund Program in the amount of \$14,550,000 to finance needed resiliency upgrades to the sewage collection system including, but not limited to, the retrofitting of all City owned lift stations to submersible designs and the upgrade or replacement of electrical and control systems. **This loan will be one hundred percent principal forgiveness. There will be no revenues pledged for the repayment of this loan.**

If approved, the next step will be submission of the loan application package (attached) to the Florida Department of Environmental Protection (FDEP) for review. The FDEP approval deadline is August 12, 2024.

FISCAL IMPACT STATEMENT:

No current budgetary impact. This will be included in FY 24-25 budget.

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

Approval as presented.

SUGGESTED MOTION:

A Daytona Beach Shores City Commissioner may move as follows:

"I move to approve Resolution 2024-06 as presented."

- ATTACHMENT:**
1. Res. 2024-06-Attach 5 DBS Authorizing Resolution
 2. Opinion Letter-Sewer Loan SRFM
 3. Daytona Beach Shores CW App Draft

RESOLUTION NO. 2024-06

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION CLEAN WATER STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING THE LOAN APPLICATION; AUTHORIZING THE LOAN AGREEMENT; DESIGNATING AN AUTHORIZED REPRESENTATIVE; PROVIDING ASSURANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the sewage collection system resiliency upgrades; and

WHEREAS, Florida Administrative Code rules require authorization to apply for loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS, the Clean Water State Revolving Fund (CWSRF) loan priority list designates Project No. 82702 as eligible for available funding from the Supplemental Appropriation for Hurricane Fiona and Ian (SAHFI); and

WHEREAS, the City of Daytona Beach Shores, Florida, intends to enter into a loan agreement with the Department of Environmental Protection under the Clean Water State Revolving Fund for project financing.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS

1. The foregoing findings are incorporated herein by reference and made a part hereof.
2. The City of Daytona Beach Shores, Florida is authorized to apply for a loan from the FDEP's CWSRF in the amount of \$14,550,000 to finance the resiliency upgrades to the sewage collection system including, but not limited to, the retrofitting of all City owned lift stations to submersible designs and the upgrade or replacement of electrical and control systems.
3. This loan will be one hundred percent principal forgiveness. There will be no revenues pledged for the repayment of this loan.
4. The City Manager is hereby designated as the authorized representative to provide the assurances and commitments required by the loan application.
5. The Mayor is hereby designated as the authorized representative to execute the loan agreement which will become a binding obligation in accordance with its terms when signed by both parties. The Mayor is authorized to represent the City in carrying out the City's

responsibilities under the loan agreement. The Mayor is authorized to delegate responsibility to appropriate City staff to carry out technical, financial, and administrative activities associated with the loan agreement.

6. The legal authority for borrowing moneys to construct this Project is Section 166.111, Florida Statutes and Section 403.8532, Florida Statutes.

SECTION 2. CONFLICTS. All resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 3. VALIDITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. EFFECTIVE DATE. This Resolution shall become effective immediately upon its approval.

I / We certify that the foregoing is an accurate copy of the resolution adopted by the **CITY OF DAYTONA BEACH SHORES, FLORIDA**

By: _____
Nancy Miller, Mayor

By: _____
Kurt Swartzlander, City Manager

ATTEST:

By: _____
Cheri Schwab, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
Vose Law Firm, City Attorney

Passed, adopted, and executed on this _____ day of _____, 2024.



May 20, 2024

Ms. Angela Knecht
Program Administrator
State Revolving Fund Management
3900 Commonwealth Blvd., Mail Station 3505
Tallahassee, Florida 32399-3000

Re: 82702 – City of Daytona Beach Shores
Sewage Collection System Resiliency Upgrades

Dear Ms. Knecht:

I am the duly appointed City Attorney for the City of Daytona Beach Shores. The City proposes to borrow \$14,550,000 from the Clean Water State Revolving Fund, Supplemental Appropriation for Hurricanes Fiona and Ian (SAHFI) to retrofit all city owned lift stations to submersible designs and upgrade or replace electrical control systems to avoid potential for flood or wind damage. Since the principal will be completely forgiven, there is no need to pledge any revenues for repayment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gretchen R. H. Vose', with a stylized flourish at the end.

Gretchen R. H. Vose
City Attorney
City of Daytona Beach Shores

COUNSEL TO EXTRAORDINARY FAMILIES, BUSINESSES & LEADERS WORLDWIDE SINCE 1973

324 W. MORSE BOULEVARD • WINTER PARK, FLORIDA 32789
TELEPHONE: (407) 645-3735 • FACSIMILE: (407) 628-5670 • TOLL FREE: (866) 789-VOSE
INTERNATIONAL TEL: (LONDON, ENGLAND): +44 (0)20 3355 1473 • INTERNET: WWW.VOSELAW.COM

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**STATE REVOLVING FUND LOAN
PROGRAM for
Point Source Water Pollution Control**

LOAN APPLICATION



Florida Department of Environmental Protection
State Revolving Fund Program
Marjory Stoneman Douglas Building
3900 Commonwealth Blvd., MS 3505
Tallahassee, FL 32399-3000

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LOAN APPLICATION

- (1) SUBMITTAL. Submit the application and attachments to the Department of Environmental Protection, MS 3505, State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000. The application (and backup) may be submitted electronically to the Department's Project Manager.
- (2) COMPLETING THE APPLICATION.
 - (a) This application consists of five parts: (I) ADMINISTRATIVE INFORMATION; (II) PROJECT INFORMATION; (III) FINANCIAL INFORMATION; (IV) AUTHORIZATION AND ASSURANCES; and (V) SUPPLEMENTARY INFORMATION.
 - (b) All information provided on this application must be printed. Monetary amounts may be rounded.
 - (c) Forms and attachments to be submitted are denoted with italic print.
- (3) ASSISTANCE. Completing this application may require information that can be obtained from Clean Water State Revolving Fund Program staff. Please email SRF_Reporting@dep.state.fl.us for assistance in completing this application.

PART I - ADMINISTRATIVE INFORMATION

- (1) PROJECT SPONSOR City of Daytona Beach Shores
Federal Employer Identification Number 59-6044103
DUNS Number Z4MVCMLG2G63
- (2) AUTHORIZED REPRESENTATIVE (person authorized to sign or attest loan documents).
Name Kurt Swartzlander Title City Manager
Telephone 386.763.5373 FAX _____ Email kswartzlander@cityofdb.org
Mailing Address 2990 S. Atlantic Avenue Daytona Beach Shores, FL 32118
- (3) PRIMARY CONTACT (person to answer questions regarding this application).
Name Stewart Cruz Title Community Services Director
Telephone 386.763.5366 FAX _____ Email scruc@cityofdb.org
Employer City of Daytona Beach Shores
Mailing Address 2990 S. Atlantic Avenue Daytona Beach Shores, FL 32118
- (4) ADDITIONAL CONTACTS. If more than one additional person is to receive copies of Department correspondence, attach the information (*Attachment #* n/a).
Name Sheryl Parsons Title Funding Practice Leader
Telephone 608.443.0404 FAX _____ Email sheryl.parsons@meadhunt.com
Employer Mead & Hunt
Mailing Address 4401 Eastport Parkway, Port Orange, FL 32127
- (5) PROJECT NUMBER (listed on the Department's priority list). 82702
- (6) INTERIM FINANCING. A local government project sponsor that has interim financing may be subject to certain conditions regarding such financing.

Is the project currently being funded with interim financing?

☐

Yes

☒

No

PART II – PROJECT INFORMATION

If you are applying for a planning, design, or SSES loan for a project that will involve construction, complete only Subpart A below. If you are applying for a loan to construct a project that is already planned and designed, complete only Subpart B below.

A. PLANNING, DESIGN OR SSES PROJECT

Information should be provided for each separate facility to be planned and designed as appropriate. For design/build projects (not eligible for design loans) or those where multiple facilities, segments, or phases are involved, please attach information for activities, schedule, and cost for each. (*Attachment #* 1)

- (1) ACTIVITIES. Attach a brief description of the scope of planning and design activities to be financed by this loan. Include a list of any specialized studies to be performed. (*Attachment #* 2) Are these activities the same as those scheduled on the *Request for Inclusion Form*? ☒ Yes ☐ No. If “No”, please explain. (*Attachment #* n/a)
- (2) SCHEDULE.
- (a) Provide proposed completion dates for the items. (Please call Department staff to discuss time frames needed to complete required tasks.)
- | | |
|------------------------------------|----------------|
| Planning documentation | <u>03/2024</u> |
| Engineering work | <u>01/2025</u> |
| Certification of site availability | <u>02/2025</u> |
| Permit | <u>02/2025</u> |
- (b) Do you anticipate that an interlocal agreement with another party will be necessary to implement the project? If “Yes”, please explain. (*Attachment #* n/a) ☐ Yes ☒ No
- (c) Is this a design/build project? ☒ Yes ☐ No
- (3) COST. Is the cost information submitted for the planning, design or SSES loan priority list current? ☒ Yes ☐ No
If “No”, please explain and submit revised cost information using the appropriate page of the *Request for Inclusion Form*. (*Attachment #* n/a) Note that the disbursable amount will be limited to the priority list amount.

PRECONSTRUCTION LOAN APPLICANTS PROCEED TO PART III.

B. CONSTRUCTION OR I/I REHABILITATION PROJECT

- (1) ACTIVITIES.
- (a) Attach a brief description of construction or I/I rehabilitation activities to be financed by this loan. Include a list of the contracts (by title) corresponding to the plans and specifications accepted by the Department (*Attachment #* 3).
Are these contracts the same as those scheduled on the *Request for Inclusion Form*? ☐ Yes ☐ No
If “No”, please explain. (*Attachment #* n/a)
- (b) Have any of the contracts been bid? ☐ Yes ☐ No
If “Yes”, indicate which contracts have been bid. (*Attachment #* n/a)
- (c) Was planning, design, or SSES for this project financed in another SRF loan? ☐ Yes ☒ No
If “Yes”, give the SRF loan number. _____
- (d) Does this project involve an interlocal agreement with other local governments or other entities? ☐ Yes ☒ No
If “Yes”, attach a copy of the interlocal agreement. (*Attachment #* n/a)
Is the interlocal agreement fully executed and enforceable? ☐ Yes ☒ No
If “No”, please explain (*Attachment #* n/a).

- (2) SCHEDULE. (month and year)
- (a) Anticipated notice to proceed for first construction contract. 03/2025
- (b) Anticipated completion of all construction contracts. 08/2026
- (3) COST. Is the cost information submitted for the priority list current? ☒ Yes ☐ No
- If "No", please explain and submit revised cost information using the appropriate page of the *Request for Inclusion Form*. (Attachment # n/a) Note that the disburseable amount will be limited to the priority list amount.

PART III - FINANCIAL INFORMATION

Estimates of the capitalized interest, project useful life for financial hardship loans, financing rate, pledged revenue coverage, limitations on annual loan amounts for large projects, applicability and amount of repayment reserves, amount of the loan service fee and any other information may be obtained by contacting staff in the State Revolving Fund Management Section.

- (1) PRINCIPAL. The requested amount of the loan which does not include capitalized interest is \$ 14,550,000
- Note that the disburseable amount will be limited to the priority list amount and must be consistent with the project information provided under **PART II** of this application. Also note that the capitalized interest is an inexact estimate, and it is subject to adjustment by the Department to reflect actual disbursement timing. The principal amount of the loan does not include the loan service fee.
- (2) TERMS AND REPAYMENT.
- (a) Loans to local government project sponsors are amortized over the lesser of useful life of the project or 20 years unless the project is to serve a small community qualifying as having a financial hardship. Loans to financial hardship communities may be amortized over the lesser of useful life of the project or 30 years. Loans to non-governmental project sponsors are amortized over the lesser of the useful of the project or 20 years. Finance charges and principal are paid semiannually.
- What is the useful life of the project? 40 (years)
- Over how many years would you like to amortize the loan? n/a (years)
- (b) List all revenues that are to be pledged for repayment of this loan. n/a (100% Principal Forgiveness)
- (c) Pledged revenue receipts or collections by the project sponsor must exceed the amount of the repayments due to the Department unless there are other collateral provisions. The excess revenue, or coverage, generally is 15% of each repayment.
- What coverage is proposed for the loan? n/a % (coverage percentage)
- (d) Is any other financial assistance being applied to this project? ☐ Yes ☒ No
- If "Yes", please list. (Attachment # n/a)
- (3) ANNUAL FUNDING LIMIT. Large project funding (generally, loans in excess of \$10 million) may be provided in increments pursuant to the initial loan agreement and subsequent amendments. Each increment shall have a separate financing rate as established in the agreement or amendment providing that increment.
- (4) INFORMATION ON LIENS.
- (a) Describe, if applicable, all debt obligations having a prior or parity lien on the revenues pledged to repay this loan. (Attachment # n/a) For example: City Name, Florida, Water and Sewer System Revenue Bonds, Series 1996, issued in the amount of \$10,000,000, pursuant to Ordinance No. 93-104, as amended and supplemented by Ordinance No. 96-156.
- (b) Using the Part V, *Schedule of Prior and Parity Liens*, provide debt service information, if applicable, on each prior and parity obligation.

- (c) For the listed obligations, provide a copy of the ordinance(s), resolution(s), official statement(s), or pages thereof, setting forth the definitions, use of proceeds, debt service schedule, pledged revenues, rate covenants, provisions for issuing additional debt, provisions for bond insurance, and debt rating. (*Attachment # n/a*).
- (d) Describe any other notes and loans payable from the revenues pledged to repay this loan. (*Attachment # n/a*).
- (5) ACTUAL AND PROJECTED REVENUES.
 - (a) Complete the Part V, *Schedule of Actual Revenues and Debt Coverage* for the past two fiscal years.
 - (b) Complete the Part V, *Schedule of Projected Revenues and Debt Coverage*, demonstrating the availability of pledged revenues for loan repayment.
- (6) AVAILABILITY OF PLEDGED REVENUES. All sources must be supported by a written legal opinion. (*Attachment # 4*) The opinion must address the following:
 - (a) Availability of the revenues to repay the loan.
 - (b) Right to increase rates at which revenues shall be collected to repay the loan.
 - (c) Subordination of the pledge if pledged revenues are subject to a prior or parity lien.
- (7) LOAN SERVICE FEE. A loan service fee is assessed on each loan. The fee is not part of the loan. The fee along with interest thereon will be deducted from the first available repayments after the final amendment to the loan agreement.

PART IV – AUTHORIZATION AND ASSURANCES

- (1) AUTHORIZATION. Provide an authorizing resolution of the Applicant's governing body or other evidence of authorization (*Attachment # 5*) for the following:
 - (a) Pledging revenues to repay the loan.
 - (b) Designation of the Authorized Representative(s) to file this application, provide assurances, execute the loan agreement, and represent the Applicant in carrying out responsibilities (including that of requesting loan disbursements) under the loan agreement.
- (2) ASSURANCES. The Applicant agrees to comply with the laws, rules, regulations, policies and conditions relating to the loan for this project. Applicants should seek further information from the Clean Water State Revolving Fund Program staff as to the applicability of the requirements if the necessity for the assurances is of concern. Specifically, the Applicant certifies that it has complied, as appropriate, and will comply with the following requirements, as appropriate, in undertaking the Project:
 - (a) Assurances for capitalization grant projects.
 - 1. Complete all facilities for which funding has been provided.
 - 2. The Archaeological and Historic Preservation Act of 1974, PL 93-291, and the National Historic Preservation Act of 1966, PL 89-665, as amended, regarding identification and protection of historic properties.
 - 3. The Clean Air Act, 42 U.S.C. 7506(c), which requires conformance with State Air Quality Implementation Plans.
 - 4. The Coastal Zone Management Act of 1972, PL 92-583, as amended, which requires assurance of project consistency with the approved State management program developed under this Act.
 - 5. The Endangered Species Act, 16 U.S.C. 1531, et seq., which requires that projects avoid disrupting threatened or endangered species and their habitats.
 - 6. Executive Order 11593, Protection and Enhancement of the Cultural Environment, regarding preservation, restoration and maintenance of the historic and cultural environment.
 - 7. Executive Order 11988, Floodplain Management, related to avoiding, to the extent possible, adverse impacts associated with floodplain occupancy, modification and development whenever there is a practicable alternative.
 - 8. Executive Order 11990, Protection of Wetlands, related to avoiding, to the extent possible, adverse impacts associated with the destruction or modification of wetlands and avoiding support of construction in wetlands.
 - 9. The Fish and Wildlife Coordination Act, PL 85-624, as amended, which requires that actions to control natural streams or other water bodies be undertaken to protect fish and wildlife resources and their habitats.

10. The Safe Drinking Water Act, Section 1424(e), PL 93-523, as amended, regarding protection of underground sources of drinking water.
 11. The Wild and Scenic Rivers Act, PL 90-542, as amended, related to protecting components or potential components of the national wild and scenic rivers system.
 12. The federal statutes relating to nondiscrimination, including: The Civil rights Act of 1964, PL 88-352, which prohibits discrimination on the basis of race, color or national origin; the Age Discrimination Act, PL 94-135, which prohibits discrimination on the basis of age; Section 13 of the Federal Water Pollution Control Act, PL 92-500, which prohibits sex discrimination; the Rehabilitation Act of 1973, PL 93-112, as amended, which prohibits discrimination on the basis of handicaps.
 13. Executive Order 11246, Equal Employment Opportunity, which provides for equal opportunity for all qualified persons.
 14. Executive Orders 11625 and 12138, Women's and Minority Business Enterprise, which require that small, minority, and women's business and labor surplus areas are used when possible as sources of supplies, equipment, construction and services.
 15. The Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq., regarding protection and conservation of the coastal barrier resources.
 16. The Farmland Protection Policy Act, 7 U.S.C. 4201 et seq., regarding protection of agricultural lands from irreversible loss.
 17. The Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646, which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs.
 18. The Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended, which requires that projects be carried out in accordance with area wide planning activities.
 19. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act and Executive Order 11738, which prohibit manufacturers, firms, or other enterprises on the EPA's list of Violating Facilities from participating in the Project.
 20. Executive Order 12549, Debarment and Suspension, which prohibits any award to a party which is debarred or suspended or is otherwise excluded from, or ineligible for, participation in federal assistance programs.
 21. Minority and Women's Business Enterprise participation in project work using numerical goals, established by the U.S. Environmental Protection Agency, and to be set forth in the specifications for construction and materials contracts.
- (b) Assurances for other projects.
1. Chapter 161, Part I, F.S., "Beach and Shore Preservation Act" and Part III, "Coastal Zone Protection Act of 1985" which regulate coastal zone construction and all activities likely to affect the condition of the beaches or shore.
 2. Chapter 163, Part II, F.S., the "Local Government Comprehensive Planning and Land Development Regulation Act" which requires units of local government to establish and implement comprehensive planning programs to control future development.
 3. Chapter 186, F.S., State and Regional Planning, which requires conformance of projects with Regional Plans and the State Comprehensive Plan.
 4. Chapter 253, F.S., "Emergency Archaeological Property Acquisition Act of 1988" which requires protection of archaeological properties of major statewide significance discovered during construction activities.
 5. Chapter 258, Part III, F.S., which requires protection of components or potential components of the national wild and scenic rivers system.
 6. Chapter 267, F.S., the "Florida Historical Resources Act" which requires identification, protection, and preservation of historic properties, archaeological and anthropological sites.
 7. Chapter 287, Part I, F.S., which prohibits parties convicted of public entity crimes or discrimination from participating in State-assisted projects and which requires consideration of the utilization of Minority Business Enterprises in State-assisted projects.
 8. Chapter 372, F.S., the Florida Endangered and Threatened Species Act which prohibits the killing or wounding of an endangered, threatened, or special concern species or intentionally destroying their eggs or nest.

9. Chapter 373, Part IV, F.S., Florida Water Resources Act of 1972, which requires that activities on surface waters or wetlands avoid adversely affecting: public health, safety, welfare, or property; conservation of fish and wildlife, including endangered or threatened species or their habitats; navigation or the flow of water; the fishing or recreational values or marine productivity; and significant historical and archaeological resources.
 10. Chapter 380, Part I, F.S., Florida Environmental Land and Water Management Act of 1972 as it pertains to regulation of developments and implementation of land and water management policies.
 11. Chapter 381, F.S., Public Health, as it pertains to regulation of onsite wastewater systems.
 12. Chapter 403, Part I, F.S., Florida Air and Water Pollution Control which requires protection of all waters of the state.
 13. Chapter 582, F.S., Soil and Water Conservation Act which requires conformance with Water Management District's regulations governing the use of land and water resources.
 14. Governor's Executive Order 95-359, which requires State Clearinghouse review of project planning documentation and intergovernmental coordination.
- (c) Assurances for all projects. The loan recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

I, the undersigned Authorized Representative of the Applicant, hereby certify that all information contained herein and in the attached is true, correct, and complete to the best of my knowledge and belief. I further certify that I have been duly authorized to file the application and to provide these assurances.

Signed this _____ Day of _____, 20 _____

Authorized Representative _____

(signature)

Kurt Swartzlander

(name typed or printed)

Attachments

PART V – SUPPLEMENTARY INFORMATION

**SCHEDULE OF PRIOR AND PARITY LIENS
(EXCLUDING SRF LOANS)**

List annual debt service beginning two years before the anticipated loan agreement date and continuing at least three additional fiscal years. Use additional pages as necessary.

	#1	#2	#3
Identify Each Obligation	The City of Daytona Beach Shores has no outstanding debt.		
Coverage	_____ %	_____ %	_____ %
Insured?	_____ Yes _____ No	_____ Yes _____ No	_____ Yes _____ No

Fiscal Year	Annual Debt Service (Principal Plus Interest)			Total Debt Service	Total Debt Service Incl. Coverage
	#1	#2	#3		
2011	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2012	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2013	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2014	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2015	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2016	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2017	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2018	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2019	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2020	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2021	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2022	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2023	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2024	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2025	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2026	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2027	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2028	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2029	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2030	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2031	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2032	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2033	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2034	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2035	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2036	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2037	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

PART V – SUPPLEMENTARY INFORMATION

SCHEDULE OF ACTUAL REVENUES AND DEBT COVERAGE

(Provide information for the two fiscal years preceding the anticipated date of the SRF loan agreement.)

	<u>FY 2022</u>	<u>FY 2023</u>
(a) Operating Revenues (Source)		
Charges for Sewer	<u>\$3,636,242</u>	<u>\$3,426,861</u>
(b) Interest Income	<u>\$3,067</u>	<u>\$338,612</u>
(c) Other Income or Revenue (Identify)		
(d) Total Revenues	<u>\$3,636,309</u>	<u>\$3,765,473</u>
(e) Operating Expenses (excluding interest on debt, depreciation, and other non-cash items)	<u>\$2,554,896</u>	<u>\$2,487,500</u>
(f) Net Revenues [(f) = (d) – (e)]	<u>\$1,084,413</u>	<u>\$1,277,973</u>
(g) Debt Service (including any required coverage)	<u>\$0</u>	<u>\$0</u>
(h) Attach audited annual financial report(s), or pages thereof, or other documentation necessary to support the above information. Include any notes or comments from the audit reports regarding compliance with covenants of debt obligations having a prior or parity lien on the revenues pledged for repayment of the SRF Loan. (Attachment # <u>6,7</u>)		
(i) Attach worksheets reconciling this page with the appropriate financial statements (for example, backing out depreciation and interest payments from operating expenses). (Attachment # <u>8</u>)		
(j) If the net revenues were not sufficient to satisfy the debt service and coverage requirement, please explain what corrective action was taken. (Attachment # <u>n/a</u>)		

PART V – SUPPLEMENTARY INFORMATION

SCHEDULE OF PROJECTED REVENUES AND DEBT COVERAGE

Begin with the fiscal year preceding first anticipated semiannual loan payment and continuing for at least three additional years. Attach a separate page for previous State Revolving Fund loans. (*Attachment # n/a*)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
(a) Operating Revenue	<u>\$4,301,800</u>	<u>\$4,430,851</u>	<u>\$4,563,774</u>	<u>\$4,700,684</u>	<u>\$4,841,701</u>
(b) Interest Income	<u>\$215,000</u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>
(c) Other Income or Revenue (identify)					
(d) Total Revenues	<u>\$4,516,800</u>	<u>\$4,445,851</u>	<u>\$4,578,774</u>	<u>\$4,715,684</u>	<u>\$4,856,701</u>
(e) Operating Expenses (excluding interest on debt, depreciation, and other non-cash items)	<u>\$3,640,600</u>	<u>\$3,749,818</u>	<u>\$3,862,313</u>	<u>\$3,978,182</u>	<u>\$4,097,527</u>
(f) Net Revenues (f = d - e)	<u>\$876,200</u>	<u>\$696,033</u>	<u>\$716,461</u>	<u>\$737,502</u>	<u>\$759,174</u>
(g) Revenue (including coverage) pledged to debt service, excluding SRF loans	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
(h) Revenue (including coverage) pledged to outstanding SRF loans	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
(i) Revenue Available for this SRF Loan [(i) = (f) – (g) – (h)]	<u>\$876,200</u>	<u>\$696,033</u>	<u>\$716,461</u>	<u>\$737,502</u>	<u>\$759,174</u>
(j) Identify the source of the above information and explain methods used to develop the projections (<i>Attachment # <u>9,10,11</u></i>). Include an explanation of any revenue and expense growth or other adjustments; for example, any rate increases, service growth, inflation adjustments, expense adjustments reflecting the cost of operating additional facilities, or other considerations.					
(k) For construction loans, are the above projections consistent with the accepted financial feasibility information?				☒ Yes	☐ No

If “No”, please explain. (*Attachment # n/a*)

PART V – SUPPLEMENTARY INFORMATION

LIST OF ATTACHMENTS

LIST OF ATTACHMENTS. This application requires the submittal of *Attachments* to provide supplemental information. The application is not complete without the completed *List of Attachments*. Please list all attachments that you are including with this application form.

[illegible]



CITY COMMISSION AGENDA MEMORANDUM JUNE 11, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Becky Vose, City Attorney
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Resolution 2024-08 New Commission Monthly Meeting Schedule

SYNOPSIS:

The purpose of this agenda item is to bring forth a Resolution, which changes the Commission's monthly meeting schedule beginning January 2025, to one regular meeting per month and one special meeting or workshop per month, only if the special meeting or workshop is needed.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The City Commission currently holds its regular meetings at 6:00 p.m. on the second (2nd) and fourth (4th) Tuesday of every month. During the last Commission meeting (May 28), the Commission decided to bring forth this Resolution, which changes its regular meeting schedule to the first (1st) Tuesday of each month. The third (3rd) Tuesday of each month shall be used, if needed, for special meetings or workshops. The new monthly meeting schedule will begin January 2025. Below is the relevant Charter provision that allows this change and outlines procedures for regular and special Commission meetings:

"Sec. 2.14. Meetings of the city commission.

The organizational meeting of the city commission shall be held at commission chambers or as otherwise designated by motion of the city commission at the first regularly scheduled city commission meeting after the municipal election. The first order of business shall be the administering of the oath of office to the newly-elected members of the city commission and the mayor, if applicable, followed by the election of the vice-mayor. Thereafter the city commission shall meet at such times as may be prescribed by resolution, except that it shall meet regularly no less than once each month. Special meetings may be called by the mayor or any three commissioners who are present in a regular or special meeting upon at least forty-eight (48) hours' notice to each member, served personally, or left at his or her usual place of residence with some member of his or her family over the age of fifteen (15). This time requirement may be waived only by the consent of all commissioners.

The city commission shall take all reasonable steps to ensure timely notice to the public of such special meetings which, at least, shall include notification of the local press and posting notice of the

meeting in a central location designated by the commission for that purpose. Any regular or special meeting, on motion adopted by the city commission, may be adjourned and continued to a time certain provided there is compliance with the requirement or public notice. All regular and special meetings of the city commission, other than the specific exceptions provided by general law, shall be open to the public. All regular meetings shall be held at commission chambers or as otherwise designated by motion of the city commission, but special meetings may be scheduled at any location.” [emphasis added]

LEGAL REVIEW:

The City Attorney approves the Resolution.

RECOMMENDATION:

SUGGESTED MOTION:

I move to approve/not approve the Resolution.

ATTACHMENT: 1. Res 2024- 08 One Commission Meeting Per Month

RESOLUTION NO. 2024-08

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH SHORES ADOPTING A NEW COMMISSION MONTHLY MEETING SCHEDULE BEGINNING JANUARY 2025; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Article II, Section 2.14 of the Charter of the City of Daytona Beach Shores mandates that the City Commission shall meet at such times as may be prescribed by resolution, except that it shall meet regularly no less than once each month. Section 2.14 of the Charter further provides procedures for holding special meetings of the City Commission; and

WHEREAS, the City Commission currently holds its regular monthly meetings at 6:00 p.m. on the second (2nd) and fourth (4th) Tuesday of every month at the City Commission Chambers located at 3000 Bellemead Drive, Daytona Beach Shores, Florida 32118; and

WHEREAS, this Resolution changes the Commission's regular monthly meeting schedule to the first (1st) Tuesday of each month. The third (3rd) Tuesday of each month shall only be used if needed, for special meetings or workshops; and

WHEREAS, the new Commission monthly meeting schedule shall begin in January 2025; and

WHEREAS, this change in the Commission's monthly meeting schedule is in the best interest of the Citizens of the City of Daytona Beach Shores because it improves economic efficiency and allows streamlining of meetings, staff workload, and City resources.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH SHORES, AS FOLLOWS:

SECTION 1. Findings. The above WHEREAS clauses are true and correct and incorporated herein by this reference.

SECTION 2. Adoption The City Commission hereby adopts the following changes to its monthly meeting schedule, which shall begin in January 2025:

1. The Commission shall hold its regular monthly meeting at 6:00 p.m. on the first (1st) Tuesday of each month at the City Commission Chambers located at 3000 Bellemead Drive, Daytona Beach Shores, Florida 32118.
2. The Commission shall meet on the third (3rd) Tuesday of each month at 4:00 pm, only if needed, for special meetings or workshops. Special meetings and

workshops shall be held in accordance with the provision of Article II, Section 2.14 of the Charter of the City of Daytona Beach Shores.

SECTION 3. Severability. If any section, sentence, clause, or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Resolution.

SECTION 4. Conflicting Resolutions. All resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. Effective Date. This Resolution shall become effective immediately upon adoption but as stated herein, the Commission's new monthly meeting schedule will begin in January 2025.

CITY OF DAYTONA BEACH SHORES, FLORIDA

By: _____
Nancy Miller, Mayor

By: _____
Kurt Swartzlander, City Manager

ATTEST:

By: _____
Cheri Schwab, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
Vose Law Firm, City Attorney

Passed and adopted on this _____ day of _____, 2024.



CITY COMMISSION AGENDA MEMORANDUM JUNE 11, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission

FROM: Becky Vose, City Attorney

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Hearing on Notice of Termination of Contract with Volusia County Towing

SYNOPSIS:

Pursuant to Section 24 of the Agreement, the City Commission is required to hold a hearing prior to terminating the Agreement.

FISCAL IMPACT STATEMENT:

BACKGROUND:

On March 15, 2023, the City entered into the Agreement with Volusia County Towing for towing and storage services as needed by the City at an agreed-upon rate of \$131.75 per tow, payable by Volusia County Towing to the City on the first day of every month for the prior month's tows, for as long as the Agreement is in effect. Although, the original term of the Agreement expired on March 31, 2024, the parties extended the Agreement until March 31, 2025, as allowable under the terms of the Agreement. Since the extension of the Agreement, Volusia County Towing has engaged in conduct that rises to the level of a material breach of the parties' Agreement. Specifically, Volusia County Towing has habitually failed to make timely payments as required by the Agreement and has also failed to pay to the City for the tows completed in March, April, and May 2024. In an effort to mitigate the damages and pursuant to the terms of the Agreement, the City notified Volusia County Towing of their breach by sending a Warning Notice on May 14, 2024, requesting payment of the full outstanding balance to the City within 7 days of the Notice. Volusia County Towing failed to remediate their breach and did not make the requested outstanding payment to the City, prompting the City to prepare a Termination Letter, which has been approved by the City Commission. The Letter of Termination was provided to Volusia County Towing on May 29, 2024, informing them of the City's intent to terminate the Agreement as provided under the terms of the Agreement. Even after Volusia County Towing received the Termination Letter from the City, they failed to make the required outstanding payments to the City, demonstrating their refusal to honor the terms of the Agreement.

LEGAL REVIEW:

The City Attorney recommends that City Commission move forward with the termination of the Agreement in light of Volusia County Towing's habitual untimely payments to the City, as well as the more recent failure to make full payments to the City.

RECOMMENDATION:

SUGGESTED MOTION:

"I move to approve/not approve the termination of the Agreement with Volusia County Towing"

- ATTACHMENT:**
1. 2023 towing contract vol cty towing
 2. volusia towing first yr extension
 3. Volusia County Towing payment history from MUNIS
 4. volusia county towing data sheet updated
 5. DBSVolusia County Towing - Corrected Letter - 5-14-24
 6. Email Transmission of the Warning Notice
 7. DBS - Volusia County Towing - Letter of Termination dated May 29 2024
 8. Email transmission of the May 29, 2024 Termination letter
 9. Notice of Public Hearing - Volusia County Towing 5-31-24
 10. Email Transmission of the Notice of Hearing
 11. Certified Mail Postage of Notice of Hearing
 12. email transmission June 3 appearance at June 11 hearing
 13. Legal Ad for Notice of June 11 hearing

WRECKER SERVICE AGREEMENT

THIS AGREEMENT entered into by and between the City of Daytona Beach Shores, Florida, a municipal corporation, hereinafter referred to as the "City" and Volusia County Dink hereinafter referred to as "Towing Company", in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

WITNESSETH:

SECTION 1. SERVICES TO BE PERFORMED BY TOWING COMPANY.

The Towing Company shall provide the following services:

- a. The Towing Company shall provide for the towing and storage, when required, of motor vehicles and trailers from public or private property lying within the City Limits of the City of Daytona Beach Shores when so authorized by a representative of the City, at a rate not greater than the applicable maximum rates specified herein.
- b. When authorized by a representative of the City, the Towing Company shall, at a rate not greater than the applicable maximum rate specified herein, provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of the provisions of the *Code of Ordinances of the City of Daytona Beach Shores* or State law or are otherwise required to be moved by or at the direction of a public safety officer, from the point of origin to the place of business of the Towing Company and at a rate not greater than the applicable maximum rate specified herein, and provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter from the scene of an accident to a location within the City, as designated by the owner, other than the place of business of the Towing Company.
- c. When authorized by a representative of the City, the Towing Company shall, at no charge to City, tow City motor vehicles and motor vehicle seized under Chapter 932, *Florida Statutes*, or other controlling law, and provide for the towing within Volusia County and/or storage of any disabled or seized vehicle at no charge to the City. If a City motor vehicle is outside of Volusia County, standard Towing Company charges apply. Any heavy City equipment that requires towing will be charged at ½ rate of its GVWR.
- d. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company, or the agent, servants, or employees of the Towing Company.
- e. The Towing Company guarantees that towing/wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that Towing Company personnel will be subject to call at any and all times. The Towing Company further guarantees that, for at least ninety five percent (95%) of all calls, it will be at the requested location within the city limits within twenty (20) minutes from the time the Towing Company receives a call requesting that a wrecker be dispatched. It further guarantees that in the remaining five percent (5%) of calls, a wrecker will be at the location within thirty (30) minutes.

f. The Towing Company shall answer expeditiously all calls from the City for on-scene service at accidents and shall immediately remove all obstructions caused by accidents and provide for cleanups even if actual towing is not required.

g. Upon request, the Towing Company shall provide the City with reasonable assistance in the examination of motor vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the law enforcement authorities.

h. All services rendered by the wrecker under this Section shall be at no expense to the City, unless specifically provided otherwise. This shall not prevent the Towing Company from charging the owner of the motor vehicle for such services according to the rates provided in Section 4.

SECTION 2. PER TOW PAYMENT TO THE CITY.

In consideration of the Towing Company being the City's exclusive towing company for the services set forth herein for the term of this Agreement, the Towing Company shall pay 131.75 per tow to the City, beginning April 1, 2023. The total for the prior month will be due on the first day of each month thereafter, the as long as this Agreement is in effect.

SECTION 3. TERM

a. The term of this Agreement shall be for a one (1) year period beginning April 1, 2023 and ending March 31, 2024. The City shall have the option of extending this Agreement for four (4) years in one year increments. Any adjustments in the maximum wrecker fees allowed and corresponding monthly payments to the City may also be negotiated at the time of renewal.

b. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call during the term of this Agreement, with one of its own wreckers, it is still responsible for providing a wrecker. It may utilize a wrecker from another wrecker company licensed in the City. In such cases, the substitute wrecker must comply with the terms agreed upon herein.

SECTION 4. RATES CHARGED OWNERS.

In consideration for the services to be provided by the Towing Company under the terms of this Agreement, the Towing Company may charge of the vehicle being stored the rates listed below, provided that:

a. The City shall not be liable in the event of nonpayment by the owner of the vehicle being towed.

b. An increase in the maximum rates specified herein may be negotiated at the end of each year covered by this Agreement, along with a corresponding increase in payment to the City.

c. The towing/servicing of City owned/leased vehicles shall be as outlined in Section 1.

d. The maximum rates to be charged the owner for towing and storage of any motor vehicle or trailer towed at the direction of the City shall be as forth below:

Towing Charge: \$125.00

Storage: \$25.00/day outside; \$30.00/day inside plus state/local taxes.

Admin Fee: \$25.00 per vehicle

e. The Towing Company agrees to tow abandoned or junked vehicles at no charge to the City, and the City shall surrender all salvage rights for the vehicle to the Towing Company and shall retain no liens upon the vehicle.

f. No other charges or fees, other than those specified and authorized in this Agreement, are allowed for services provided under this Agreement.

SECTION 5. RATES CHARGED TO THE CITY.

The City shall not be charged for any services rendered to it under this Agreement except as specifically provided in this Agreement.

SECTION 6. PROHIBITED CHARGES.

The services called for in Section 1 shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicle was towed in error at the request of the City, nor shall the City in such a case, be responsible for payment of a tow charge or storage costs.

SECTION 7. SALVAGE RIGHTS.

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement and as specifically outlined herein excluding those vehicles seized and held for possible forfeiture by the City. The City will not be charged towing charges or storage fees for temporary storage in cases of vehicles seized for forfeiture or law enforcement investigation.

SECTION 8. STORAGE FACILITIES.

a. The Towing Company shall maintain a storage garage and/or outside storage facility complying with applicable building and zoning regulations. Such storage facility shall:

1) contain a minimum of twenty-five (25) spaces in an area which is completely fenced;

2) have available a minimum of four (4) spaces inside a building for the storing of vehicles which require law enforcement processing. These spaces shall be maintained to provide protection from the weather and security to preserve chain of custody for vehicles which require a law enforcement processing, and

3) be located within ten (10) miles of the City.

b. The Towing Company shall have an employee on duty at said storage facility twenty-four (24) hours a day, seven (7) days a week, including holidays.

c. Said storage facilities shall be subject to inspection and shall be approved by the City prior to the award of any contract; storage facilities shall be subject to periodic inspections at any time by the City during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement. Notice of any discrepancies or deficiencies in contract compliance found by the City shall be submitted to the Towing Company in writing, and the Towing Company shall remedy the same within ten (10) days of receipt of such notice. Upon failure of the Towing Company to remedy the deficiencies in contract compliance, action may be taken by the City pursuant to Section 24.

d. Vehicles which have been marked "HOLD" for investigative or forfeiture purposes by the City shall be held at the storage facility, unless indicated otherwise, for whatever period of time necessary to properly process the vehicle and finish the investigation, at no charge to the City. City personnel shall be permitted access to such vehicles at any time. Vehicles stored in enclosed areas shall be secured from access by unauthorized persons. The Towing Company shall take reasonable steps to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD", an administrative fee for compliance with statutory notice requirements may be charged after the first forty-eight (48) hours so long as the wrecker service has complied with the requirements of controlling State law including, but not limited to, execution and mailing of the lien notice.

SECTION 9. WRECKER EQUIPMENT AND WRECKER COMPANY PERSONNEL.

a. The Towing Company shall, during the term of this Agreement, own or lease, in its name, a minimum of three (3) wreckers to provide the services called for by this Agreement. The Towing Company name shall be prominently displayed on the vehicles. The wreckers must include: at least one Class A wrecker, at least one Class B wrecker and at least one Class C wrecker as determined by the City. The wreckers of the Towing Company shall meet the requirements and specifications established by the City.

b. No owner, partner, employee, or agent of the Towing Company shall have been:

1) convicted of any felony when the person's civil rights have not been restored;

2) convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of whether civil rights have been restored. For the purpose of this Section, any offense involving perjury, false statement, or dishonesty shall also be considered to be directly related to the business of operating a wrecker.

3) For the purposes of this Section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a verdict of guilty when adjudication is withheld and the accused is placed on probation.

c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.

SECTION 10. RADIO COMMUNICATIONS.

The Towing Company shall provide a two-way radio communication system between its office and all tow trucks operated by the Towing Company. The towing company shall maintain a direct telephone line for incoming police calls.

SECTION 11. NON-EXCLUSIVENESS OF SERVICE.

The Towing Company agrees that the owner or person in possession of any vehicle, which has been incapacitated, shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

SECTION 12. BENEFITS FROM REPAIRS.

The Towing Company shall not benefit directly or indirectly, without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor vehicle repair or painting with respect to vehicles towed and/or stored by the Towing Company under the terms and provisions of any agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner, or between the Towing Company and a repair facility shall state the repairs/painting to be accomplished as well as the price and terms of payment therefore.

SECTION 13. LIABILITY OF TOWING COMPANY.

The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the vehicle to be towed or endorse the inventory prepared by the law enforcement authority in charge.

SECTION 14. PERSONAL PROPERTY IN VEHICLE.

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall not be disposed of to defray any charges for storage or towing of the vehicle, except as provided by law. All such personal property must be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the owner or person entitled to possession thereof shall provide a receipt to the Towing Company for the same.

SECTION 15. RELEASE OF THE VEHICLE.

The Towing Company agrees to release any vehicle which has not been marked "HOLD" to the proper owner or person entitled to possession of the vehicle. Any vehicle which has been marked "HOLD" by the City cannot be released without prior written authority from the City. The

Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall be given a receipt for the vehicle. The storage facility must be open for the purpose of redemption of vehicles on any day that the Towing Company is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within one hour. The Towing Company shall deliver to the City by 9:00 a. m. daily or such other time period designated by the City a report of all vehicles released the previous day.

SECTION 16. POSTING CHARGES.

The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed the amounts listed in Section 4.

SECTION 17. ITEMIZED STATEMENTS.

Should any owner or person entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner or such person offering title to possession with an itemized statement of all charges relating to the towing and storage of such vehicle.

SECTION 18. INDEMNIFICATION.

The Towing Company shall indemnify and hold harmless the City and its agents, officers and employees from and against all claims, damages, losses and expenses including, but not limited to, attorney's fees, arising out of or resulting from the work provided that the claim, damage, loss and expense is caused in whole or in part by any negligent act or omission of the City, the Towing Company, any subcontractor, anyone directly or indirectly employed by any one of them, or any one for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

SECTION 19. INSURANCE.

a. Required Insurance: The Towing Company shall purchase and maintain, at its own expense, the following types and amounts of insurance, in form and from companies satisfactory to the City:

1) Worker's Compensation Insurance for all employees and subcontractors of the Towing Company connected with the work which is the subject of this Agreement. The insurance required by this subsection shall comply fully with the Florida Workers' Compensation Law and include Employers Liability insurance with limits of not less than \$500,000 per occurrence. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.

2) Liability Insurance: General Liability Insurance, including coverage for operations, products-completed operations, and personal injury insuring the Towing Company and any other interests, including but not limited to any associated or subsidiary companies involved in

the work. Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Towing Company for the work which is the subject of this Agreement. The Liability Insurance shall include contractual liability insurance applicable to the Towing Company's obligations under Section 18. The Liability Insurance shall name the City as an additional insured. The General and Automobile liability insurance shall each have a limit of liability of no less than \$1,000,000 for injury or death and no less than \$2,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than \$250,000 for property damage to one or more persons as a result of any one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than \$1,000,000. If insurance coverage is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$3,000,000. The limit of liability for personal injury shall be no less than \$1,000,000 and the limit of liability for contractual liability shall be no less than \$1,000,000.

3) Garage Keepers Legal Liability Insurance: Garage Keepers Legal Liability Insurance in an amount reasonably sufficient to protect the owners of any and all vehicles towed or stored by the Towing Company, pursuant to this Agreement, from loss or damages to such vehicle on account of such removal or storage. The insurance may be provided with a deductible in an amount deemed acceptable to the City.

b. Proof of Insurance: The Towing Company shall furnish proof of insurance acceptable to the City prior to the award of a towing contract and the Towing Company shall not commence work under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

In the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to:

City Manager
City of Daytona Beach Shores
2990 S. Atlantic Ave.
Daytona Beach Shores, Florida 32118"

If requested by the City, the Towing Company shall furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the City. The Towing Company shall file replacement certificates thirty (30) days prior to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. In the event such insurance shall lapse, the City expressly reserves the right to renew the insurance at the Towing Company's expense.

SECTION 20. RECORDS, BOOKS AND PAYMENT.

The City reserves the right, during normal business hours to inspect and audit the Towing Company records pertaining to service provided under this Agreement. All records must be maintained at one central location as provided hereinafter. Additionally, the monthly sum payable to the City by the Towing Company will be submitted to City on the first day of each

month for the duration of this Agreement. Copies of all wrecker company paid invoices for services provided each month as a result of this Agreement shall be submitted with the monthly payment, if requested by the City. Such invoices may be in the form of a computer printout.

a. The Towing Company shall maintain for at least one (1) year, following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:

1) Where the vehicle was towed from; the date towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date the vehicle was released or disposed of; and all correspondence sent or received concerning said vehicle.

2) The Towing Company shall be required to submit a list of all vehicles towed under authority of the City every twenty-four (24) hours, or such other time period as authorized in writing by the City, describing each vehicle by make, year, model, VIN and Tag Number.

3) The records shall be submitted on computer disc if it proves logistically feasible, upon approval of the City.

b. The Towing Company shall provide facsimile machines, as approved by City, capable of transmitting documents between the City and the Towing Company.

c. The Towing Company shall comply with all laws of the State or Florida relating to public records as directed by the City.

SECTION 21. RIGHT TO CANCEL SERVICE CALL.

The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the vehicle operator/owner. When a wrecker is to be canceled, it must be canceled over the law enforcement radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the vehicle to be towed and the wrecker has stopped in preparation to perform the towing service.

SECTION 22. COMPLIANCE WITH LAWS AND RULES.

The Towing Company agrees to and shall comply with all applicable provisions of Federal and State law, all applicable City ordinances, and the Rules of the Daytona Beach Shores Public Safety Department, as amended from time to time, unless otherwise provided by this Agreement.

SECTION 23. CASH BOND.

Prior to the effective commencement date of this Agreement, the Towing Company shall post a cash or surety performance bond in the amount of two thousand dollars (\$2,000) with the City, to be used by the City, in the event:

a. The Towing Company fails to provide wrecker service required by this Agreement, for the purpose of defraying costs incurred by the City in making adequate arrangements for the removal of vehicles, or

b. The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in Section 24 for the purpose of defraying the cost of rebidding this Agreement.

SECTION 24. BREACH OF AGREEMENT.

a. It shall be the right of the City Manager, and any officials of the City which the City Manager may designate, to observe closely the wrecker service operations and, if, in the opinion of the City Manager, there has been a breach of contract, the City Manager shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If within a period of seven (7) days the Towing Company has not eliminated the condition considered to be a breach of contract, the City Manager may so notify the City Council and a hearing shall be set for a date within fifteen (15) days of such notice. At that time, the City Council shall hear the Towing Company and the City representative, and shall make a determination as to whether or not there has been a breach of contract, and shall direct what further action shall be taken by the City, including, but not limited to, cancellation of this Agreement, as hereinafter provided. Any lesser remedial action than cancellation shall not waive the City's right to further remedial action.

b. In addition to terminating this Agreement, the City may recover from the cash or surety bond all administrative costs as provided by Section 23.

c. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or not hereafter existing at law or at equity or by statute.

SECTION 25. MISLEADING, DISHONEST AND ILLEGAL PRACTICES.

The Towing Company warrants that it will not engage in any misleading, dishonest or illegal practices with regard to the vehicles towed pursuant to this Agreement. Engaging in misleading, dishonest or illegal practices shall be deemed a violation and breach of this Agreement. The City shall promptly notify the Towing Company of an alleged violation and breach. If a satisfactory explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations will not occur in the future within the twenty-four (24) hour period, the violation may be reported to the City Council for termination of this Agreement or other appropriate action as provided in Section 24. The City reserves the right to terminate this Agreement if it determines such action to be in the public interest.

SECTION 26. MISCELLANEOUS.

a. The descriptive headings appearing in this Agreement are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.

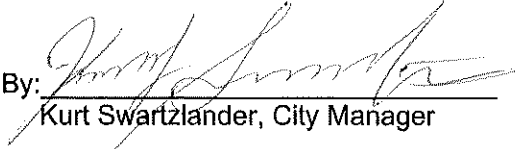
b. The bid documents and specifications, attached hereto, are made a part of this Agreement as if fully set forth herein verbatim.

c. It is mutually understood and agreed that nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of copartners or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.

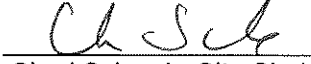
d. The Towing Company shall not assign this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

CITY OF DAYTONA BEACH SHORES

By: 
Kurt Swartzlander, City Manager

3/15/23
Date

Attest: 
Cheri Schwab, City Clerk

TOWING COMPANY


Authorized Corporate Officer-

2/18/2023
Date

DEREK Thomson
PRINTED NAME

Attest: _____

PRINTED NAME

CITY OF DAYTONA BEACH SHORES, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this 1 day of April, 2023, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the "City", and Volusia County towing hereinafter referred to as "Contractor", concerning that certain Agreement dated the 15 day of March, 2023 ("Agreement").

WITNESSETH:

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.

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

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. 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 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.**

3. 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.

4. 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.

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.

9. **Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. N/A

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.

CONTRACTOR:



Print Name: DEREK THOMSON

Title: OWNER

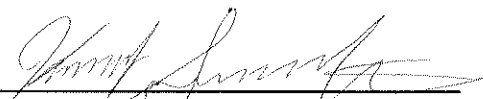
Company: VOLUSIA COUNTY TOWING

Attest:



By: Cheri Schwab, City Clerk

CITY OF DAYTONA BEACH SHORES



By: Kurt Swartzlander, City Manager



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

OFFICE OF THE CITY MANAGER

February 26, 2024

Volusia County Towing
345 8th Street
Holly Hill, FL 32117

RE: Contract Renewal

The purpose of this letter is to serve as official notice from the City as called for in Section 3a of our contract that the City is extending the existing contract for an additional one year. This is the first of the possible four one-year extensions of this contract and will carry the agreement to March 31, 2025. Please provide a copy of your current insurance certificate as we do not have one on file.

Please respond whether you are in agreement to these terms.

Thank you,

Kurt Swartzlander
City Manager

EFF DATE	POST DATE	REFERENCE	AMOUNT	VDR NAME/ITEM DESC
05/15/2023	05/26/2023	APR 23	-1,712.75	THOMSON HOLDINGS ENTERPRISES LLC
07/05/2023	07/06/2023	MAY23	-3,293.75	THOMSON HOLDINGS ENTERPRISES LLC
08/07/2023	08/08/2023	JUNE 23	-3,030.25	THOMSON HOLDINGS ENTERPRISES LLC
08/07/2023	08/08/2023	JUL 23	-3,293.75	THOMSON HOLDINGS ENTERPRISES LLC
10/09/2023	10/10/2023	AUG 23	-1,976.25	THOMSON HOLDINGS ENTERPRISES LLC
10/09/2023	10/10/2023	SEP 23	-2,371.50	THOMSON HOLDINGS ENTERPRISES LLC
11/15/2023	11/16/2023	OCT23	-922.25	THOMSON HOLDINGS ENTERPRISES
12/18/2023	12/19/2023	NOV 23	-527.00	THOMSON HOLDINGS ENTERPRISES LLC
01/30/2024	01/31/2024	DEC23	-527.00	THOMSON HOLDINGS ENTERPRISES LLC
02/26/2024	02/27/2024	JAN 24	-1,581.00	THOMSON HOLDINGS ENTERPRISES LLC
05/02/2024	05/03/2024	FEB 24	-922.25	THOMSON HLD ENT LLC VOLUSIA TOWING

COMMENTS

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Volusia County Towing

Month	Date paid	Days late	Amount pd	# tows
Apr-23	5/15/2023	14	\$1,712.75	13
May-23	7/5/2023	34	\$3,293.75	25
Jun-23	7/5/2023	4	\$3,030.25	23
Jul-23	8/7/2023	6	\$3,293.75	25
Aug-23	10/9/2023	38	\$1,976.25	15
Sep-23	10/9/2023	8	\$2,371.50	18
Oct-23	11/15/2023	14	\$922.25	7
Nov-23	12/18/2023	17	\$527.00	4
Dec-23	1/30/2024	29	\$527.00	4
Jan-24	2/26/2024	25	\$1,581.00	12
Feb-24	5/2/2024	62	\$922.25	7
Mar-24	unpaid			17
Apr-24	unpaid			12
May-24	unpaid			5

Amount due

\$2,239.75

\$1,581.00

\$658.75

VOSE LAW FIRM LLP
ATTORNEYS & COUNSELORS AT LAW

GRETCHEN R.H. ("BECKY") VOSE[‡]
WADE C. VOSE[†]
NANCY A. STUPARICH
PAUL R. WATERS
GARRETT M. OLSEN
STEPHANIE M. VELO
CHLOE E. BERRYMAN
MARIA RONDEL

[†]BOARD CERTIFIED IN CITY, COUNTY &
LOCAL GOVERNMENT LAW

[‡]RATED AV PREEMINENT BY MARTINDALE-HUBBELL

May 14, 2024

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

Thomson Holdings Enterprises, LLC
d/b/a Volusia County Towing
c/o Derek Thomson
345 8th Street
Holly Hill, FL 32117

RE: Corrected Letter Regarding Notice of Overdue Payment

Dear Mr. Thomson:

As you may already know, our firm has the pleasure of representing the City of Daytona Beach Shores, Florida. Please disregard the correspondence from our office dated May 13, 2024.

The City has referred to us the matter of your noncompliance with your Wrecker Service Agreement with the City of Daytona Beach Shores (the "Agreement"), under which Volusia County Towing agreed to provide as-needed towing services to the City. A copy of the Agreement is enclosed for your convenience.

As you are aware, pursuant to Section 2 of the Agreement, you have an obligation to pay "Per Tow Payment" to the City, at the rate of \$131.75 per tow, the total for the prior month being due on the first day of each month thereafter.

It has come to our attention that you currently owe the City of Daytona Beach Shores \$4,084.29.

The City has determined that your failure to comply with the terms of the Agreement and compensate the City for the work performed constitutes a breach of the Agreement, according to the terms outlined in Section 24. As you may know, Section 24 of the Agreement states:

"It shall be the right of the City Manager, and any officials of the City which the City Manager may designate, to observe closely the wrecker service operations and, if, in the opinion of the City Manager, there has been a breach of contract, the City Manager shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If within a period of seven (7) days the

COUNSEL TO EXTRAORDINARY GOVERNMENTS & LEADERS THROUGHOUT FLORIDA SINCE 1973

324 W. MORSE BOULEVARD • WINTER PARK, FLORIDA 32789
TELEPHONE: (407) 645-3735 • FACSIMILE: (407) 628-5670 • TOLL FREE: (866) 789-VOSE
INTERNATIONAL TEL. (LONDON, ENGLAND): +44 (0)20 3355 1473 • INTERNET: WWW.VOSELAW.COM

Towing Company has not eliminated the condition considered to be a breach of contract, the City Manager may so notify the City Council and a hearing shall be set for a date within fifteen (15) days of such notice.

...

In addition to terminating this Agreement, the City may recover from the cash or surety bond all administrative costs as provided by Section 23.

...

The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations.”

The City of Daytona Beach Shores demands that you pay the total overdue amount of **\$4,084.29** within **seven (7) days** of delivery of this notice. Your failure to do so may result in City taking legal action against you for recovery of the amount owed in accordance with the terms of the Agreement, including without limitation any administrative costs and attorney’s fees incurred by the City as a result of your breach, and any other amounts to which the City may be entitled under the terms of the Agreement and Florida law.

Payment should be made to the City of Daytona Beach Shores, and should be mailed or delivered to Cheri Schwab, City Clerk, 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118. Please contact our office at (407) 645-3735 once you mail or deliver the above-referenced payment. Should you have any questions, please do not hesitate to reach out.

Please govern yourself accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheri Schwab".

Vose Law Firm, LLP
City Attorney for Daytona Beach Shores

CC: Aaron Forsman, General Manager of Thomson Holdings Enterprises, LLC, d/b/a Volusia County Towing (aaron@volusiacountytowing.com)
Cheri Schwab, City Clerk (cschwab@cityofdb.org)
Kurt Swartzlander, City Manager (kswartzlander@cityofdb.org)
Paul R. Waters, Esq., City Attorney (paul@voselaw.com)

WRECKER SERVICE AGREEMENT

THIS AGREEMENT entered into by and between the City of Daytona Beach Shores, Florida, a municipal corporation, hereinafter referred to as the "City" and *Volusia County* hereinafter referred to as "Towing Company", in consideration of the mutual covenants contained herein, and subject to the terms and conditions listed below:

WITNESSETH:

SECTION 1. SERVICES TO BE PERFORMED BY TOWING COMPANY.

The Towing Company shall provide the following services:

- a. The Towing Company shall provide for the towing and storage, when required, of motor vehicles and trailers from public or private property lying within the City Limits of the City of Daytona Beach Shores when so authorized by a representative of the City, at a rate not greater than the applicable maximum rates specified herein.
- b. When authorized by a representative of the City, the Towing Company shall, at a rate not greater than the applicable maximum rate specified herein, provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter which is towed under the provisions of the provisions of the *Code of Ordinances of the City of Daytona Beach Shores* or State law or are otherwise required to be moved by or at the direction of a public safety officer, from the point of origin to the place of business of the Towing Company and at a rate not greater than the applicable maximum rate specified herein, and provide for the towing and storage of any motor vehicle, trailer, motorcycle, or motor scooter from the scene of an accident to a location within the City, as designated by the owner, other than the place of business of the Towing Company.
- c. When authorized by a representative of the City, the Towing Company shall, at no charge to City, tow City motor vehicles and motor vehicle seized under Chapter 932, *Florida Statutes*, or other controlling law, and provide for the towing within Volusia County and/or storage of any disabled or seized vehicle at no charge to the City. If a City motor vehicle is outside of Volusia County, standard Towing Company charges apply. Any heavy City equipment that requires towing will be charged at ½ rate of its GVWR.
- d. The Towing Company shall, at no cost to the City, promptly clean all debris off the public streets, ways, sidewalks, parks, avenues, and property of the City, and remove the same to a proper place away from the scene of any motor vehicle accident if the accident scene is to be, is being, or has been serviced by the Towing Company, or the agent, servants, or employees of the Towing Company.
- e. The Towing Company guarantees that towing/wrecker service shall be rendered at any and all times, as required by this Agreement, twenty-four (24) hours a day, seven (7) days a week, including holidays, and that Towing Company personnel will be subject to call at any and all times. The Towing Company further guarantees that, for at least ninety five percent (95%) of all calls, it will be at the requested location within the city limits within twenty (20) minutes from the time the Towing Company receives a call requesting that a wrecker be dispatched. It further guarantees that in the remaining five percent (5%) of calls, a wrecker will be at the location within thirty (30) minutes.

f. The Towing Company shall answer expeditiously all calls from the City for on-scene service at accidents and shall immediately remove all obstructions caused by accidents and provide for cleanups even if actual towing is not required.

g. Upon request, the Towing Company shall provide the City with reasonable assistance in the examination of motor vehicles stored by the Towing Company. Such assistance shall include the availability and use of a wrecker at the storage site for the moving of vehicles to be examined by the law enforcement authorities.

h. All services rendered by the wrecker under this Section shall be at no expense to the City, unless specifically provided otherwise. This shall not prevent the Towing Company from charging the owner of the motor vehicle for such services according to the rates provided in Section 4.

SECTION 2. PER TOW PAYMENT TO THE CITY.

In consideration of the Towing Company being the City's exclusive towing company for the services set forth herein for the term of this Agreement, the Towing Company shall pay 131.75 per tow to the City, beginning April 1, 2023. The total for the prior month will be due on the first day of each month thereafter, the as long as this Agreement is in effect.

SECTION 3. TERM

a. The term of this Agreement shall be for a one (1) year period beginning April 1, 2023 and ending March 31, 2024. The City shall have the option of extending this Agreement for four (4) years in one year increments. Any adjustments in the maximum wrecker fees allowed and corresponding monthly payments to the City may also be negotiated at the time of renewal.

b. It is further understood by the parties to this Agreement that in the event the Towing Company is unable to respond to a call during the term of this Agreement, with one of its own wreckers, it is still responsible for providing a wrecker. It may utilize a wrecker from another wrecker company licensed in the City. In such cases, the substitute wrecker must comply with the terms agreed upon herein.

SECTION 4. RATES CHARGED OWNERS.

In consideration for the services to be provided by the Towing Company under the terms of this Agreement, the Towing Company may charge of the vehicle being stored the rates listed below, provided that:

a. The City shall not be liable in the event of nonpayment by the owner of the vehicle being towed.

b. An increase in the maximum rates specified herein may be negotiated at the end of each year covered by this Agreement, along with a corresponding increase in payment to the City.

c. The towing/servicing of City owned/leased vehicles shall be as outlined in Section 1.

d. The maximum rates to be charged the owner for towing and storage of any motor vehicle or trailer towed at the direction of the City shall be as forth below:

Towing Charge: \$125.00

Storage: \$25.00/day outside; \$30.00/day inside plus state/local taxes.

Admin Fee: \$25.00 per vehicle

e. The Towing Company agrees to tow abandoned or junked vehicles at no charge to the City, and the City shall surrender all salvage rights for the vehicle to the Towing Company and shall retain no liens upon the vehicle.

f. No other charges or fees, other than those specified and authorized in this Agreement, are allowed for services provided under this Agreement.

SECTION 5. RATES CHARGED TO THE CITY.

The City shall not be charged for any services rendered to it under this Agreement except as specifically provided in this Agreement.

SECTION 6. PROHIBITED CHARGES.

The services called for in Section 1 shall be provided at no cost to the owner of the towed vehicle whenever the City determines that the vehicle was towed in error at the request of the City, nor shall the City in such a case, be responsible for payment of a tow charge or storage costs.

SECTION 7. SALVAGE RIGHTS.

In consideration for the services to be provided by the Towing Company, under the terms of this Agreement, the City hereby grants the Towing Company all salvage rights that may be permitted by law on any vehicle which may be towed pursuant to this Agreement and as specifically outlined herein excluding those vehicles seized and held for possible forfeiture by the City. The City will not be charged towing charges or storage fees for temporary storage in cases of vehicles seized for forfeiture or law enforcement investigation.

SECTION 8. STORAGE FACILITIES.

a. The Towing Company shall maintain a storage garage and/or outside storage facility complying with applicable building and zoning regulations. Such storage facility shall:

1) contain a minimum of twenty-five (25) spaces in an area which is completely fenced;

2) have available a minimum of four (4) spaces inside a building for the storing of vehicles which require law enforcement processing. These spaces shall be maintained to provide protection from the weather and security to preserve chain of custody for vehicles which require a law enforcement processing, and

3) be located within ten (10) miles of the City.

b. The Towing Company shall have an employee on duty at said storage facility twenty-four (24) hours a day, seven (7) days a week, including holidays.

c. Said storage facilities shall be subject to inspection and shall be approved by the City prior to the award of any contract; storage facilities shall be subject to periodic inspections at any time by the City during the term of this Agreement when deemed necessary by the City to ensure compliance with this Agreement. Notice of any discrepancies or deficiencies in contract compliance found by the City shall be submitted to the Towing Company in writing, and the Towing Company shall remedy the same within ten (10) days of receipt of such notice. Upon failure of the Towing Company to remedy the deficiencies in contract compliance, action may be taken by the City pursuant to Section 24.

d. Vehicles which have been marked "HOLD" for investigative or forfeiture purposes by the City shall be held at the storage facility, unless indicated otherwise, for whatever period of time necessary to properly process the vehicle and finish the investigation, at no charge to the City. City personnel shall be permitted access to such vehicles at any time. Vehicles stored in enclosed areas shall be secured from access by unauthorized persons. The Towing Company shall take reasonable steps to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD", an administrative fee for compliance with statutory notice requirements may be charged after the first forty-eight (48) hours so long as the wrecker service has complied with the requirements of controlling State law including, but not limited to, execution and mailing of the lien notice.

SECTION 9. WRECKER EQUIPMENT AND WRECKER COMPANY PERSONNEL.

a. The Towing Company shall, during the term of this Agreement, own or lease, in its name, a minimum of three (3) wreckers to provide the services called for by this Agreement. The Towing Company name shall be prominently displayed on the vehicles. The wreckers must include: at least one Class A wrecker, at least one Class B wrecker and at least one Class C wrecker as determined by the City. The wreckers of the Towing Company shall meet the requirements and specifications established by the City.

b. No owner, partner, employee, or agent of the Towing Company shall have been:

1) convicted of any felony when the person's civil rights have not been restored;

2) convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of whether civil rights have been restored. For the purpose of this Section, any offense involving perjury, false statement, or dishonesty shall also be considered to be directly related to the business of operating a wrecker.

3) For the purposes of this Section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a verdict of guilty when adjudication is withheld and the accused is placed on probation.

c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.

SECTION 10. RADIO COMMUNICATIONS.

The Towing Company shall provide a two-way radio communication system between its office and all tow trucks operated by the Towing Company. The towing company shall maintain a direct telephone line for incoming police calls.

SECTION 11. NON-EXCLUSIVENESS OF SERVICE.

The Towing Company agrees that the owner or person in possession of any vehicle, which has been incapacitated, shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.

SECTION 12. BENEFITS FROM REPAIRS.

The Towing Company shall not benefit directly or indirectly, without the express written consent of the owner of the vehicle, or the owner's designated representative, from any motor vehicle repair or painting with respect to vehicles towed and/or stored by the Towing Company under the terms and provisions of any agreement between the City and the Towing Company. Any such agreement between the Towing Company and the owner, or between the Towing Company and a repair facility shall state the repairs/painting to be accomplished as well as the price and terms of payment therefore.

SECTION 13. LIABILITY OF TOWING COMPANY.

The liability of the Towing Company for any towed vehicle and all property contained therein shall commence at the time a wrecker is hooked to any vehicle to be towed. The Towing Company or its employee, representative, or agent shall inventory all personal property contained in the vehicle to be towed or endorse the inventory prepared by the law enforcement authority in charge.

SECTION 14. PERSONAL PROPERTY IN VEHICLE.

To the extent provided by law, the Towing Company shall be accountable and liable for damage or loss to all personal property in the vehicles towed and for all vehicle accessories. Personal property situated in a vehicle stored by the Towing Company shall not be disposed of to defray any charges for storage or towing of the vehicle, except as provided by law. All such personal property must be returned at once, unless directed otherwise by the City, to the owner or person entitled to legal possession thereof upon proper proof of ownership or right to possession as provided by law. The determination of the owner or person entitled to legal possession shall be made by the Towing Company. Should the Towing Company release any personal property, the owner or person entitled to possession thereof shall provide a receipt to the Towing Company for the same.

SECTION 15. RELEASE OF THE VEHICLE.

The Towing Company agrees to release any vehicle which has not been marked "HOLD" to the proper owner or person entitled to possession of the vehicle. Any vehicle which has been marked "HOLD" by the City cannot be released without prior written authority from the City. The

Towing Company shall require proper proof of ownership or right to possession before releasing a vehicle, and the Towing Company shall be given a receipt for the vehicle. The storage facility must be open for the purpose of redemption of vehicles on any day that the Towing Company is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within one hour. The Towing Company shall deliver to the City by 9:00 a. m. daily or such other time period designated by the City a report of all vehicles released the previous day.

SECTION 16. POSTING CHARGES.

The Towing Company shall prominently post a sign at the storage facility in such a manner that it is conspicuous to the public with one-inch black lettering on a white background which lists the charges to be imposed upon persons whose vehicles are towed pursuant to this Agreement. As to such persons, the Towing Company shall not impose any charges that exceed the amounts listed in Section 4.

SECTION 17. ITEMIZED STATEMENTS.

Should any owner or person entitled to possession of a towed and/or stored vehicle seek to reclaim the same from the Towing Company, the Towing Company shall provide such owner or such person offering title to possession with an itemized statement of all charges relating to the towing and storage of such vehicle.

SECTION 18. INDEMNIFICATION.

The Towing Company shall indemnify and hold harmless the City and its agents, officers and employees from and against all claims, damages, losses and expenses including, but not limited to, attorney's fees, arising out of or resulting from the work provided that the claim, damage, loss and expense is caused in whole or in part by any negligent act or omission of the City, the Towing Company, any subcontractor, anyone directly or indirectly employed by any one of them, or any one for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

SECTION 19. INSURANCE.

a. Required Insurance: The Towing Company shall purchase and maintain, at its own expense, the following types and amounts of insurance, in form and from companies satisfactory to the City:

1) Worker's Compensation Insurance for all employees and subcontractors of the Towing Company connected with the work which is the subject of this Agreement. The insurance required by this subsection shall comply fully with the Florida Workers' Compensation Law and include Employers Liability insurance with limits of not less than \$500,000 per occurrence. No class of employee, including the Towing Company itself, if an individual, shall be excluded from the Workers' Compensation coverage.

2) Liability Insurance: General Liability Insurance, including coverage for operations, products-completed operations, and personal injury insuring the Towing Company and any other interests, including but not limited to any associated or subsidiary companies involved in

the work. Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the Towing Company for the work which is the subject of this Agreement. The Liability Insurance shall include contractual liability insurance applicable to the Towing Company's obligations under Section 18. The Liability Insurance shall name the City as an additional insured. The General and Automobile liability insurance shall each have a limit of liability of no less than \$1,000,000 for injury or death and no less than \$2,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than \$250,000 for property damage to one or more persons as a result of any one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than \$1,000,000. If insurance coverage is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$3,000,000. The limit of liability for personal injury shall be no less than \$1,000,000 and the limit of liability for contractual liability shall be no less than \$1,000,000.

3) Garage Keepers Legal Liability Insurance: Garage Keepers Legal Liability Insurance in an amount reasonably sufficient to protect the owners of any and all vehicles towed or stored by the Towing Company, pursuant to this Agreement, from loss or damages to such vehicle on account of such removal or storage. The insurance may be provided with a deductible in an amount deemed acceptable to the City.

b. Proof of Insurance: The Towing Company shall furnish proof of insurance acceptable to the City prior to the award of a towing contract and the Towing Company shall not commence work under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been filed with and approved by the City. The Towing Company shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation:

In the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to:

City Manager
City of Daytona Beach Shores
2990 S. Atlantic Ave.
Daytona Beach Shores, Florida 32118"

If requested by the City, the Towing Company shall furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the City. The Towing Company shall file replacement certificates thirty (30) days prior to expiration or termination of the required insurance occurring prior to the expiration of this Agreement. In the event such insurance shall lapse, the City expressly reserves the right to renew the insurance at the Towing Company's expense.

SECTION 20. RECORDS, BOOKS AND PAYMENT.

The City reserves the right, during normal business hours to inspect and audit the Towing Company records pertaining to service provided under this Agreement. All records must be maintained at one central location as provided hereinafter. Additionally, the monthly sum payable to the City by the Towing Company will be submitted to City on the first day of each

month for the duration of this Agreement. Copies of all wrecker company paid invoices for services provided each month as a result of this Agreement shall be submitted with the monthly payment, if requested by the City. Such invoices may be in the form of a computer printout.

a. The Towing Company shall maintain for at least one (1) year, following the towing of any vehicle towed under authority of a representative of the City, the following records of such tow:

1) Where the vehicle was towed from; the date towed; the driver who towed the vehicle; where it was towed to; a complete description of the vehicle; the name and address of the registered owner; the disposition of the vehicle; the date the vehicle was released or disposed of; and all correspondence sent or received concerning said vehicle.

2) The Towing Company shall be required to submit a list of all vehicles towed under authority of the City every twenty-four (24) hours, or such other time period as authorized in writing by the City, describing each vehicle by make, year, model, VIN and Tag Number.

3) The records shall be submitted on computer disc if it proves logistically feasible, upon approval of the City.

b. The Towing Company shall provide facsimile machines, as approved by City, capable of transmitting documents between the City and the Towing Company.

c. The Towing Company shall comply with all laws of the State or Florida relating to public records as directed by the City.

SECTION 21. RIGHT TO CANCEL SERVICE CALL.

The City shall have the right to cancel a request for Towing Company services until the time the wrecker arrives on the scene, and there shall be no charge to the City or the vehicle operator/owner. When a wrecker is to be canceled, it must be canceled over the law enforcement radio prior to the wrecker's arrival on the scene. The term "arrives on the scene" is construed to mean that the responding wrecker has arrived within the close physical proximity of the vehicle to be towed and the wrecker has stopped in preparation to perform the towing service.

SECTION 22. COMPLIANCE WITH LAWS AND RULES.

The Towing Company agrees to and shall comply with all applicable provisions of Federal and State law, all applicable City ordinances, and the Rules of the Daytona Beach Shores Public Safety Department, as amended from time to time, unless otherwise provided by this Agreement.

SECTION 23. CASH BOND.

Prior to the effective commencement date of this Agreement, the Towing Company shall post a cash or surety performance bond in the amount of two thousand dollars (\$2,000) with the City, to be used by the City, in the event:

a. The Towing Company fails to provide wrecker service required by this Agreement, for the purpose of defraying costs incurred by the City in making adequate arrangements for the removal of vehicles, or

- b. The Towing Company breaches the terms of this Agreement and it is terminated by the City as provided in Section 24 for the purpose of defraying the cost of rebidding this Agreement.

SECTION 24. BREACH OF AGREEMENT.

a. It shall be the right of the City Manager, and any officials of the City which the City Manager may designate, to observe closely the wrecker service operations and, if, in the opinion of the City Manager, there has been a breach of contract, the City Manager shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract. If within a period of seven (7) days the Towing Company has not eliminated the condition considered to be a breach of contract, the City Manager may so notify the City Council and a hearing shall be set for a date within fifteen (15) days of such notice. At that time, the City Council shall hear the Towing Company and the City representative, and shall make a determination as to whether or not there has been a breach of contract, and shall direct what further action shall be taken by the City, including, but not limited to, cancellation of this Agreement, as hereinafter provided. Any lesser remedial action than cancellation shall not waive the City's right to further remedial action.

b. In addition to terminating this Agreement, the City may recover from the cash or surety bond all administrative costs as provided by Section 23.

c. The City may, if it so elects, pursue any other remedies provided by law for breach of this Agreement or any of its terms, covenants, conditions, or stipulations. No right or remedy herein conferred upon or reserved to the City or the Towing Company is intended to be exclusive of any other right or remedy, and each and every right and remedy given hereunder, or not hereafter existing at law or at equity or by statute.

SECTION 25. MISLEADING, DISHONEST AND ILLEGAL PRACTICES.

The Towing Company warrants that it will not engage in any misleading, dishonest or illegal practices with regard to the vehicles towed pursuant to this Agreement. Engaging in misleading, dishonest or illegal practices shall be deemed a violation and breach of this Agreement. The City shall promptly notify the Towing Company of an alleged violation and breach. If a satisfactory explanation is not received by the City within twenty-four (24) hours from the Towing Company, or the violation is not otherwise remedied and assurances given that similar violations will not occur in the future within the twenty-four (24) hour period, the violation may be reported to the City Council for termination of this Agreement or other appropriate action as provided in Section 24. The City reserves the right to terminate this Agreement if it determines such action to be in the public interest.

SECTION 26. MISCELLANEOUS.

a. The descriptive headings appearing in this Agreement are for convenience only and are not to be construed either as a part of the terms and conditions hereof or as any interpretation thereof.

b. The bid documents and specifications, attached hereto, are made a part of this Agreement as if fully set forth herein verbatim.

c. It is mutually understood and agreed that nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of copartners or joint ventures between the parties hereto or as constituting the Towing Company as agent or representative of the City for any purpose or in any manner whatsoever.

d. The Towing Company shall not assign this Agreement and its rights hereunder, in whole or in part, except with the prior written consent of the City.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

CITY OF DAYTONA BEACH SHORES

By: 
Kurt Swartzlander, City Manager

3/15/23
Date

Attest: 
Cheri Schwab, City Clerk

TOWING COMPANY


Authorized Corporate Officer-

2/18/2023
Date

DEREK Thomason
PRINTED NAME

Attest: _____

PRINTED NAME

CITY OF DAYTONA BEACH SHORES, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this 1 day of April, 2023, by and between the CITY OF DAYTONA BEACH SHORES, a Florida municipality, hereinafter referred to as the "City", and Volusia County towing hereinafter referred to as "Contractor", concerning that certain Agreement dated the 15 day of March, 2023 ("Agreement").

WITNESSETH:

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.

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

1. **Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. **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 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@CITYOFEDBS.ORG
2990 SOUTH ATLANTIC AVENUE
DAYTONA BEACH SHORES
FLORIDA 32118.**

3. **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.

4. **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.

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.

9. **Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. N/A

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.

CONTRACTOR:



Print Name: DEREK Thomson

Title: OWNER

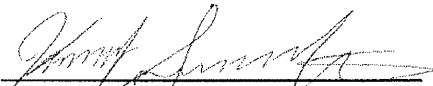
Company: VOLUSIA COUNTY TOWING

Attest:



By: Cheri Schwab, City Clerk

CITY OF DAYTONA BEACH SHORES



By: Kurt Swartzlander, City Manager

Maria Rondel <mrondel@voselaw.com>

Corrected Letter re: Notice of Overdue Payment

Maria Rondel <mrondel@voselaw.com>

Tue, May 14, 2024 at 10:59 AM

To: aaron@volusiacountytowing.comCc: cschwab@cityofdbb.org, kswartzlander@cityofdbb.org, Paul Waters <paul@voselaw.com>

Good morning, Mr. Forsman,

Attached, please find a copy of the corrected letter regarding Volusia County Towing's overdue payment to the City of Daytona Beach Shores. Please note that a copy of this corrected letter was also mailed out by certified mail.

Thank you for your prompt attention to this matter in advance.

Maria Rondel, Esq.

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Fax: 407-628-5670

email: mrondel@voselaw.comweb: www.voselaw.com

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**DBS:Volusia County Towing - Corrected Letter - 5-14-24.pdf**

2788K



GRETCHEN R.H. ("BECKY") VOSE[‡]
WADE C. VOSE[†]
NANCY A. STUPARICH
PAUL R. WATERS
GARRETT M. OLSEN
STEPHANIE M. VELO
CHLOE E. BERRYMAN
MARIA RONDEL

[†]BOARD CERTIFIED IN CITY, COUNTY &
LOCAL GOVERNMENT LAW

[‡]RATED AV PREEMINENT BY MARTINDALE-HUBBELL

May 29, 2024

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

Thomson Holdings Enterprises, LLC
d/b/a Volusia County Towing
c/o Derek Thomson
345 8th Street
Holly Hill, FL 32117

**RE: Letter of Termination of the Wrecker Service Agreement Between the City
of Daytona Beach Shores and Volusia County Towing**

Dear Mr. Thomson:

As you may already know, our firm has the pleasure of representing the City of Daytona Beach Shores, Florida.

On May 14, 2024, our office sent you correspondence, informing you of your breach of the contract between Volusia County Towing and the City of Daytona Beach Shores, dated February 18, 2023 ("Agreement"). A copy of the Agreement is enclosed for your convenience. Under the Agreement, Volusia County Towing agreed to provide as-needed towing services to the City.

As outlined in our correspondence dated May 14, 2024, Volusia County Towing is currently in violation of the Agreement. Specifically, Volusia County Towing has engaged in conduct that violates Section 2 of the Agreement, which states:

"In consideration of the Towing Company being the City's exclusive towing company for the services set forth herein for the term of the Agreement, the Towing Company shall pay \$131.75 per tow to the City, beginning April 1, 2023. The total for the prior month will be due on the first day of each month thereafter, as long as this Agreement is in effect."

According to the City's records, Volusia County Towing has violated this provision on multiple occasions, failing to timely make payments to the City for the prior month. After careful consideration, the City has determined that Volusia County Towing's habitual failure to make timely payments constitutes a material breach of the Agreement.

COUNSEL TO EXTRAORDINARY GOVERNMENTS & LEADERS THROUGHOUT FLORIDA SINCE 1973

324 W. MORSE BOULEVARD • WINTER PARK, FLORIDA 32789
TELEPHONE: (407) 645-3735 • FACSIMILE: (407) 628-5670 • TOLL FREE: (866) 789-VOSE
INTERNATIONAL TEL. (LONDON, ENGLAND): +44 (0)20 3355 1473 • INTERNET: WWW.VOSELAW.COM

Additionally, due to the material breach outlined above, Volusia County Towing currently owes to the City payments for the months of March and April 2024. The City has given the Volusia County Towing an opportunity to remedy the breach by providing notice of said breach by sending correspondence on May 14, 2024, in accordance with the terms of the Agreement. Specifically, Section 24 of the Agreement states:

“It shall be the right of the City Manager, and any officials of the City which the City Manager may designate, to observe closely the wrecker service operations and, **if, in the opinion of the City Manager, there has been a breach of contract, the City Manager shall so notify the Towing Company, in writing, specifying the manner in which there has been a breach of contract.** If within a period of seven (7) days the Towing Company has not eliminated the condition considered to be a breach of contract, the City Manager may so notify the City Council and a hearing shall be set for a date within fifteen (15) days of such notice.”

As of the date of this letter of termination, Volusia County Towing has not remedied its breach. Therefore, please let this correspondence serve as the City’s notice to Volusia County Towing of its intent to terminate the Agreement and recover all available damages under the terms of the Agreement and Florida law.

Please govern yourself accordingly.

Sincerely,



Gretchen R.H. Vose
City Attorney for Daytona Beach Shores

CC: Aaron Forsman, General Manager of Thomson Holdings Enterprises, LLC, d/b/a Volusia County Towing (aaron@volusiacountytowing.com)
Cheri Schwab, City Clerk (cschwab@cityofdb.org)
Kurt Swartzlander, City Manager (kswartzlander@cityofdb.org)
Paul R. Waters, Esq., City Attorney (paul@voselaw.com)

From: [Schwab, Cheri](#)
To: [Aaron Forsman](#); manager@volusiacountytowing.com; office@volusiacountytowing.com
Cc: [Fowler, Michael](#)
Subject: Daytona Beach Shores Termination letter for Wrecker Service Agreement
Date: Wednesday, May 29, 2024 2:13:00 PM
Attachments: [DBS - Volusia County Towing - Letter of Termination dated May 29 2024.pdf](#)
[image001.png](#)

Good afternoon,

Please see the attached correspondence from City Attorney Becky Vose.

Thank you,

Cheri Schwab, CMC
City Clerk



City of Daytona Beach Shores
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118

Phone 386-763-5364
Fax 386-763-5360

**CITY OF DAYTONA BEACH SHORES, FLORIDA
NOTICE OF A PUBLIC HEARING BEFORE THE CITY COMMISSION
REGARDING NOTICE OF TERMINATION OF CONTRACT WITH
VOLUSIA COUNTY TOWING**

NOTICE IS HEREBY GIVEN that the **City Commission of the City of Daytona Beach Shores** will hold a public hearing on **Tuesday, June 11, 2024, at 6:00 p.m.**, or as soon thereafter as possible, at the Shores Community Center, 3000 Bellemead Drive, Daytona Beach Shores, Florida 32118, to determine whether VOLUSIA COUNTY TOWING is in breach of the Wrecker Service Agreement (“Agreement”) for failure to make timely payments and pay all required amounts to the City under the terms of the Agreement.

The City Commission will review any relevant records to determine whether Volusia County Towing has breached the Agreement and will ascertain the amounts owed to the City from Volusia County Towing and determine the manner of collection of any such outstanding amounts. The City Commission will further explore other remedies that may be available to the City under the terms of the Agreement and determine whether the City of Daytona Beach Shores wishes to terminate the Agreement with Volusia County Towing.

All interested parties may appear at the hearing and be heard. Any response or evidence pertaining to the above-referenced hearing must be provided to the City Clerk, Cheri Schwab, at cschwab@cityofdbcs.org or 386-763-5364, before 4:30 p.m. on June 3, 2024. Any evidence provided after the deadline may not be included on the published agenda but will be provided to the City Commission for review.

If you decide to appeal any decision made with respect to any matter considered at the above-referenced hearing, you will need a record of the proceedings and will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATE STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK FOR ASSISTANCE AT LEAST THREE BUSINESS DAYS PRIOR TO THE MEETING AT (386) 763-5364.

CITY OF DAYTONA BEACH SHORES

Cheri Schwab
City Clerk

Maria Rondel <mrondel@voselaw.com>

FW: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Maria Rondel <mrondel@voselaw.com>

Fri, May 31, 2024 at 2:01 PM

To: Paul Waters <paul@voselaw.com>Cc: Aaron Forsman <Aaron@volusiacitytowing.com>, "Schwab, Cheri" <cschwab@cityofdb.org>,"Mfowler@cityofdb.org" <Mfowler@cityofdb.org>, Becky Vose <bvose@voselaw.com>, "Swartzlander, Kurt" <kswartzlander@cityofdb.org>

Mr. Forsman,

Attached, please find the notice of hearing. A copy of this notice will also be mailed to you. Should you have any questions, please reach out.

Thank you,

Maria Rondel, Esq.

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Fax: 407-628-5670

email: mrondel@voselaw.comweb: www.voselaw.com

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[Quoted text hidden]

**Notice of Public Hearing - Volusia County Towing 5-31-24.pdf**

59K

**CITY OF DAYTONA BEACH SHORES, FLORIDA
NOTICE OF A PUBLIC HEARING BEFORE THE CITY COMMISSION
REGARDING NOTICE OF TERMINATION OF CONTRACT WITH
VOLUSIA COUNTY TOWING**

NOTICE IS HEREBY GIVEN that the **City Commission of the City of Daytona Beach Shores** will hold a public hearing on **Tuesday, June 11, 2024, at 6:00 p.m.**, or as soon thereafter as possible, at the Shores Community Center, 3000 Bellemead Drive, Daytona Beach Shores, Florida 32118, to determine whether **VOLUSIA COUNTY TOWING** is in breach of the Wrecker Service Agreement ("Agreement") for failure to make timely payments and pay all required amounts to the City under the terms of the Agreement.

The City Commission will review any relevant records to determine whether Volusia County Towing has breached the Agreement and will ascertain the amounts owed to the City from Volusia County Towing and determine the manner of collection of any such outstanding amounts. The City Commission will further explore other remedies that may be available to the City under the terms of the Agreement and determine whether the City of Daytona Beach Shores wishes to terminate the Agreement with Volusia County Towing.

All interested parties may appear at the hearing and be heard. Any response or evidence pertaining to the above-referenced hearing must be provided to the City Clerk, Cheri Schwab, at cschwab@cityofdb.org or 386-763-5364, before 4:30 p.m. on June 3, 2024. Any evidence provided after the deadline may not be included on the published agenda but will be provided to the City Commission for review.

If you decide to appeal any decision made with respect to any matter considered at the above-referenced hearing, you will need a record of the proceedings and will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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CITY OF DAYTONA BEACH SHORES

Cheri Schwab
City Clerk

9589 0710 5270 1184 7975 09

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☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

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Total Postage and Fees

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Here

PS Form 3800, January 2023 PSN 7530-02-000-9047

See Reverse for Instructions

From: [Maria Rondel](#)
To: [Aaron Forsman](#)
Cc: [Paul Waters](#); [Schwab, Cheri](#); [Fowler, Michael](#); [Becky Vose](#); [Swartzlander, Kurt](#)
Subject: Re: Daytona Beach Shores Termination letter for Wrecker Service Agreement
Date: Monday, June 3, 2024 2:29:48 PM
Attachments: [image001.png](#)
[image002.png](#)
[image005.png](#)
[image006.png](#)
[image009.png](#)
[image010.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[image018.png](#)
[image019.png](#)
[image020.png](#)
[image023.png](#)

Good afternoon Aaron,

To follow up on my previous email, please advise whether you'll be appearing on behalf of Volusia County Towing at the hearing on June 11. Please note that the company owner's appearance is highly recommended. Additionally, and as you may already know, we only represent the City's interests, so Volusia County Towing is free and encouraged to obtain legal counsel prior to the hearing.

If you have any questions, please do not hesitate to reach out.

Thank you,

Maria Rondel, Esq.

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Fax: 407-628-5670

email: mrondel@voselaw.com

web: www.voselaw.com



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On Fri, May 31, 2024 at 2:03 PM Aaron Forsman <Aaron@volusiacitytowing.com> wrote:

Thank You,

Now can I please get a report of how many vehicles have been towed in the past 7 days as we have not been towing anything from our company

Aaron Forsman

Aaron Forsman

General Manager

Thomson Holdings Enterprises, LLC.

DBA Volusia County Towing

345 8th Street

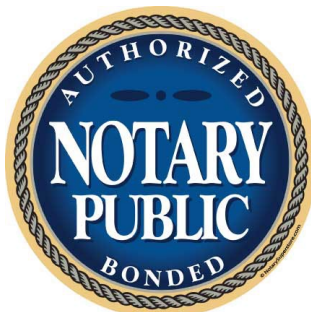
Holly Hill, FL 32117

P: (386) 872-7200 F: (386) 239-8607

C: (386) 589-8092 E: aaron@volusiacountytowing.com

USDOT: 3589771 MC: 1215481

Website/Social Media: www.volusiacountytowing.com



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From: Maria Rondel <mrondel@voselaw.com>

Date: Friday, May 31, 2024 at 2:01 PM

To: Paul Waters <paul@voselaw.com>

Cc: Aaron Forsman <Aaron@volusiacountytowing.com>, "Schwab, Cheri" <cschwab@cityofdbbs.org>, "Mfowler@cityofdbbs.org" <Mfowler@cityofdbbs.org>, Becky Vose <bvose@voselaw.com>, "Swartzlander, Kurt" <kswartzlander@cityofdbbs.org>

Subject: Re: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Mr. Forsman,

Attached, please find the notice of hearing. A copy of this notice will also be mailed to you. Should you have any questions, please reach out.

Thank you,

Maria Rondel, Esq.

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Fax: 407-628-5670

email: mrondel@voselaw.com

web: www.voselaw.com



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On Fri, May 31, 2024 at 11:38 AM Paul Waters <paul@voselaw.com> wrote:

Mr. Forsmon, the City will continue to honor the contract and will not terminate your services pending the June 11 hearing. As Maria stated below, you should receive the actual notice of hearing in the next few days. Please call me if you have any questions. My cell is 904-495-1054.

On Fri, May 31, 2024 at 10:34 AM Aaron Forsman <Aaron@volusiacountytowing.com> wrote:

Ok then if that is the case then the services should not be terminated till such hearing per the contract and Volusia County Towing can hold the City of Daytona Beach Shores Liable for any loss in funds between that time.

Aaron Forsman

Aaron Forsman

General Manager

Thomson Holdings Enterprises, LLC.

DBA Volusia County Towing

345 8th Street

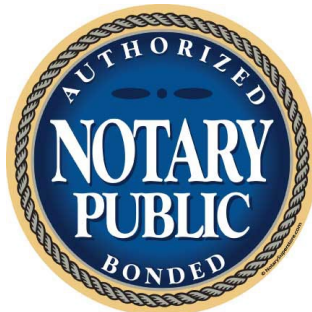
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From: Maria Rondel <mrondel@voselaw.com>

Date: Friday, May 31, 2024 at 10:31 AM

To: <office@volusiacitytowing.com>, Aaron Forsman
<aaron@volusiacitytowing.com>

Cc: "Schwab, Cheri" <cschwab@cityofdb.org>, "Mfowler@cityofdb.org"
<Mfowler@cityofdb.org>, Paul Waters <paul@voselaw.com>, Becky Vose
<bvose@voselaw.com>

Subject: Re: FW: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Good morning, Mr. Forsman,

Please note that the city intends to hold a hearing on this issue on Tuesday, June 11, 2024 at 6:00 p.m. You should soon be receiving a notice of hearing. Please confirm your availability and advise whether you will be attending the hearing.

If there are any items that you would like to be included on the agenda, please provide them to the City Clerk, Cheri, by Monday, June 3, and copy us. The agenda with all relevant documents will be published on or around June 4.

Should you have any questions, please do not hesitate to reach out.

Thank you,

Maria Rondel, Esq.

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Fax: 407-628-5670

email: mrondel@voselaw.com

web: www.voselaw.com



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From: Aaron Forsman <Aaron@volusiacountytowing.com>
Sent: Thursday, May 30, 2024 2:40 PM
To: Schwab, Cheri <cschwab@cityofdb.org>
Cc: Fowler, Michael <mfowler@cityofdb.org>; Becky Vose <bvose@voselaw.com>
Subject: Re: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Ok and why did we not get notified of the agenda as you stated we would?

Also my question was not answered as to when we can expect payment for services provided to the City of Daytona Beach shores as I mentioned this was outside of the towing services contract.

Aaron Forsman

Aaron Forsman

General Manager

Thomson Holdings Enterprises, LLC.

DBA Volusia County Towing

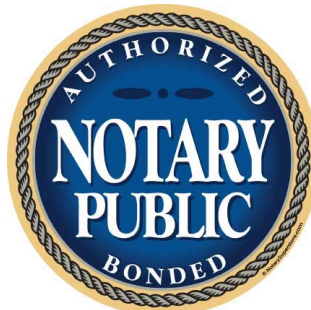
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From: "Schwab, Cheri" <cschwab@cityofdbbs.org>
Date: Thursday, May 30, 2024 at 2:31 PM
To: Aaron Forsman <Aaron@volusiacountytowing.com>
Cc: "Fowler, Michael" <mfowler@cityofdbbs.org>, Becky Vose <bvose@voselaw.com>
Subject: RE: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Mr. Forsman,

It was on the meeting agenda May 28, 2024. The City Commission approved the termination letter.

Cheri Schwab, CMC

City Clerk



City of Daytona Beach Shores

2990 S. Atlantic Avenue

Daytona Beach Shores, FL 32118

Phone 386-763-5364

Fax 386-763-5360

From: Aaron Forsman <Aaron@volusiacountytowing.com>
Sent: Thursday, May 30, 2024 2:28 PM
To: Schwab, Cheri <cschwab@cityofdb.org>
Cc: Fowler, Michael <mfowler@cityofdb.org>; Becky Vose <bvose@voselaw.com>
Subject: Re: Daytona Beach Shores Termination letter for Wrecker Service Agreement

It has not gone through city council how can you cancel our contract that is in violation per your terms

Aaron Forsman

Aaron Forsman

*General Manager
Thomson Holdings Enterprises, LLC.*

DBA Volusia County Towing

345 8th Street

Holly Hill, FL 32117

P: (386) 872-7200 F: (386) 239-8607

C: (386) 589-8092 E: aaron@volusiacountytowing.com
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From: "Schwab, Cheri" <cschwab@cityofdb.org>
Date: Thursday, May 30, 2024 at 1:27 PM
To: Aaron Forsman <Aaron@volusiacountytowing.com>
Cc: "Fowler, Michael" <mfowler@cityofdb.org>, Becky Vose <bvose@voselaw.com>
Subject: RE: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Mr. Forsman,

Your contract with the City of Daytona Beach Shores is terminated. You do still owe the City for the tows from March, April and through May 29, 2024.

Thank you,

Cheri Schwab, CMC

City Clerk



City of Daytona Beach Shores

2990 S. Atlantic Avenue

Daytona Beach Shores, FL 32118

Phone 386-763-5364

Fax 386-763-5360

From: Aaron Forsman <Aaron@volusiacountytowing.com>

Sent: Thursday, May 30, 2024 1:17 PM

To: Schwab, Cheri <cschwab@cityofdb.org>

Cc: Fowler, Michael <mfowler@cityofdb.org>

Subject: Re: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Following up on my previous email

Aaron Forsman

Aaron Forsman

General Manager

Thomson Holdings Enterprises, LLC.

DBA Volusia County Towing

345 8th Street

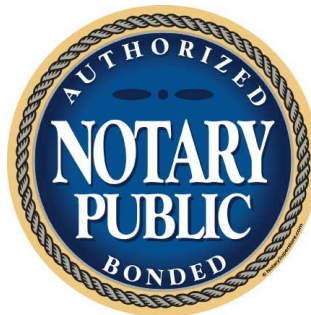
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delivering this electronic message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by reply e-mail or by contacting Thomson Holdings Enterprises, LLC. DBA Volusia County Towing.

From: "Schwab, Cheri" <cschwab@cityofdb.org>

Date: Wednesday, May 29, 2024 at 2:13 PM

To: Aaron Forsman <Aaron@volusiacitytowing.com>, "manager@volusiacitytowing.com" <manager@volusiacitytowing.com>, "office@volusiacitytowing.com" <office@volusiacitytowing.com>

Cc: "Fowler, Michael" <mfowler@cityofdb.org>

Subject: Daytona Beach Shores Termination letter for Wrecker Service Agreement

Good afternoon,

Please see the attached correspondence from City Attorney Becky Vose.

Thank you,

Cheri Schwab, CMC

City Clerk



City of Daytona Beach Shores

2990 S. Atlantic Avenue

Daytona Beach Shores, FL 32118

Phone 386-763-5364

Fax 386-763-5360

--

Paul Waters, Esq.

Partner

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Cell: (904) 495-1054 (Preferred contact number)

Fax: 407-628-5670

email: paul@[voselaw.com](mailto:paul@voselaw.com)

web: www.voselaw.com

Toll-Free: 866-789-VOSE

London, UK: +44 (0)20 3355 1473

COUNSEL TO EXTRAORDINARY GOVERNMENTS, BUSINESSES & LEADERS
WORLDWIDE SINCE 1973; LOCAL GOVERNMENT REPRESENTATION |
BUSINESS LITIGATION | BUSINESS LAW | REAL ESTATE & DEVELOPMENT
LAW

From: [Daytona Beach Legals](#)
To: [Schwab, Cheri](#)
Subject: Thank you for placing your order with us.
Date: Friday, May 31, 2024 1:39:58 PM

THANK YOU for your ad submission!

This is your confirmation that your order has been submitted. Below are the details of your transaction. Please save this confirmation for your records.

We appreciate you using our online self-service ads portal, available 24/7. Please continue to visit Daytona Beach News-Journal's online Classifieds [HERE](#) to place your legal notices in the future.

Changes and/or cancellations may not be honored up to 2 business days prior to your first publication date.

Job Details

Order Number: **LDTB0110757**
Classification: [Govt Public Notices](#)
Package: [General Package](#)
Total payment: **\$354.56**

Account Details

City Of Daytona Beach Shores - Legal
2990 S Atlantic AVE
Daytona Beach, FL 32118-6002
386-763-5353
cschwab@cityofdb.org
City Of Daytona Beach Shores -

Schedule for ad number LDTB01107570

Wed Jun 5, 2024
Daytona Beach News- All Zones
Journal

**CITY OF DAYTONA BEACH
SHORES, FLORIDA
NOTICE OF A PUBLIC HEARING
BEFORE THE CITY COMMISSION
REGARDING NOTICE OF TERMI-
NATION OF CONTRACT WITH
VOLUSIA COUNTY TOWING**
NOTICE IS HEREBY GIVEN that the City Commission of the City of Daytona Beach Shores will hold a public hearing on Tuesday, June 11, 2024, at 6:00 p.m., or as soon thereafter as possible, at the Shores Community Center, 3000 Bellemead Drive, Daytona Beach Shores, Florida 32118, to determine whether VOLUSIA COUNTY TOWING is in breach of the Wrecker Service Agreement ("Agreement") for failure to make timely payments and pay all required amounts to the City under the terms of the Agreement.
The City Commission will review any relevant records to determine whether Volusia County Towing has breached the Agreement and will ascertain the amounts owed to the City from Volusia County Towing and determine the manner of collection of any such outstand-

ing amounts. The City Commission will further explore other remedies that may be available to the City under the terms of the Agreement and determine whether the City of Daytona Beach Shores wishes to terminate the Agreement with Volusia County Towing.

All interested parties may appear at the hearing and be heard. Any response or evidence pertaining to the above-referenced hearing must be provided to the City Clerk, Cheri Schwab, at cschwab@cityofdb.org or 386-763-5364, before 4:30 p.m. on June 3, 2024. Any evidence provided after the deadline may not be included on the published agenda but will be provided to the City Commission for review.

If you decide to appeal any decision made with respect to any matter considered at the above-referenced hearing, you will need a record of the proceedings and will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATE STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK FOR ASSISTANCE AT LEAST THREE BUSINESS DAYS PRIOR TO THE MEETING AT (386) 763-5364.

CITY OF DAYTONA BEACH SHORES

Cheri Schwab

City Clerk

Publication Dates

LOCATION DATE
L00000000



CITY COMMISSION AGENDA MEMORANDUM JUNE 11, 2024 AGENDA

TO: Honorable Mayor and Members of the City Commission
FROM: Kurt Swartzlander, City Manager
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Review City Manager Evaluations

SYNOPSIS:

As Per the Charter of the City of Daytona Beach Shores and Resolution 2019-22, the City Manager's Annual Evaluation will be summarized and presented to the Commission.

Sec. 3.03. Compensation and annual evaluation of manager.

The city commission shall establish the salary and other benefits of the city manager, and shall at least annually review the salary. On the occasion of the annual salary review the commission shall make a systematic evaluation of the performance of the manager which shall be made a matter of public record.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The evaluation forms were given to the Commission for completion on June 1st. The forms were completed and are attached to the agenda. The average score was 4.98 out of 5. The item is open for further discussion.

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

There is no motion required.

ATTACHMENT: 1. CM eval Miller 2024

2. CM eval Politis 2024
3. CM eval Card 2024
4. CM eval Conomos 2024
5. CM eval Dembinsky 2024



City of Daytona Beach Shores

City Manager Performance Evaluation

City Manager's Name: Kurt Swartzlander

Commissioner Name: Mayor Nancy Miler

Evaluation Period: 2023-2024

Evaluation Date: June 1, 2024

Evaluation Instructions:

This form shall be completed by each member of the Commission to evaluate the City Manager's performance in each of the areas noted below. Each member of the Commission shall sign at the end of the form and forward it to the City Clerk. Performance levels can be noted based on the following scale:

- | | |
|----------------------------|--|
| 5 – EXCELLENT: | The incumbent consistently demonstrates performance at a very high standard that significantly surpasses reasonable expectations. |
| 4 – SUPERIOR: | The incumbent consistently demonstrates performance that generally exceeds reasonable expectations. The individual demonstrates no appreciable performance deficiencies. |
| 3 – SATISFACTORY: | The incumbent consistently meets reasonable performance expectations. The individual demonstrates an acceptable degree of competence and performance. |
| 2 – FAIR: | The incumbent achieves the minimum of performance expectations. The individual requires development in specific areas in order to meet reasonable expectations of performance. |
| 1 – UNSATISFACTORY: | The incumbent frequently fails to meet minimum performance expectations. |

Timeline:

- City Manager evaluations are distributed April 15th to City Commissioners
- By May 10th Commissioners have completed the form and scheduled individual meetings
- Summary report is placed on Commission Agenda in second meeting in May

Performance Dimensions:

1. Professional Skills and Expertise		Rating:
a. Is knowledgeable of current developments affecting the management field and affecting local governments.		5 of 5
b. Regularly provides accurate, comprehensive reports concerning matters of importance to the organization.		5 of 5
c. Anticipates problems and develops effective approaches for solving them.		5 of 5
d. Offers workable alternatives when changes in the law render the administration of an ordinance or policy impractical.		5 of 5
e. Sets a professional example by handling the affairs of the organization in a fair and impartial manner.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
	Kurt keeps up to date with State and County developments thru his excellent relationships he has built throughout his time as City Manager	

2. Commission Relations		Rating:
a. Carries out directives of the Commission as a whole rather than those of any one member.		5 of 5
b. In responding the requests for information, provides complete, accurate, and timely information equally to all members.		5 of 5
c. Assists the Commission by resolving problems at the administrative level to avoid unnecessary commission action.		5 of 5
d. Assists the Commission in establishing policy while acknowledging the ultimate authority of the Commission.		5 of 5
e. Is willing to try new ideas proposed by members.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
Comments:	Kurt has meetings with each of the Commissioners and Mayor by request thoroughly explaining what items will be on the agenda. Kurt is always available for questions or clarifications to answer Mayors concerns. Newer Commissioners feel comfortable reaching out to Kurt with questions.	

3. Citizen and Public Relations		Rating:
a. Effectively conveys to the public that the organization delivers services in a cost-effective manner without sacrificing quality and customer focus.		5 of 5
b. Is willing to meet with members of the community and is responsive to their concerns.		5 of 5
c. Demonstrates a dedication to service to the community and its citizens.		5 of 5
d. Expresses information orally in a clear and concise manner when making public presentations.		5 of 5
e. Is skillful with the news media, proactively providing information that is important to the public.		5 of 5
Total Rating for this Performance Dimension:		<u>25 of 25</u>
Comments:	Kurt's Background and experience as Director of Finance is an asset in making city financial decisions and the budget. Kurt answers all resident communications in a timely manner. Reports to commission are pertinent and to the point. He is transparent in all communication he provides to the commission.	

4. Policy Execution		Rating:
a. Understands, supports, and enforces the organization's ordinances, policies, and procedures.		5 of 5
b. Clearly identifies and communicates expectations to the organization regarding the implementation of policies enacted by the Board.		5 of 5
c. Implements Commission actions in accordance with the intent of the Commission.		5 of 5
d. Supports the actions of the Commission after a decision has been reached, both inside and outside the organization.		5 of 5
e. Helps internal and external stakeholders to achieve common objectives within the parameters of established policies.		5 of 5
Total Rating for this Performance Dimension:		<u>25 of 25</u>
Comments:	After Commission has set forth a policy, Kurt has staff meetings how to best roll out any new policy, ordinance, or resolution.	

5. Intergovernmental Relations		Rating:
a. Promotes a positive working relationship with other governmental entities.		5 of 5
b. Engages with other local, regional, state, and federal agencies to accomplish local initiatives.		5 of 5
c. Positively and effectively represents the organization and its interests when working with other governmental agencies.		5 of 5
d. Maintains awareness of laws and other issues affecting other governmental agencies which may affect the organization.		5 of 5
e. Is willing to share resources or information with other governmental agencies as appropriate.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
Comments:	As stated previously Kurt has established relationships with state and local officials that was instrumental in Daytona Beach Shores gaining the support needed after two hurricanes caused mass destruction. Kurt attends all County Roundtable and City Manger meetings to keep up to date on the happenings in and around county.	

6. Staffing and Management		Rating:
a. Recruits and retains competent personnel for City positions.		4 of 5
b. Is aware of staff weaknesses and works to improve their performance.		4 of 5
c. Promotes training and development opportunities for employees at all levels of the organization.		4 of 5
d. Stays accurately informed and concerned about employee relations.		4 of 5
e. Is able to discern when it is necessary to assume charge of situations that would normally be handled by a subordinate and when it is necessary to only provide guidance and support.		5 of 5
Total Rating for this Performance Dimension:		21 of 25
Comments:	In last year's performance, Kurt and I discussed conducting skip level meetings to gauge how the different departments are feeling with their job satisfaction. With the current climate of low job employment, it is necessary to retain the good employees we have and be proactive in any issues that may arise. We have had some turnover in the city that may have been avoided if Kurt was involved in the hiring process of some positions.	

7. Fiscal Management		Rating:
a. Prepares a balanced budget to provide services at a level directed by the Commission.		5 of 5
b. Ensures that the budget meets the operational needs of the organization and makes the best possible use of available funds.		5 of 5
c. Prepares the budget in an intelligent but readable format.		5 of 5
d. Submits the proposed budget in a timely manner that allows for an appropriate review period.		5 of 5
e. Appropriately monitors and manages the fiscal activities of the organization throughout the fiscal year.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
Comments:	Kurt always makes fiscally sound decisions discussion with Mayor and commission. As previous Finance Director we are in excellent shape as city confirmed during our audits.	

8. Planning and Organizational Development		Rating:
a. Works with the commission, community leaders, and other stakeholders to develop a clear vision, mission, values, and objectives for the organization.		5 of 5
b. Effectively prioritizes goals and objectives in order to ensure that the organization is doing "first things first" in support of its strategic plan.		5 of 5
c. Maintains a healthy and productive organizational culture focused on customer service and responsible stewardship of the organization's resources.		5 of 5
d. Has a capacity for and encourages innovation.		5 of 5
e. Reviews ordinances, policies, and procedures periodically to suggest improvements.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
Comments:	Previously documented his commitment to making sound decisions to benefit the city. Has frequently reviewed older policies and voiced his concerns to our commission and city attorney to update.	

9. Leadership and Decision-Making		Rating:
a. Leads the organization by example in adhering to its established policies, rules, and procedures, and ensures that subordinates do the same.		5 of 5
b. Acknowledges the efforts of others and gives appropriate credit for their accomplishments.		5 of 5
c. Is effective at building consensus among stakeholders on new or unpopular policies or initiatives.		5 of 5
d. Makes logical decisions based on a thorough review of available information and soliciting input from appropriate sources.		5 of 5
e. Is able to effectively make decisions rapidly in situations where information is limited and the outcome might be uncertain.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
Comments:	Kurt is a great leader, leading by example with high ethics and morals always looking at all aspects of his decisions and how it will effect residents, staff and commission.	

10. Individual Characteristics		Rating:
a. Consistently acts with professionalism and courtesy, including prompt attendance at meetings, returning phone calls/messages, and adhering to scheduled appointments.		5 of 5
b. Ensures that all business conducted by the organization is free of conflicts of interest or practices that might be construed as illegal, unethical, or unprofessional.		5 of 5
c. Is energetic, cooperative, and willing to spend whatever time is necessary to do a good job.		5 of 5
d. Has the capacity to listen to others and to recognize their interests.		5 of 5
e. Avoids political positions, partisanship, and unnecessary controversy.		5 of 5
Total Rating for this Performance Dimension:		25 of 25
Comments:	Kurt is respectful, a good listener, gives his staff and commission necessary time to discuss issues. He is ethical and has high morals.	

Summary:

Performance Dimension:	Overall Rating:	
1. Professional Skills and Expertise	<u>25</u>	<i>of 25</i>
2. Commission Relations	<u>25</u>	<i>of 25</i>
3. Citizen and Public Relations	<u>25</u>	<i>of 25</i>
4. Policy Execution	<u>25</u>	<i>of 25</i>
5. Intergovernmental Relations	<u>25</u>	<i>of 25</i>
6. Staffing and Management	<u>21</u>	<i>of 25</i>
7. Fiscal Management	<u>25</u>	<i>of 25</i>
8. Planning and Organizational Development	<u>25</u>	<i>of 25</i>
9. Leadership and Decision-Making	<u>25</u>	<i>of 25</i>
10. Individual Characteristics	<u>25</u>	<i>of 25</i>

Total Score: 246 of 250

Divide by 50 (total number of metrics)

Total Average Rating: **4.92** *of 5*

Evaluator's Signature:

Nancy J. Miller

Date:

6/5/2024



City of Daytona Beach Shores

City Manager Performance Evaluation

City Manager's Name:

Commissioner Name:

Evaluation Period:

Evaluation Date:

Michael Politis
5/15/24

Evaluation Instructions:

This form shall be completed by each member of the Commission to evaluate the City Manager's performance in each of the areas noted below. Each member of the Commission shall sign at the end of the form and forward it to the City Clerk. Performance levels can be noted based on the following scale:

- | | |
|----------------------------|--|
| 5 – EXCELLENT: | The incumbent consistently demonstrates performance at a very high standard that significantly surpasses reasonable expectations. |
| 4 – SUPERIOR: | The incumbent consistently demonstrates performance that generally exceeds reasonable expectations. The individual demonstrates no appreciable performance deficiencies. |
| 3 – SATISFACTORY: | The incumbent consistently meets reasonable performance expectations. The individual demonstrates an acceptable degree of competence and performance. |
| 2 – FAIR: | The incumbent achieves the minimum of performance expectations. The individual requires development in specific areas in order to meet reasonable expectations of performance. |
| 1 – UNSATISFACTORY: | The incumbent frequently fails to meet minimum performance expectations. |

Timeline:

- City Manager evaluations are distributed April 15th to City Commissioners
- By May 10th Commissioners have completed the form and scheduled individual meetings
- Summary report is placed on Commission Agenda in second meeting in May

Performance Dimensions:

1. Professional Skills and Expertise		Rating:
a. Is knowledgeable of current developments affecting the management field and affecting local governments.		<u>5</u> of 5
b. Regularly provides accurate, comprehensive reports concerning matters of importance to the organization.		<u>5</u> of 5
c. Anticipates problems and develops effective approaches for solving them.		<u>5</u> of 5
d. Offers workable alternatives when changes in the law render the administration of an ordinance or policy impractical.		<u>5</u> of 5
e. Sets a professional example by handling the affairs of the organization in a fair and impartial manner.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

2. Commission Relations		Rating:
a. Carries out directives of the Commission as a whole rather than those of any one member.		<u>5</u> of 5
b. In responding the requests for information, provides complete, accurate, and timely information equally to all members.		<u>5</u> of 5
c. Assists the Commission by resolving problems at the administrative level to avoid unnecessary commission action.		<u>5</u> of 5
d. Assists the Commission in establishing policy while acknowledging the ultimate authority of the Commission.		<u>5</u> of 5
e. Is willing to try new Ideas proposed by members.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>I enjoy sitting next to Kent. He is a good city manager + a great person.</i>	

3. Citizen and Public Relations		Rating:
a. Effectively conveys to the public that the organization delivers services in a cost-effective manner without sacrificing quality and customer focus.	<u>5</u>	of 5
b. Is willing to meet with members of the community and is responsive to their concerns.	<u>5</u>	of 5
c. Demonstrates a dedication to service to the community and its citizens.	<u>5</u>	of 5
d. Expresses information orally in a clear and concise manner when making public presentations.	<u>5</u>	of 5
e. Is skillful with the news media, proactively providing information that is important to the public.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>Communicates well + is transparent</i>	

4. Policy Execution		Rating:
a. Understands, supports, and enforces the organization's ordinances, policies, and procedures.	<u>5</u>	of 5
b. Clearly identifies and communicates expectations to the organization regarding the implementation of policies enacted by the Board.	<u>5</u>	of 5
c. Implements Commission actions in accordance with the intent of the Commission.	<u>5</u>	of 5
d. Supports the actions of the Commission after a decision has been reached, both inside and outside the organization.	<u>5</u>	of 5
e. Helps internal and external stakeholders to achieve common objectives within the parameters of established policies.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

5. Intergovernmental Relations		Rating:
a. Promotes a positive working relationship with other governmental entities.	<u>5</u>	of 5
b. Engages with other local, regional, state, and federal agencies to accomplish local initiatives.	<u>5</u>	of 5
c. Positively and effectively represents the organization and its interests when working with other governmental agencies.	<u>5</u>	of 5
d. Maintains awareness of laws and other issues affecting other governmental agencies which may affect the organization.	<u>5</u>	of 5
e. Is willing to share resources or information with other governmental agencies as appropriate.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>Has created good relationships with agencies + other municipalities</i>	

6. Staffing and Management		Rating:
a. Recruits and retains competent personnel for City positions.	<u>5</u>	of 5
b. Is aware of staff weaknesses and works to improve their performance.	<u>5</u>	of 5
c. Promotes training and development opportunities for employees at all levels of the organization.	<u>5</u>	of 5
d. Stays accurately informed and concerned about employee relations.	<u>5</u>	of 5
e. Is able to discern when it is necessary to assume charge of situations that would normally be handled by a subordinate and when it is necessary to only provide guidance and support.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>Has put together a great team</i>	

Rating:	
7. Fiscal Management	
a. Prepares a balanced budget to provide services at a level directed by the Commission.	<u>5</u> of 5
b. Ensures that the budget meets the operational needs of the organization and makes the best possible use of available funds.	<u>5</u> of 5
c. Prepares the budget in an intelligent but readable format.	<u>5</u> of 5
d. Submits the proposed budget in a timely manner that allows for an appropriate review period.	<u>5</u> of 5
e. Appropriately monitors and manages the fiscal activities of the organization throughout the fiscal year.	<u>5</u> of 5
Total Rating for this Performance Dimension: <u>25</u> of 25	
Comments:	<i>with a finance background, he maximizes revenues + minimizes expenses</i>

Rating:	
8. Planning and Organizational Development	
a. Works with the commission, community leaders, and other stakeholders to develop a clear vision, mission, values, and objectives for the organization.	<u>5</u> of 5
b. Effectively prioritizes goals and objectives in order to ensure that the organization is doing "first things first" in support of its strategic plan.	<u>5</u> of 5
c. Maintains a healthy and productive organizational culture focused on customer service and responsible stewardship of the organization's resources.	<u>5</u> of 5
d. Has a capacity for and encourages innovation.	<u>5</u> of 5
e. Reviews ordinances, policies, and procedures periodically to suggest improvements.	<u>5</u> of 5
Total Rating for this Performance Dimension: <u>25</u> of 25	
Comments:	<i>anticipates future issues + plans accordingly</i>

9. Leadership and Decision-Making		Rating:
a. Leads the organization by example in adhering to its established policies, rules, and procedures, and ensures that subordinates do the same.	<u>5</u>	of 5
b. Acknowledges the efforts of others and gives appropriate credit for their accomplishments.	<u>5</u>	of 5
c. Is effective at building consensus among stakeholders on new or unpopular policies or initiatives.	<u>5</u>	of 5
d. Makes logical decisions based on a thorough review of available information and soliciting input from appropriate sources.	<u>5</u>	of 5
e. Is able to effectively make decisions rapidly in situations where information is limited and the outcome might be uncertain.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>leads by example. communicates with staff + subordinates</i>	

10. Individual Characteristics		Rating:
a. Consistently acts with professionalism and courtesy, including prompt attendance at meetings, returning phone calls/messages, and adhering to scheduled appointments.	<u>5</u>	of 5
b. Ensures that all business conducted by the organization is free of conflicts of interest or practices that might be construed as illegal, unethical, or unprofessional.	<u>5</u>	of 5
c. Is energetic, cooperative, and willing to spend whatever time is necessary to do a good job.	<u>5</u>	of 5
d. Has the capacity to listen to others and to recognize their interests.	<u>5</u>	of 5
e. Avoids political positions, partisanship, and unnecessary controversy.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>professional demeanor + utilizes common sense</i>	

Summary:

Performance Dimension:	Overall Rating:	
1. Professional Skills and Expertise	_____	of 25
2. Commission Relations	_____	of 25
3. Citizen and Public Relations	_____	of 25
4. Policy Execution	_____	of 25
5. Intergovernmental Relations	_____	of 25
6. Staffing and Management	_____	of 25
7. Fiscal Management	_____	of 25
8. Planning and Organizational Development	_____	of 25
9. Leadership and Decision-Making	_____	of 25
10. Individual Characteristics	_____	of 25

Total Score: 250 of 250

Divide by 50 (total number of metrics)

Total Average Rating: 5 of 5

Evaluator's Signature: _____

Date: 5/15/24



City of Daytona Beach Shores

City Manager Performance Evaluation

City Manager's Name: KURT Swartzlander
Council Member Name: MARK K. CARD
Evaluation Period: 1-9-24 to 5-28-24
Evaluation Date: 5-22-24

Evaluation Instructions:

This form shall be completed by each member of the Council to evaluate the City Manager's performance in each of the areas noted below. Each member of the Council shall sign at the end of the form and forward it to the City Clerk. Performance levels can be noted based on the following scale:

- | | |
|---------------------|--|
| 5 – EXCELLENT: | The incumbent consistently demonstrates performance at a very high standard that significantly surpasses reasonable expectations. |
| 4 – SUPERIOR: | The incumbent consistently demonstrates performance that generally exceeds reasonable expectations. The individual demonstrates no appreciable performance deficiencies. |
| 3 – SATISFACTORY: | The incumbent consistently meets reasonable performance expectations. The individual demonstrates an acceptable degree of competence and performance. |
| 2 – FAIR: | The incumbent achieves the minimum of performance expectations. The individual requires development in specific areas in order to meet reasonable expectations of performance. |
| 1 – UNSATISFACTORY: | The incumbent frequently fails to meet minimum performance expectations. |

Timeline:

- City Manager evaluations are distributed May 1st to City Councilmembers
- By June 1st Councilmembers have completed the form and scheduled individual meetings
- Summary report is placed on Council Agenda in July

EXHIBIT

A

Performance Dimensions:

1. Professional Skills and Expertise	Rating:
a. Is knowledgeable of current developments affecting the management field and affecting local governments.	<u>5</u> of 5
b. Regularly provides accurate, comprehensive reports concerning matters of importance to the organization.	<u>5</u> of 5
c. Anticipates problems and develops effective approaches for solving them.	<u>5</u> of 5
d. Offers workable alternatives when changes in the law render the administration of an ordinance or policy impractical.	<u>5</u> of 5
e. Sets a professional example by handling the affairs of the organization in a fair and impartial manner.	<u>5</u> of 5
Total Rating for this Performance Dimension: <u>25</u> of 25	
Comments:	

2. Council Relations	Rating:
a. Carries out directives of the Board as a whole rather than those of any one Board member.	<u>5</u> of 5
b. In responding the requests for information, provides complete, accurate, and timely information equally to all Board members.	<u>5</u> of 5
c. Assists the Board by resolving problems at the administrative level to avoid unnecessary Board action.	<u>5</u> of 5
d. Assists the Board in establishing policy while acknowledging the ultimate authority of the Board.	<u>5</u> of 5
e. Is willing to try new ideas proposed by Board members.	<u>5</u> of 5
Total Rating for this Performance Dimension: <u>25</u> of 25	
Comments:	

3. Citizen and Public Relations		Rating:
a. Effectively conveys to the public that the organization delivers services in a cost-effective manner without sacrificing quality and customer focus.	<u>5</u>	of 5
b. Is willing to meet with members of the community and is responsive to their concerns.	<u>5</u>	of 5
c. Demonstrates a dedication to service to the community and its citizens.	<u>5</u>	of 5
d. Expresses information orally in a clear and concise manner when making public presentations.	<u>5</u>	of 5
e. Is skillful with the news media, proactively providing information that is important to the public.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

4. Policy Execution		Rating:
a. Understands, supports, and enforces the organization's ordinances, policies, and procedures.	<u>5</u>	of 5
b. Clearly identifies and communicates expectations to the organization regarding the implementation of policies enacted by the Board.	<u>5</u>	of 5
c. Implements Board actions in accordance with the intent of the Board.	<u>5</u>	of 5
d. Supports the actions of the Board after a decision has been reached, both inside and outside the organization.	<u>5</u>	of 5
e. Helps internal and external stakeholders to achieve common objectives within the parameters of established Board policies.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

5. Intergovernmental Relations		Rating:
a. Promotes a positive working relationship with other governmental entities.	<u>5</u>	of 5
b. Engages with other local, regional, state, and federal agencies to accomplish local initiatives.	<u>5</u>	of 5
c. Positively and effectively represents the organization and its interests when working with other governmental agencies.	<u>5</u>	of 5
d. Maintains awareness of laws and other issues affecting other governmental agencies which may affect the organization.	<u>5</u>	of 5
e. Is willing to share resources or information with other governmental agencies as appropriate.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

6. Staffing and Management		Rating:
a. Recruits and retains competent personnel for City positions.	<u>5</u>	of 5
b. Is aware of staff weaknesses and works to improve their performance.	<u>5</u>	of 5
c. Promotes training and development opportunities for employees at all levels of the organization.	<u>5</u>	of 5
d. Stays accurately informed and concerned about employee relations.	<u>5</u>	of 5
e. Is able to discern when it is necessary to assume charge of situations that would normally be handled by a subordinate and when it is necessary to only provide guidance and support.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

		Rating:
7. Fiscal Management		
a. Prepares a balanced budget to provide services at a level directed by the Board.		<u>5</u> of 5
b. Ensures that the budget meets the operational needs of the organization and makes the best possible use of available funds.		<u>5</u> of 5
c. Prepares the budget in an intelligent but readable format.		<u>5</u> of 5
d. Submits the proposed budget in a timely manner that allows for an appropriate review period.		<u>5</u> of 5
e. Appropriately monitors and manages the fiscal activities of the organization throughout the fiscal year.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

8. Planning and Organizational Development		Rating:
a. Works with the Board, community leaders, and other stakeholders to develop a clear vision, mission, values, and objectives for the organization.		<u>5</u> of 5
b. Effectively prioritizes goals and objectives in order to ensure that the organization is doing "first things first" in support of its strategic plan.		<u>5</u> of 5
c. Maintains a healthy and productive organizational culture focused on customer service and responsible stewardship of the organization's resources.		<u>5</u> of 5
d. Has a capacity for and encourages innovation.		<u>5</u> of 5
e. Reviews ordinances, policies, and procedures periodically to suggest improvements.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

9. Leadership and Decision-Making		Rating:
a. Leads the organization by example in adhering to its established policies, rules, and procedures, and ensures that subordinates do the same.	<u>5</u>	of 5
b. Acknowledges the efforts of others and gives appropriate credit for their accomplishments.	<u>5</u>	of 5
c. Is effective at building consensus among stakeholders on new or unpopular policies or initiatives.	<u>5</u>	of 5
d. Makes logical decisions based on a thorough review of available information and soliciting input from appropriate sources.	<u>5</u>	of 5
e. Is able to effectively make decisions rapidly in situations where information is limited and the outcome might be uncertain.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

10. Individual Characteristics		Rating:
a. Consistently acts with professionalism and courtesy, including prompt attendance at meetings, returning phone calls/messages, and adhering to scheduled appointments.	<u>5</u>	of 5
b. Ensures that all business conducted by the organization is free of conflicts of interest or practices that might be construed as illegal, unethical, or unprofessional.	<u>5</u>	of 5
c. Is energetic, cooperative, and willing to spend whatever time is necessary to do a good job.	<u>5</u>	of 5
d. Has the capacity to listen to others and to recognize their interests.	<u>5</u>	of 5
e. Avoids political positions, partisanship, and unnecessary controversy.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		____ of 25
Comments:	City Manager Swartzlander HAS BEEN Consistent IN Leading THE City IN THE Right Direction Well Done Kurt!	

Summary:

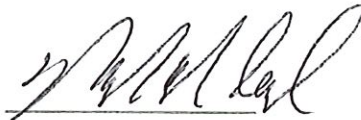
Performance Dimension:	Overall Rating:	
1. Professional Skills and Expertise	<u>25</u>	of 25
2. Council/Commission Relations	<u>25</u>	of 25
3. Citizen and Public Relations	<u>25</u>	of 25
4. Policy Execution	<u>25</u>	of 25
5. Intergovernmental Relations	<u>25</u>	of 25
6. Staffing and Management	<u>25</u>	of 25
7. Fiscal Management	<u>25</u>	of 25
8. Planning and Organizational Development	<u>25</u>	of 25
9. Leadership and Decision-Making	<u>25</u>	of 25
10. Individual Characteristics	<u>25</u>	of 25

Total Score: 250 of 250

Divide by 50 (total number of metrics)

Total Average Rating: 5 of 5

Evaluator's Signature:



Date:

5-22-24

RESOLUTION 2019-XX

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADOPTING A PROCESS FOR THE ANNUAL EVALUATION OF THE OF CITY MANAGER IN THE PERFORMANCE OF CHARTER DUTIES AND RESPONSIBILITIES.

WHEREAS, the City Council seeks to adopt and implement a formal process for the annual evaluation of the performance of the City Manager to comply with its mandate pursuant to Article III, Section 3.03 of the City Charter; and

WHEREAS, City Council has expressed its desire for an evaluation process that is open, transparent and that utilizes objective, measurable criteria; and

WHEREAS, the Mayor has reached out to both the Florida League of Cities and the Florida City County Management Association (FCCMA) for their respective recommendations and suggestions; and

WHEREAS, the Florida League of Cities suggested a two-part evaluation process consisting of separate interviews utilizing a standardized evaluation ratings worksheet and a public hearing following tabulation of the results of the interview worksheets; and

WHEREAS, FCCMA has provided a proposed evaluation ratings worksheet which utilizes just such objective and measurable criteria sought by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AS FOLLOWS:

SECTION I Findings.

The foregoing recitals (whereas clauses) are hereby incorporated by reference herein and are adopted as administrative findings in support of the matters set forth in this Resolution and are made a part hereof.

SECTION II Process.

A. The annual performance evaluation of the City Manager shall take place in conjunction with the annual salary review of the City Manager as provided by Article III, Section 3.03 of the City Charter.

B. Each Council Member shall separately schedule an interview of the City Manager to occur not later than two (2) weeks prior to the public meeting at which the annual salary and evaluation review is scheduled.

C. Each Council Member shall complete the standardized evaluation ratings worksheet (attached hereto as Exhibit A, which is adopted and incorporated by reference herein) as part of his/her interview of the City Manager.

D. Following the interview of the City Manager, the Council Member shall sign and submit the completed evaluation worksheet to the City Clerk.

E. Upon receipt of all completed evaluation worksheets, the City Clerk shall tabulate the results for an overall performance score and attach all interview evaluation worksheets and the tabulation results to the agenda for the meeting at which the annual review of the City Manager is scheduled.

F. Following public discussion of the performance evaluations and results, the records associated therewith shall be preserved as part of the City's permanent public records.

SECTION III Conflicts.

All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION IV Severability.

If any section or portions of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION V Effective Date. This Resolution shall take effect immediately upon its passage and adoption by the City Council.

CITY OF DAYTONA BEACH SHORES, FLORIDA

MAYOR, NANCY J. MILLER

Attest:

CITY MANAGER, MICHAEL T. BOOKER

CITY CLERK, CHERI SCHWAB

Approved as to form and legality:

CITY ATTORNEY, RAYMOND J. BRANCH

Adopted this ___ day of _____, 2019.

Posted this ___ day of _____, 2019.



City of Daytona Beach Shores

City Manager Performance Evaluation

City Manager's Name: KURT SWARTZLANDER

Commissioner Name: CHRIS CONOMOS

Evaluation Period:

Evaluation Date: 6/1/2024

Evaluation Instructions:

This form shall be completed by each member of the Commission to evaluate the City Manager's performance in each of the areas noted below. Each member of the Commission shall sign at the end of the form and forward it to the City Clerk. Performance levels can be noted based on the following scale:

- | | |
|----------------------------|--|
| 5 – EXCELLENT: | The incumbent consistently demonstrates performance at a very high standard that significantly surpasses reasonable expectations. |
| 4 – SUPERIOR: | The incumbent consistently demonstrates performance that generally exceeds reasonable expectations. The individual demonstrates no appreciable performance deficiencies. |
| 3 – SATISFACTORY: | The incumbent consistently meets reasonable performance expectations. The individual demonstrates an acceptable degree of competence and performance. |
| 2 – FAIR: | The incumbent achieves the minimum of performance expectations. The individual requires development in specific areas in order to meet reasonable expectations of performance. |
| 1 – UNSATISFACTORY: | The incumbent frequently fails to meet minimum performance expectations. |

Timeline:

- City Manager evaluations are distributed April 15th to City Commissioners
- By May 10th Commissioners have completed the form and scheduled individual meetings
- Summary report is placed on Commission Agenda in second meeting in May

Performance Dimensions:

1. Professional Skills and Expertise		Rating:
a. Is knowledgeable of current developments affecting the management field and affecting local governments.	<u>5</u>	of 5
b. Regularly provides accurate, comprehensive reports concerning matters of importance to the organization.	<u>5</u>	of 5
c. Anticipates problems and develops effective approaches for solving them.	<u>5</u>	of 5
d. Offers workable alternatives when changes in the law render the administration of an ordinance or policy impractical.	<u>5</u>	of 5
e. Sets a professional example by handling the affairs of the organization in a fair and impartial manner.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>Kurt is always ahead of the curve.</i>	

2. Commission Relations		Rating:
a. Carries out directives of the Commission as a whole rather than those of any one member.	<u>5</u>	of 5
b. In responding the requests for information, provides complete, accurate, and timely information equally to all members.	<u>5</u>	of 5
c. Assists the Commission by resolving problems at the administrative level to avoid unnecessary commission action.	<u>5</u>	of 5
d. Assists the Commission in establishing policy while acknowledging the ultimate authority of the Commission.	<u>5</u>	of 5
e. Is willing to try new ideas proposed by members.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

3. Citizen and Public Relations		Rating:
a. Effectively conveys to the public that the organization delivers services in a cost-effective manner without sacrificing quality and customer focus.		<u>5</u> of 5
b. Is willing to meet with members of the community and is responsive to their concerns.		<u>5</u> of 5
c. Demonstrates a dedication to service to the community and its citizens.		<u>5</u> of 5
d. Expresses information orally in a clear and concise manner when making public presentations.		<u>5</u> of 5
e. Is skillful with the news media, proactively providing information that is important to the public.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

4. Policy Execution		Rating:
a. Understands, supports, and enforces the organization's ordinances, policies, and procedures.		<u>5</u> of 5
b. Clearly identifies and communicates expectations to the organization regarding the implementation of policies enacted by the Board.		<u>5</u> of 5
c. Implements Commission actions in accordance with the intent of the Commission.		<u>5</u> of 5
d. Supports the actions of the Commission after a decision has been reached, both inside and outside the organization.		<u>5</u> of 5
e. Helps internal and external stakeholders to achieve common objectives within the parameters of established policies.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

5. Intergovernmental Relations		Rating:
a. Promotes a positive working relationship with other governmental entities.		<u>5</u> of 5
b. Engages with other local, regional, state, and federal agencies to accomplish local initiatives.		<u>5</u> of 5
c. Positively and effectively represents the organization and its interests when working with other governmental agencies.		<u>5</u> of 5
d. Maintains awareness of laws and other issues affecting other governmental agencies which may affect the organization.		<u>5</u> of 5
e. Is willing to share resources or information with other governmental agencies as appropriate.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

6. Staffing and Management		Rating:
a. Recruits and retains competent personnel for City positions.		<u>5</u> of 5
b. Is aware of staff weaknesses and works to improve their performance.		<u>5</u> of 5
c. Promotes training and development opportunities for employees at all levels of the organization.		<u>5</u> of 5
d. Stays accurately informed and concerned about employee relations.		<u>5</u> of 5
e. Is able to discern when it is necessary to assume charge of situations that would normally be handled by a subordinate and when it is necessary to only provide guidance and support.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

		Rating:
7. Fiscal Management		
a. Prepares a balanced budget to provide services at a level directed by the Commission.		<u>5</u> of 5
b. Ensures that the budget meets the operational needs of the organization and makes the best possible use of available funds.		<u>5</u> of 5
c. Prepares the budget in an intelligent but readable format.		<u>5</u> of 5
d. Submits the proposed budget in a timely manner that allows for an appropriate review period.		<u>5</u> of 5
e. Appropriately monitors and manages the fiscal activities of the organization throughout the fiscal year.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

8. Planning and Organizational Development		Rating:
a. Works with the commission, community leaders, and other stakeholders to develop a clear vision, mission, values, and objectives for the organization.		<u>5</u> of 5
b. Effectively prioritizes goals and objectives in order to ensure that the organization is doing "first things first" in support of its strategic plan.		<u>5</u> of 5
c. Maintains a healthy and productive organizational culture focused on customer service and responsible stewardship of the organization's resources.		<u>5</u> of 5
d. Has a capacity for and encourages innovation.		<u>5</u> of 5
e. Reviews ordinances, policies, and procedures periodically to suggest improvements.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

9. Leadership and Decision-Making		Rating:
a. Leads the organization by example in adhering to its established policies, rules, and procedures, and ensures that subordinates do the same.	<u>5</u>	of 5
b. Acknowledges the efforts of others and gives appropriate credit for their accomplishments.	<u>5</u>	of 5
c. Is effective at building consensus among stakeholders on new or unpopular policies or initiatives.	<u>5</u>	of 5
d. Makes logical decisions based on a thorough review of available information and soliciting input from appropriate sources.	<u>5</u>	of 5
e. Is able to effectively make decisions rapidly in situations where information is limited and the outcome might be uncertain.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

10. Individual Characteristics		Rating:
a. Consistently acts with professionalism and courtesy, including prompt attendance at meetings, returning phone calls/messages, and adhering to scheduled appointments.	<u>5</u>	of 5
b. Ensures that all business conducted by the organization is free of conflicts of interest or practices that might be construed as illegal, unethical, or unprofessional.	<u>5</u>	of 5
c. Is energetic, cooperative, and willing to spend whatever time is necessary to do a good job.	<u>5</u>	of 5
d. Has the capacity to listen to others and to recognize their interests.	<u>5</u>	of 5
e. Avoids political positions, partisanship, and unnecessary controversy.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:	<i>Kurt is highly dedicated and selfless in his duties.</i>	

Summary:

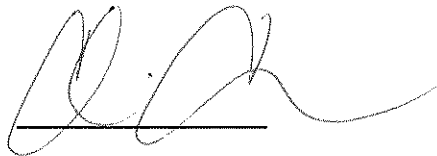
Performance Dimension:	Overall Rating:	
1. Professional Skills and Expertise	<u>25</u>	of 25
2. Commission Relations	<u>25</u>	of 25
3. Citizen and Public Relations	<u>25</u>	of 25
4. Policy Execution	<u>25</u>	of 25
5. Intergovernmental Relations	<u>25</u>	of 25
6. Staffing and Management	<u>25</u>	of 25
7. Fiscal Management	<u>25</u>	of 25
8. Planning and Organizational Development	<u>25</u>	of 25
9. Leadership and Decision-Making	<u>25</u>	of 25
10. Individual Characteristics	<u>25</u>	of 25

Total Score: 250 of 250

Divide by 50 (total number of metrics)

Total Average Rating: 5 **of 5**

Evaluator's Signature:



Date:

6/1/2024



City of Daytona Beach Shores

City Manager Performance Evaluation

City Manager's Name: KURT SWARTZENDER

Commissioner Name: STEPHAN DUMBIASKY

Evaluation Period:

Evaluation Date: 5/14/2024

Evaluation Instructions:

This form shall be completed by each member of the Commission to evaluate the City Manager's performance in each of the areas noted below. Each member of the Commission shall sign at the end of the form and forward it to the City Clerk. Performance levels can be noted based on the following scale:

- | | |
|----------------------------|--|
| 5 – EXCELLENT: | The incumbent consistently demonstrates performance at a very high standard that significantly surpasses reasonable expectations. |
| 4 – SUPERIOR: | The incumbent consistently demonstrates performance that generally exceeds reasonable expectations. The individual demonstrates no appreciable performance deficiencies. |
| 3 – SATISFACTORY: | The incumbent consistently meets reasonable performance expectations. The individual demonstrates an acceptable degree of competence and performance. |
| 2 – FAIR: | The incumbent achieves the minimum of performance expectations. The individual requires development in specific areas in order to meet reasonable expectations of performance. |
| 1 – UNSATISFACTORY: | The incumbent frequently fails to meet minimum performance expectations. |

Timeline:

- City Manager evaluations are distributed April 15th to City Commissioners
- By May 10th Commissioners have completed the form and scheduled individual meetings
- Summary report is placed on Commission Agenda in second meeting in May

Performance Dimensions:

1. Professional Skills and Expertise		Rating:
a. Is knowledgeable of current developments affecting the management field and affecting local governments.		<u>5</u> of 5
b. Regularly provides accurate, comprehensive reports concerning matters of importance to the organization.		<u>5</u> of 5
c. Anticipates problems and develops effective approaches for solving them.		<u>5</u> of 5
d. Offers workable alternatives when changes in the law render the administration of an ordinance or policy impractical.		<u>5</u> of 5
e. Sets a professional example by handling the affairs of the organization in a fair and impartial manner.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

2. Commission Relations		Rating:
a. Carries out directives of the Commission as a whole rather than those of any one member.		<u>5</u> of 5
b. In responding the requests for information, provides complete, accurate, and timely information equally to all members.		<u>5</u> of 5
c. Assists the Commission by resolving problems at the administrative level to avoid unnecessary commission action.		<u>5</u> of 5
d. Assists the Commission in establishing policy while acknowledging the ultimate authority of the Commission.		<u>5</u> of 5
e. Is willing to try new ideas proposed by members.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

3. Citizen and Public Relations		Rating:
a. Effectively conveys to the public that the organization delivers services in a cost-effective manner without sacrificing quality and customer focus.		<u>5</u> of 5
b. Is willing to meet with members of the community and is responsive to their concerns.		<u>5</u> of 5
c. Demonstrates a dedication to service to the community and its citizens.		<u>5</u> of 5
d. Expresses information orally in a clear and concise manner when making public presentations.		<u>5</u> of 5
e. Is skillful with the news media, proactively providing information that is important to the public.		<u>4</u> of 5
Total Rating for this Performance Dimension:		<u>24</u> of 25
Comments:		

4. Policy Execution		Rating:
a. Understands, supports, and enforces the organization's ordinances, policies, and procedures.		<u>5</u> of 5
b. Clearly identifies and communicates expectations to the organization regarding the implementation of policies enacted by the Board.		<u>5</u> of 5
c. Implements Commission actions in accordance with the intent of the Commission.		<u>5</u> of 5
d. Supports the actions of the Commission after a decision has been reached, both inside and outside the organization.		<u>5</u> of 5
e. Helps internal and external stakeholders to achieve common objectives within the parameters of established policies.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

5. Intergovernmental Relations		Rating:
a. Promotes a positive working relationship with other governmental entities.		<u>5</u> of 5
b. Engages with other local, regional, state, and federal agencies to accomplish local initiatives.		<u>5</u> of 5
c. Positively and effectively represents the organization and its interests when working with other governmental agencies.		<u>5</u> of 5
d. Maintains awareness of laws and other issues affecting other governmental agencies which may affect the organization.		<u>5</u> of 5
e. Is willing to share resources or information with other governmental agencies as appropriate.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

6. Staffing and Management		Rating:
a. Recruits and retains competent personnel for City positions.		<u>5</u> of 5
b. Is aware of staff weaknesses and works to improve their performance.		<u>5</u> of 5
c. Promotes training and development opportunities for employees at all levels of the organization.		<u>5</u> of 5
d. Stays accurately informed and concerned about employee relations.		<u>5</u> of 5
e. Is able to discern when it is necessary to assume charge of situations that would normally be handled by a subordinate and when it is necessary to only provide guidance and support.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

		Rating:
7. Fiscal Management		
a. Prepares a balanced budget to provide services at a level directed by the Commission.		<u>5</u> of 5
b. Ensures that the budget meets the operational needs of the organization and makes the best possible use of available funds.		<u>5</u> of 5
c. Prepares the budget in an intelligent but readable format.		<u>5</u> of 5
d. Submits the proposed budget in a timely manner that allows for an appropriate review period.		<u>5</u> of 5
e. Appropriately monitors and manages the fiscal activities of the organization throughout the fiscal year.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

		Rating:
8. Planning and Organizational Development		
a. Works with the commission, community leaders, and other stakeholders to develop a clear vision, mission, values, and objectives for the organization.		<u>5</u> of 5
b. Effectively prioritizes goals and objectives in order to ensure that the organization is doing "first things first" in support of its strategic plan.		<u>5</u> of 5
c. Maintains a healthy and productive organizational culture focused on customer service and responsible stewardship of the organization's resources.		<u>5</u> of 5
d. Has a capacity for and encourages innovation.		<u>5</u> of 5
e. Reviews ordinances, policies, and procedures periodically to suggest improvements.		<u>5</u> of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

9. Leadership and Decision-Making		Rating:
a. Leads the organization by example in adhering to its established policies, rules, and procedures, and ensures that subordinates do the same.	<u>5</u>	of 5
b. Acknowledges the efforts of others and gives appropriate credit for their accomplishments.	<u>5</u>	of 5
c. Is effective at building consensus among stakeholders on new or unpopular policies or initiatives.	<u>5</u>	of 5
d. Makes logical decisions based on a thorough review of available information and soliciting input from appropriate sources.	<u>5</u>	of 5
e. Is able to effectively make decisions rapidly in situations where information is limited and the outcome might be uncertain.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

10. Individual Characteristics		Rating:
a. Consistently acts with professionalism and courtesy, including prompt attendance at meetings, returning phone calls/messages, and adhering to scheduled appointments.	<u>5</u>	of 5
b. Ensures that all business conducted by the organization is free of conflicts of interest or practices that might be construed as illegal, unethical, or unprofessional.	<u>5</u>	of 5
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d. Has the capacity to listen to others and to recognize their interests.	<u>5</u>	of 5
e. Avoids political positions, partisanship, and unnecessary controversy.	<u>5</u>	of 5
Total Rating for this Performance Dimension:		<u>25</u> of 25
Comments:		

Summary:

Performance Dimension:	Overall Rating:	
1. Professional Skills and Expertise	<u>25</u>	of 25
2. Commission Relations	<u>25</u>	of 25
3. Citizen and Public Relations	<u>24</u>	of 25
4. Policy Execution	<u>25</u>	of 25
5. Intergovernmental Relations	<u>25</u>	of 25
6. Staffing and Management	<u>25</u>	of 25
7. Fiscal Management	<u>25</u>	of 25
8. Planning and Organizational Development	<u>25</u>	of 25
9. Leadership and Decision-Making	<u>25</u>	of 25
10. Individual Characteristics	<u>25</u>	of 25

Total Score: 249 of 250

Divide by 50 (total number of metrics)

Total Average Rating: 4.9 of 5

Evaluator's Signature: _____



Date: _____

5/14/2024