

City of South Daytona
Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: The Honorable Mayor and Members of the City Council
From: James L. Gillis Jr., City Manager
Re: Consideration of Resolution No. 2023-06, approving the Wholesale Water, Wastewater, and Reuse Water Services Agreement with the City of Daytona Beach
Date: March 30, 2023

The City of Daytona Beach provides water, wastewater and reuse water services to the City of South Daytona. A Water and Wastewater Service Agreement was executed in June 1994 which established the terms and conditions of the water and wastewater services to be provided and the compensation South Daytona is to pay for said services.

Staff members from Daytona Beach and South Daytona have negotiated the terms and conditions of new the Wholesale Water, Wastewater and Reuse Water Services Agreement which is attached.

To comply with the conditions of the new agreement, the city must adopt Daytona Beach's pretreatment code for industrial wastewater which is scheduled to be before the City Council on the same agenda as this agreement.

The agreement sets the rates and capacity reserves for water and wastewater. It affords the city the opportunity to purchase additional capacity as needed in the future. In the event that Daytona Beach cannot provide the requested additional capacity, the city has the opportunity to seek the additional capacity from another entity such as Port Orange.

After a year and a half of negotiations, staff believes that the terms in the proposed agreement is the absolute maximum that Daytona Beach is willing to offer. As a result, staff recommends the City Council approve Resolution No. 2023-06 approving the Wholesale Water, Wastewater and Reuse Water Services Agreement with Daytona Beach and authorizing the Mayor and City Manager to execute the Agreement.

If approved, the agreement will expire on December 31, 2042. The agreement may be extended an additional ten years if mutually agreed upon by both parties.

RESOLUTION NO. 2023-06

A RESOLUTION OF THE CITY OF SOUTH DAYTONA, FLORIDA, APPROVING THE WHOLESALE WATER, WASTEWATER, AND REUSE WATER SERVICES AGREEMENT WITH THE CITY OF DAYTONA BEACH AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Daytona Beach provides water, wastewater and reuse water services to the City of South Daytona; and

WHEREAS, Daytona Beach and South Daytona executed a Water and Wastewater Service Agreement in June 1994 which established the terms and conditions of the water and wastewater services to be provided and the compensation South Daytona is to pay for said services; and

WHEREAS, Daytona Beach and South Daytona have negotiated the terms and conditions of new the Wholesale Water, Wastewater and Reuse Water Services Agreement; and

WHEREAS, the City Council has determined that entering into a Wholesale Water, Wastewater and Reuse Water Services Agreement with Daytona Beach is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Council hereby approves the Wholesale Water, Wastewater and Reuse Water Services Agreement with the City of Daytona Beach, a copy of which is hereby attached as Exhibit "A" to this Resolution.

Section 2. The Mayor and City Manager are hereby authorized to execute the Wholesale Water, Wastewater and Reuse Water Services Agreement with the City of Daytona Beach.

Section 3. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or

application shall be deemed a separate, distinct, and independent provision, and such holding shall not the validity of the remaining portions or application hereof.

Section 4. That all resolutions made in conflict with this Resolution are hereby repealed.

Section 5. That this Resolution shall become effective immediately upon its adoption.

THIS RESOLUTION APPROVED ON FIRST AND ONLY READING this 11th day of April 2023 by the City Council of the City of South Daytona, Florida.

CITY OF SOUTH DAYTONA, FLORIDA

William C. Hall, Mayor

ATTEST: _____
James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:

Wade C. Vose, City Attorney

**WHOLESALE WATER, WASTEWATER, AND REUSE WATER SERVICES
AGREEMENT BETWEEN THE CITY OF DAYTONA BEACH, FLORIDA
AND THE CITY OF SOUTH DAYTONA, FLORIDA**

THIS WHOLESALE WATER, WASTEWATER, AND REUSE WATER SERVICES AGREEMENT (Agreement), is made and entered as of the date of last execution below ("Effective Date"), by and between THE CITY OF DAYTONA BEACH, a Florida municipal corporation ("DAYTONA BEACH"), and the CITY OF SOUTH DAYTONA, a Florida municipal corporation ("SOUTH DAYTONA"). DAYTONA BEACH and SOUTH DAYTONA may also be referred to herein individually as a "Party" or, collectively, as the "Parties."

RECITALS:

WHEREAS, DAYTONA BEACH and SOUTH DAYTONA acknowledge a long-term relationship wherein DAYTONA BEACH has provided potable water supply, treatment and transmission services, wastewater transmission, treatment and disposal services, and reuse water services ("Services") to SOUTH DAYTONA on a wholesale basis as evidenced by the Water and Wastewater Service agreement approved by Daytona Beach Ordinance No. 94-294 adopted on June 1, 1994, as amended from time to time ("Prior Wholesale Service Agreement"); and

WHEREAS, The Parties deem it mutually beneficial to enter into a new agreement for DAYTONA BEACH to continue providing wholesale water, wastewater and reuse water services to SOUTH DAYTONA; and

WHEREAS, SOUTH DAYTONA desires to continue the purchase of Services as a Customer of DAYTONA BEACH, subject to certain conditions as provided in the Agreement; and

WHEREAS, the Parties desire to enter into and execute this Agreement setting forth the terms and provisions of their agreement for the sale and purchase of Wholesale Water, Wastewater, and Reuse Water Services; and

NOW THEREFORE, in consideration of the foregoing recitals and the mutual undertakings and covenants contained herein and assumed, and other good and valuable consideration, receipt of which is hereby acknowledged, DAYTONA BEACH and SOUTH DAYTONA hereby covenant and agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct and are incorporated herein.

SECTION 2. DEFINITIONS. The following words shall have the following meanings unless the context hereof requires otherwise:

"**Agreement**" shall mean this Wholesale Water, Wastewater and Reuse Water Services Agreement between DAYTONA BEACH and SOUTH DAYTONA.

"**Annual Average Daily Flow**" shall mean the total annual amount of finished water delivered to the SOUTH DAYTONA System by DAYTONA BEACH or the amount of wastewater delivered to the DAYTONA BEACH System by SOUTH DAYTONA, determined on a Fiscal Year Basis divided by the number of days in such Fiscal Year.

"Billing Period" shall mean that monthly period for which Services are delivered by DAYTONA BEACH to SOUTH DAYTONA for Services which serves as the billing determinant basis for which the wholesale rates are imposed by DAYTONA BEACH.

"CPI Rate Adjustment" shall mean the percent rate adjustment factor that is applied uniformly by DAYTONA BEACH, no more than once annually to the rates for Services, to provide for the recovery of the estimated increase in the cost of providing service, to the extent possible, due to general inflation. The index that is used by DAYTONA BEACH shall be the Water, Sewer and Trash Collection Services Index (Series ID CUSR0000SEHG) as published by the U.S. Department of Labor, Bureau of Labor Statistics, from June of the preceding calendar year until June of the present calendar year.

"Days" shall mean calendar days.

"DAYTONA BEACH System" shall mean the potable water supply, treatment and transmission systems; wastewater conveyance, treatment, and disposal systems; and reuse water supply and transmission systems that serve DAYTONA BEACH's retail and wholesale customers.

"Debt" shall mean all utility revenue bonds, loans, notes, capitalized or financing leases, and other forms of indebtedness associated with financing the construction, acquisition, or securing of DAYTONA BEACH System Facilities that are outstanding during the Agreement.

"DOH" shall mean the Volusia County Department of Health, which enforces certain regulations on the treatment and distribution of potable water.

"Equivalent Residential Connection" or "ERC" shall mean the measurement of potable water equal to two hundred fifty (250) gallons per day (gpd) of design flow, and for wastewater equal to two hundred fifty (250) gallons per day (gpd) of design flow. An ERC represents the amount of capacity required in the design of the water system to provide potable water service and/or the amount of capacity required in the design of the wastewater system to provide wastewater service to a single residential dwelling unit served by DAYTONA BEACH.

"FDEP" shall mean the Florida Department of Environmental Protection which enforces certain regulations on the treatment and disposal of wastewater effluent and bio-solids.

"Fiscal Year" shall mean the twelve-month period ending September 30th.

"Force Majeure" shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics/pandemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of either Party to this Agreement, or acts or failures to act by regulatory authorities.

"SOUTH DAYTONA Service Area" shall mean the existing geographic area served retail potable water, wastewater, and reuse water service by SOUTH DAYTONA located in Volusia County, as of the date of this Agreement, as shown in **EXHIBIT B**, and as may be expanded and modified from time to time. SOUTH DAYTONA has the sole responsibility to provide retail water, wastewater, and reuse water service to its customers.

"SOUTH DAYTONA System" shall mean the potable water distribution system including pump stations and chlorine booster stations; the wastewater system collection, the sanitary sewer lift station facilities and force mains; and the reuse water distribution system that are installed to serve the SOUTH DAYTONA retail utility customers.

"Wastewater" shall mean a water-carried waste, in solution or suspension, from SOUTH DAYTONA characterized by volume or rate of flow, physical condition, chemical and toxic constituents, and its bacteriologic status (which organisms it contains and in what quantities) and shall consist mostly of greywater (from sinks, tubs, showers, dishwashers, and clothes washers), blackwater (the water used to flush toilets, combined with the human waste that it flushes away); soaps and detergents; and other similar wastes that will be treated by the DAYTONA BEACH System.

"Wholesale Meters" shall mean all water, wastewater or reuse water meters, valves, and other appurtenances located within the meter vault owned and maintained by DAYTONA BEACH at those locations as identified on **EXHIBIT A** for the purpose of measuring the delivery of potable water and reuse water from the DAYTONA BEACH System to the SOUTH DAYTONA System and the receipt of sewage for treatment by the DAYTONA BEACH System from the SOUTH DAYTONA System.

"Wholesale Reuse Water Rate" shall mean the amount to be charged for each one thousand gallons (1,000) of metered reuse water provided by DAYTONA BEACH to SOUTH DAYTONA at all of the Wholesale Meters.

"Wholesale Reuse Water Service" shall mean the services provided by DAYTONA BEACH associated with the supply and transmission of reuse water to SOUTH DAYTONA for the benefit of serving its reuse water customers.

"Wholesale Wastewater Rate" shall mean the amount to be charged for each one thousand gallons (1,000) of metered Wastewater received by DAYTONA BEACH from SOUTH DAYTONA at all of the Wholesale Meters.

"Wholesale Wastewater Service" shall mean the services provided by DAYTONA BEACH associated with the conveyance, treatment, and disposal of bio-solids and effluent allocated solely to SOUTH DAYTONA for the benefit of serving its retail wastewater customers.

"Wholesale Water Rate" shall mean the amount to be charged for each one thousand gallons (1,000) of metered potable water provided by DAYTONA BEACH to SOUTH DAYTONA at all of the Wholesale Meters.

"Wholesale Water Service" shall mean the services provided by DAYTONA BEACH associated with the supply, treatment, and transmission of potable water allocated solely to SOUTH DAYTONA for the benefit of serving its retail potable water customers.

SECTION 3. TERM.

A. *Term.* Except as provided in Subsections 3.B and 9.G, the term of this Agreement shall begin on the date of its complete execution by the Parties and end on December 31, 2042. The Agreement may be extended for additional ten (10) year terms if mutually agreed by the Parties prior to the expiration of the Agreement term.

B. *Early Termination.* After the tenth anniversary of this Agreement, in SOUTH DAYTONA's sole discretion, SOUTH DAYTONA may terminate this Agreement by providing written notice to DAYTONA BEACH no less than one year prior to the effective date of termination as specified in the notice. In the event SOUTH DAYTONA exercises its right to terminate this Agreement pursuant to this subsection, SOUTH DAYTONA, at its sole cost and

expense, shall cause the SOUTH DAYTONA System to be disconnected from the DAYTONA BEACH System as of the effective date of termination.

SECTION 4. DAYTONA BEACH AGREEMENT TO PROVIDE SERVICE.

A. DAYTONA BEACH agrees to supply, treat and transmit potable water to SOUTH DAYTONA at the Wholesale Meters in quantities and quality to meet SOUTH DAYTONA Service Area potable water needs on the terms as hereinafter set forth and provided.

B. DAYTONA BEACH agrees to receive, transport, and treat the SOUTH DAYTONA Service Area domestic and other pretreated Wastewater delivered to the Wholesale Meters by SOUTH DAYTONA to meet SOUTH DAYTONA wastewater service needs in quantities and quality at terms as hereinafter set forth and provided.

C. DAYTONA BEACH agrees to supply and transmit reuse water to SOUTH DAYTONA at the Wholesale Meters in quantities and quality to meet SOUTH DAYTONA Service Area reuse water service needs subject to availability at terms as hereinafter set forth and provided.

D. DAYTONA BEACH agrees that it will provide and maintain the DAYTONA BEACH System of adequate size and condition to supply and transmit potable and reuse water; and transport and treat all wastewater delivered to the Wholesale Meters by SOUTH DAYTONA. DAYTONA BEACH will increase or expand the necessary DAYTONA BEACH System facilities as needed or mandated by FDEP or DOH in order to meet the service demands of DAYTONA BEACH and current service demands of SOUTH DAYTONA based on the provisions of this Agreement and will be responsible for the financing and construction of such increased or expanded DAYTONA BEACH System facilities.

SECTION 5. SOUTH DAYTONA AGREEMENT TO RECEIVE SERVICE.

A. SOUTH DAYTONA agrees to receive from DAYTONA BEACH all potable water required to meet the SOUTH DAYTONA Service Area need at the Wholesale Meters in quantities not to exceed the capacity reservation, quality and on terms as hereinafter set forth in this Agreement.

B. SOUTH DAYTONA agrees to transport and deliver to DAYTONA BEACH all domestic and other pretreated Wastewater from the SOUTH DAYTONA Service Area to the Wholesale Meters in quantities not to exceed the capacity reservation, quality and at terms as hereinafter set forth in this Agreement and provided for treatment and disposal by DAYTONA BEACH.

C. SOUTH DAYTONA agrees to receive from DAYTONA BEACH all required reuse water for the SOUTH DAYTONA Service Area as available as determined by DAYTONA BEACH and delivered to the Wholesale Meters in quality and at terms as set forth in this Agreement.

D. SOUTH DAYTONA covenants and agrees that the SOUTH DAYTONA System and all additions and extensions thereof shall conform in all regards to the standards and regulations promulgated by FDEP, DOH, and any other applicable regulatory agencies and imposed on the SOUTH DAYTONA System. SOUTH DAYTONA further covenants that it will maintain all water distribution lines and mains, water storage and pumping facilities, sewer collection lines and interceptors, pumping stations, and all other appurtenances thereof that comprise SOUTH DAYTONA System in good condition, according to accepted public utility standards, and make such expenditures on SOUTH DAYTONA System facilities for maintenance and repairs for renewals and replacements thereof as may be proper for its operation and maintenance, including

maintaining the SOUTH DAYTONA System in order to minimize infiltration and inflow of groundwater and storm water into SOUTH DAYTONA System within recognized acceptable limits. Additional requirements for excessive infiltration and inflow are addressed in Section 10.F of this Agreement.

E. SOUTH DAYTONA covenants that no permits shall be issued allowing storm or surface water drainage into the SOUTH DAYTONA wastewater system. It is mutually understood and agreed that SOUTH DAYTONA will maintain a careful inspection of SOUTH DAYTONA's System and will exercise diligence and care in the maintenance of SOUTH DAYTONA's System and in the installation of connections and laterals that may be connected with SOUTH DAYTONA's System in order that the DAYTONA BEACH System not be burdened with excess discharge during rainy and wet weather. SOUTH DAYTONA shall provide DAYTONA BEACH annually with reports regarding implementation of the management of wastewater inflow and infiltration as provided in Subsection 10.F, and copies of all reports required to be filed with a state or federal agency relating to the SOUTH DAYTONA System.

SECTION 6. WASTEWATER USE AND PRETREATMENT STANDARDS.

A. It is expressly covenanted and agreed by SOUTH DAYTONA that to the extent allowed by law, and where not otherwise provided in the Agreement, it will adhere to and abide by DAYTONA BEACH's Pretreatment Code as set out at Section 7.2(P), Land Development Code, which SOUTH DAYTONA acknowledges and affirms has been received from DAYTONA BEACH. The Pretreatment Code is hereby expressly made a part of this Agreement by reference thereto. Nothing in this Agreement shall abrogate the police powers of SOUTH DAYTONA.

B. SOUTH DAYTONA agrees to adopt a Wastewater Use Ordinance, to include industrial wastewater pretreatment standards and parameters, DAYTONA BEACH's pretreatment program requirements, and DAYTONA BEACH's enforcement response plan, in order to continuously deliver wastewater to the Wholesale Meters that will meet DAYTONA BEACH's adopted industrial pretreatment standards ("DAYTONA BEACH Standards") (such wastewater being considered as domestic strength waste). SOUTH DAYTONA will adopt and diligently enforce a Wastewater Use Ordinance that is no less stringent and is as broad in scope as the DAYTONA BEACH Standards, which are based, in part, on the rules and regulations as promulgated by FDEP. SOUTH DAYTONA will not deliver any Wastewater to DAYTONA BEACH that would cause DAYTONA BEACH to violate its operating and regulatory permits associated with the operation of the DAYTONA BEACH System.

C. SOUTH DAYTONA will, review its Wastewater Use Ordinance and adopt amendments thereto when necessary to meet FDEP standards, regulations, and parameters for the effective administration and operation of SOUTH DAYTONA's pretreatment program. This review will be conducted no less than once every three (3) years. However, DAYTONA BEACH may request a review whenever it deems that a review is necessary stating a reason for the request and a date by which the review will take place. Within fifteen (15) days, SOUTH DAYTONA must respond to the request, agreeing to the proposed date or proposing an alternate date. In any event, the joint review will take place within thirty (30) days of the request. In the event FDEP amends or develops new standards, regulations, and parameters affecting the operation of DAYTONA BEACH's System and which create a conflict with SOUTH DAYTONA's Wastewater Use Ordinance, DAYTONA BEACH will forward a copy of the amendments or new standards, regulations, and

parameters to SOUTH DAYTONA. SOUTH DAYTONA will amend its wastewater use ordinance if needed to be compliant with the amended or new standards within ninety (90) days.

D. SOUTH DAYTONA will perform technical and administrative duties necessary to implement and enforce SOUTH DAYTONA's Wastewater Use Ordinance against industrial users located in SOUTH DAYTONA Service Area. SOUTH DAYTONA will: i) update its industrial wastewater survey; ii) issue permits to all users lawfully requested to obtain a permit; iii) conduct inspections, sampling, and analysis; iv) perform enforcement activities; and v) perform any other technical or administrative duties the Parties to the Agreement deem appropriate. In addition, SOUTH DAYTONA will take emergency or administrative action to stop or prevent any discharge that presents or may present an imminent danger to the health or welfare to humans, which reasonably appear to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

E. SOUTH DAYTONA will issue permits to all industrial users lawfully required to be permitted under its Wastewater Use Ordinance located in SOUTH DAYTONA Service Area. Permits must be issued prior to any discharge of Wastewater from SOUTH DAYTONA System to DAYTONA BEACH System. SOUTH DAYTONA will maintain current information on industrial users located in SOUTH DAYTONA Service Area and will provide such information, including any revisions thereto, to DAYTONA BEACH. Industrial user information shall be reported annually including information indicating there are no industrial users. SOUTH DAYTONA will provide DAYTONA BEACH access to all records or documents relevant to the pretreatment program for any industrial use located in SOUTH DAYTONA Service Area or discharging through SOUTH DAYTONA's System to DAYTONA BEACH's System.

F. DAYTONA BEACH may, in conjunction with SOUTH DAYTONA, conduct inspections and samplings at any industrial user's facility, located within the SOUTH DAYTONA Service Area as it deems necessary. All evidence of noncompliance discovered on any inspection may be used by DAYTONA BEACH in subsequent enforcement actions as outlined in Section 10E of this Agreement.

G. SOUTH DAYTONA will enforce the provisions of its Wastewater Use Ordinance and permits. DAYTONA BEACH may take any necessary and appropriate action by civil enforcement in a court of law or emergency enforcement of wastewater pretreatment standards required by the Wastewater Use Ordinance and permits. DAYTONA BEACH may take emergency enforcement action whenever it deems necessary to stop or prevent any discharge which presents, or may present, an imminent danger to the health or welfare of humans, reasonably appears to threaten the environment, or threatens to cause interference, pass through, or sludge contamination. In such event, DAYTONA BEACH will provide written notice to SOUTH DAYTONA of its emergency enforcement action and the reasons therefore, and SOUTH DAYTONA shall be given an opportunity to respond. However, depending on the nature and extent of the emergency, as solely determined by DAYTONA BEACH, such response may be limited to a hearing before the DAYTONA BEACH City Manager after the emergency powers of DAYTONA BEACH have been exercised. Any emergency enforcement action taken by DAYTONA BEACH under this subsection to suspend water or wastewater service to SOUTH DAYTONA's System shall seek to minimize impacts on all users of SOUTH DAYTONA's System, other than the user(s) allegedly violating wastewater pretreatment standards. Any refusal by SOUTH DAYTONA to enforce the aforementioned provisions could result in a breach of contract and may be grounds to terminate this Agreement.

SECTION 7. SYSTEM FACILITIES OWNERSHIP AND ADMINISTRATION.

A. The assets of the DAYTONA BEACH System required to provide Wholesale Services will be owned, operated, and maintained by DAYTONA BEACH. Nothing in this Agreement shall be construed to convey to SOUTH DAYTONA any ownership interest in any portion of the assets of DAYTONA BEACH's System. Similarly, the assets of the SOUTH DAYTONA system will be owned, operated, and maintained by SOUTH DAYTONA and nothing in this Agreement shall be construed to convey to DAYTONA BEACH any ownership interest in any portion of the assets of SOUTH DAYTONA's system.

B. DAYTONA BEACH is named as the permit holder of the DAYTONA BEACH System facilities which are required to provide water supply, treatment and distribution, wastewater treatment and disposal capacity, and reuse supply and distribution on behalf of SOUTH DAYTONA as permitted by the FDEP or DOH and / or any other regulatory agency which may have jurisdiction with respect to the operation or construction of DAYTONA BEACH System facilities. DAYTONA BEACH, at all times, will operate the DAYTONA BEACH System in accordance with generally accepted utility operating procedures such that it will not be in violation of state and federal regulations governing the operation of such facilities with such permit(s) and will at all times renew such permits on a timely basis in accordance with applicable regulations to maintain such permit(s) in an approved active status mode.

As the named applicant on the regulatory permit(s), DAYTONA BEACH will be considered as the administrator of the respective utility system facilities necessary to provide Wholesale Service and have the responsibility to operate and maintain such system facilities in accordance with the provisions of the permit(s), generally accepted utility operating procedures, and the policies of DAYTONA BEACH such that SOUTH DAYTONA can receive wholesale utility service.

SECTION 8. SERVICE AREA

A. SOUTH DAYTONA agrees that it will not provide service to any customers located outside of the SOUTH DAYTONA Service Area as shown on **EXHIBIT B**. Nothing herein shall limit the ability of SOUTH DAYTONA to annex territory.

B. SOUTH DAYTONA shall not purchase, provide, furnish, transfer, or sell water and wastewater from its contracted Capacity Reservation in DAYTONA BEACH'S System for or to any other jurisdiction or private utility that is not considered as a retail customer of the SOUTH DAYTONA without the approval of the DAYTONA BEACH; this Agreement is solely for providing water and wastewater service to SOUTH DAYTONA's retail customers located within the SOUTH DAYTONA System.

C. SOUTH DAYTONA shall not purchase, provide, furnish, transfer, or sell reuse water from DAYTONA BEACH's System for or to any other jurisdiction or private utility that is not considered as a retail customer of the SOUTH DAYTONA without the approval of the DAYTONA BEACH; this Agreement is solely for providing reuse water service to SOUTH DAYTONA's retail customers located within SOUTH DAYTONA's System.

SECTION 9. CAPACITY RESERVATION

A. DAYTONA BEACH shall provide to SOUTH DAYTONA as of the Effective Date of this Agreement an exclusive entitlement right to one million (1,000,000) gallons of water supply, treatment, and transmission capacity on an Annual Average Daily Flow basis in the DAYTONA BEACH System.

B. DAYTONA BEACH shall provide to SOUTH DAYTONA as of the Effective Date of this Agreement an exclusive entitlement right to one million three hundred thousand (1,300,000) gallons of wastewater treatment and transmission capacity on an Annual Average Daily Flow basis in the DAYTONA BEACH System.

C. DAYTONA BEACH shall provide to SOUTH DAYTONA as of the Effective Date of this Agreement reuse water supply and distribution from the DAYTONA BEACH System. No exclusive entitlement of Wholesale Reuse Water Service is expressed or provided; service is subject to the availability of reuse water from the DAYTONA BEACH System. In the event of reduced reuse water capacity and/or availability, DAYTONA BEACH reserves the right to provide service to its own retail customers prior to providing reuse water service to SOUTH DAYTONA.

D. SOUTH DAYTONA may request supplemental water capacity from DAYTONA BEACH above the amounts stated in Section 9.A. for its exclusive use, and DAYTONA BEACH shall determine whether it has available capacity and agrees to convey the supplemental capacity requested. Such amounts shall be purchased by payment of DAYTONA BEACH's then current adopted Wholesale Water Capital Facilities Fee in increments of 25,000 gallons of water capacity per day. For example, the current Wholesale Water Capital Facilities Fee, as of the date of this Agreement of \$6,320.00 per 1,000 gallons, multiplied by 25 would result in a total Wholesale Water Capital Facilities Fee due to DAYTONA BEACH of \$158,000. SOUTH DAYTONA shall receive a corresponding increase in water capacity reserved of 25,000 gallons per day, which would result in a total water capacity of 1,025,000 gallons per day.

E. SOUTH DAYTONA may request supplemental wastewater capacity from DAYTONA BEACH above the amounts stated in Section 9.B. for its exclusive use and DAYTONA BEACH shall determine whether it has available capacity and agrees to convey the supplemental capacity requested. Such amounts shall be purchased by payment of DAYTONA BEACH's then current adopted the Wholesale Wastewater Capital Facilities Fee in increments 25,000 gallons of wastewater capacity per day. For example, the current Wholesale Wastewater Capital Facilities Fee, as of the date of this Agreement of \$10,240 per 1,000 gallons, multiplied by 25 would result in a total Wholesale Wastewater Capital Facilities Fee due to DAYTONA BEACH of \$256,000. SOUTH DAYTONA shall receive a corresponding increase in wastewater capacity reserved of 25,000 gallons per day, which would result in a total wastewater capacity of 1,325,000 gallons per day.

F. Not later than July 31th of each fiscal year, DAYTONA BEACH will calculate SOUTH DAYTONA'S Annual Average Daily Flows for water and wastewater for the previous fiscal year, and provide SOUTH DAYTONA written notice of said calculation. . If SOUTH DAYTONA exceeds its reserved water capacity, or its reserved wastewater capacity, DAYTONA BEACH shall charge SOUTH DAYTONA and SOUTH DAYTONA shall pay, in minimum increments 25,000 gallons capacity per day, for the supplemental water capacity or supplemental wastewater capacity as provided in Section 9.D and 9.E above. Following notification by DAYTONA BEACH of the requirement to purchase supplemental capacity, DAYTONA BEACH will include the amount of the excess capacity charge required in the monthly invoice provided in Section 10; provided, however:

- (1) Except as provided in Paragraph F(2) below, the excess capacity charge shall be prorated in 12 equal monthly installments, and paid accordingly; and any supplemental capacity charged to SOUTH DAYTONA shall be added to the then existing reserve

capacity as provided in Section 9.D and 9.E above, for purposes of calculating the applicable reserve capacity in that fiscal year.

- (2) For the 2022-2023 Fiscal Year only, the excess capacity charge for wastewater, if any, shall be invoiced and paid as a lump sum payment. Payment shall be due 360 days after the date of the invoice. The supplemental wastewater capacity associated with this charge shall not be deemed to be reserved until the lump sum payment is made.

Any failure to pay on or before the due date shall be considered as a delinquent payment and SOUTH DAYTONA shall pay the statutory interest on the unpaid balance.

G. If DAYTONA BEACH is unwilling or unable to sell SOUTH DAYTONA supplemental water or wastewater capacity, (i) due to SOUTH DAYTONA exceeding its reserve capacity for water or wastewater services, or (ii) as requested by SOUTH DAYTONA pursuant to Section 9.D or Section 9.E (respectively), because DAYTONA BEACH System Facilities have insufficient service capacity or because DAYTONA BEACH would need to construct additional DAYTONA BEACH System Facilities to service SOUTH DAYTONA's supplemental capacity, as solely determined by DAYTONA BEACH, SOUTH DAYTONA shall thereafter be permitted to contract for and receive water or wastewater services from another water or wastewater provider, as applicable, in addition to DAYTONA BEACH, for the supplemental water or wastewater capacity that DAYTONA BEACH declined to provide. In such event, DAYTONA BEACH shall give written notice to SOUTH DAYTONA of the threshold amount of water or wastewater capacity above which DAYTONA BEACH is unwilling or unable to provide to SOUTH DAYTONA ("Facility Capacity"). Within 45 days after receipt of notice, SOUTH DAYTONA may provide written notice to DAYTONA BEACH of its election to obtain water or wastewater service from another service provider, in addition to the Facility Capacity provided by DAYTONA BEACH. In such instance, SOUTH DAYTONA shall, at its sole cost and expense, modify its distribution and/or collection system, as applicable, to avoid cross-connection between any portion of SOUTH DAYTONA's System served by DAYTONA BEACH's System and any portion of SOUTH DAYTONA's System served by the other water or wastewater provider.

H. If SOUTH DAYTONA requests supplemental capacity in any fiscal year as provided Subsections 9.D or 9.E, or receives supplemental capacity in any fiscal year as provided Subsection 9.F, which necessitates DAYTONA BEACH issuing debt to construct additional DAYTONA BEACH System Facilities, as solely determined by DAYTONA BEACH, that is secured from payments made by SOUTH DAYTONA, with a debt payment term that extends beyond December 31, 2042 ("Debt"), DAYTONA BEACH shall give written notice to SOUTH DAYTONA of the threshold amount of water or wastewater capacity above which DAYTONA BEACH intends to issue Debt to improve its Facilities ("Debt Capacity"). Within 45 days after receipt of notice, SOUTH DAYTONA may provide written notice to DAYTONA BEACH of its election to obtain water or wastewater service from another service provider, in addition to the Debt Capacity provided by DAYTONA BEACH, or, if applicable, to withdraw its request for supplemental capacity. If SOUTH DAYTONA elects to obtain another provider, SOUTH DAYTONA shall, at its sole cost and expense, modify its distribution and/or collection system, as applicable, to avoid cross-connection between any portion of SOUTH DAYTONA's System served by DAYTONA BEACH's System and any portion of SOUTH DAYTONA's System served by the other water or wastewater provider. If SOUTH DAYTONA does not elect to obtain another provider, or does not withdraw its request for supplemental capacity, as applicable, and DAYTONA BEACH issues

Debt as provided above, the term of this Agreement shall be deemed to be extended to coincide with the term on the Debt payment, with no right of early termination as provided in Subsection 3.B.

SECTION 10. PAYMENT FOR SERVICES

SOUTH DAYTONA shall pay DAYTONA BEACH for the Services provided by DAYTONA BEACH during each Billing Period. The Wholesale Services Rates charged by DAYTONA BEACH shall be the rates as adopted by this Agreement. If DAYTONA BEACH conducts a wholesale services rate study during the course of this Agreement, the rates adopted by this Agreement may be renegotiated as an amendment.

A. The initial Wholesale Water Rate shall be two dollars and sixty-four cents (\$2.64) per thousand gallons of metered potable water delivered and shall be revised subsequently based on the application of the annual CPI Rate Adjustment.

B. The initial Wholesale Wastewater Rate shall be three dollars and fifty-nine cents (\$3.59) per thousand gallons of metered wastewater received and shall be revised subsequently based on the application of the annual CPI Rate Adjustment.

C. The initial Wholesale Reuse Water Rate shall be one dollar and ten cents (\$1.10) per thousand gallons of metered reuse water delivered and shall be revised subsequently based on the application of the annual CPI Rate Adjustment.

D. DAYTONA BEACH will invoice SOUTH DAYTONA for each Billing Period in accordance with the meter readings taken at the Wholesale Meters. SOUTH DAYTONA shall make payment based upon these meter readings, and payment shall be due and payable based on the collection policies applied by DAYTONA BEACH for all of its retail Utility customers except as provided in Section 10.H Section 11.D, and this section. Except as provided in Section 10.H, Section 11.D, and this section, in accordance with DAYTONA BEACH policy, any failure to pay on or before the due date shall be considered as a delinquent payment and SOUTH DAYTONA shall be subject to Section 98-68 of the City of Daytona Beach City Code as applicable to DAYTONA BEACH's retail Utility customers. In the event SOUTH DAYTONA disputes a portion of an invoice, SOUTH DAYTONA shall pay the undisputed portion of the invoice on or before the date the payment is due and provide written notice of the dispute to DAYTONA BEACH within 30 days after receipt of the invoice. If payment of the undisputed portion of an invoice has not been received in ninety (90) days after sending the invoice from DAYTONA BEACH, SOUTH DAYTONA will be in considered in default under the terms of this Agreement.

E. *High Strength Wastewater Surcharges.* If DAYTONA BEACH can prove that high strength wastewater as defined in section 7.2P of the Land Development Code or a wastewater flow containing specified pollutants in excess of the normal concentrations allowed by DAYTONA BEACH Ordinance is being discharged by SOUTH DAYTONA, SOUTH DAYTONA shall be given ninety (90) days to find the source and remedy the issue or DAYTONA BEACH shall have the right to assess Wastewater treatment surcharges. The Wastewater treatment surcharge for high-strength wastewater will be calculated and charged to SOUTH DAYTONA on the same basis and methodology used by DAYTONA BEACH for all of its customers served by DAYTONA BEACH System, which rate and methodology may be modified from time to time.

F. *Management of Wastewater Inflow and Infiltration.* SOUTH DAYTONA recognizes that its wastewater collection system is experiencing high amounts of inflows and infiltrations, which is negatively impacting DAYTONA BEACH's ability to treat wastewater and serve future growth in the region for the benefit of the Parties. In order to reduce the inflow and infiltration into the SOUTH DAYTONA System and as a condition of the reservation of wastewater capacity as delineated in Section 9.B., commencing with Fiscal Year 2023/2024, SOUTH DAYTONA will expend no less than \$250,000, which shall be revised subsequently based on the application of the annual CPI Rate Adjustment during each Fiscal Year of the term ("Minimum I. & I. Expenditure"), for testing, inspection, sewer main and manhole lining, sewer pipe replacement, and other sewer collection system improvements to reduce excessive inflow and infiltration to the SOUTH DAYTONA System. In the event SOUTH DAYTONA makes qualifying capital expenditures under this Subsection in a given Fiscal Year in excess of the Minimum I. & I. Expenditure, the amount in excess will be carried forward to future Fiscal Years as a credit against this annual requirement. SOUTH DAYTONA will provide within sixty (60) days after the end of each Fiscal Year, sufficient evidence detailing the capital expenditures associated with the requirements of this Section.

G. SOUTH DAYTONA shall also pay to DAYTONA BEACH any and all other applicable charges, surcharges, rates, fees, or other payments imposed on or required to be paid by SOUTH DAYTONA in accordance with applicable federal, state, or county statutes, rules, and regulations, as they may exist or be amended from time to time.

H. In the event a Meter fails and the replacement is delayed or there is a documented reading error, an invoice may be adjusted based on the average of the three previous months' consumption plus an adjustment for any unusual increase in consumption of the month in question based upon prior years' experience where applicable. If the above occurs, SOUTH DAYTONA will not be charged any interest on the unpaid disputed portion of the monthly bills due solely to the failure of the meter.

SECTION 11. SYSTEMS INTERFACE

A. Each Party shall be responsible for regulatory compliance, operation, and maintenance of its water, wastewater, and reuse water systems within its respective service area. Each Party acknowledges it is responsible for any pipelines within their service area.

B. DAYTONA BEACH will own and be responsible for the operation, maintenance, and calibration of the potable water Wholesale Meters for meeting regulatory requirements for potable water pressure and chlorine residual at the potable water Wholesale Meters as provided in Florida Administrative Code Chapters 62-550 and 62-555, as they may exist or be amended from time to time. DAYTONA BEACH will own and be responsible for the operation, maintenance and calibration of the wastewater meters located as shown on **EXHIBIT A**.

C. DAYTONA BEACH shall maintain complete and accurate records of its flow measurements at the Wholesale Meters. Flow measurements recorded by DAYTONA BEACH shall be the exclusive means of determining the quantity of Services provided pursuant to this Agreement. The metering equipment shall be of standard make and type, installed at a readily accessible location, and shall record flow with an accuracy sufficient to meet all applicable reporting requirements. DAYTONA BEACH will calibrate and test the meters at least annually to maintain the accuracy of the meters using an independent testing company. The test records shall be provided to SOUTH DAYTONA upon request. If the results of independent testing determine

a meter was not measuring within an acceptable accuracy rate of 98% to 102% the procurement of a work order to calibrate, repair or replace the meter will be initiated by DAYTONA BEACH within 30 days.

D. In the event SOUTH DAYTONA disputes the accuracy of the Wholesale Meter reading, it must notify DAYTONA BEACH in writing within thirty (30) days of receipt of the invoice; all meter readings not disputed within thirty (30) days of receipt of the invoice by SOUTH DAYTONA will be considered as final and not subject to dispute. For purposes of billing any charges based on the disputed metered flow, the amount billed during the period that the Wholesale Meter was determined to be inaccurate will be the average of the three (3) months of monthly or daily readings, as applicable, immediately before the determination of the period of the inaccurate readings or as of meter replacement/repair, multiplied by the number of months or days that the meter was determined to be reading inaccurately by the Parties. If significant conditions exist that would cause this calculation to be unreasonable as agreed by the Parties, the Parties can mutually agree to otherwise adjust the amount of flow for SOUTH DAYTONA utilization and billing purposes. All rates, fees, and charges for service will be applicable to the adjusted flows.

SECTION 12. NOTICE.

All notices, requests, demands or other communications hereunder shall be in writing and shall be deemed to be properly given if hand-delivered, mailed by certified or registered U.S. Mail, or delivered by a generally accepted overnight courier service, such as Federal Express or United Parcel Service. Notices shall be addressed as follows:

CITY OF DAYTONA BEACH:
Deric C. Feacher
City Manager
301 S. Ridgewood Ave.
Daytona Beach, FL 32114

CITY OF SOUTH DAYTONA:
James L. Gillis, Jr.
City Manager
1672 S. Ridgewood Ave.
South Daytona, FL 32119

Either Party may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or three days after the date mailed. Each Party to this Agreement shall have a continuing duty to promptly notify the other Party of any change to any of this information.

SECTION 13. DEFAULT.

If either Party materially fails or defaults in keeping, performing, or abiding by the terms and provisions of this Agreement, then the nondefaulting Party shall give written notice to the defaulting Party specifying the nature of the default. If the defaulting Party does not cure the default within forty-five (45) days after the date of the written notice, then this Agreement, at the option of the nondefaulting Party, shall terminate. This paragraph is not intended to replace any other legal or equitable remedies available to the nondefaulting Party under Florida law but is in

addition thereto. Notwithstanding the foregoing, any failure to make timely payments by SOUTH DAYTONA shall be considered a material default and shall be grounds to immediately terminate this Agreement.

SECTION 14. FORCE MAJEURE. With respect to the matters contemplated by this Agreement, neither Party shall be liable or responsible to the other as a result of any injury to property or person, which was caused by Force Majeure.

SECTION 15. ASSIGNMENT. This Agreement shall inure to the benefit of and be binding upon the heirs, representatives, and assigns of the Parties hereto. However, neither DAYTONA BEACH nor SOUTH DAYTONA shall assign this Agreement without the express, written permission of the other Party. Any unauthorized attempt shall be void ab initio.

SECTION 16. PUBLICATIONS, REFERENCE WORKS, GOVERNMENTAL REGULATIONS. In each instance herein where reference is made to a publication, reference work, or state or federal regulation, it is the intention of the Parties that, at any given time, the then current edition of any such publication or reference work or state or federal regulation shall apply. If a publication or reference work is discontinued or ceases to be the generally accepted work in its field or if conditions change or new methods or processes are implemented by DAYTONA BEACH, new standards shall be adopted, which are in compliance with state and federal laws and any valid rules and regulations pursuant thereto.

SECTION 17. AMENDMENT. No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement, whether or not similar, unless otherwise expressly provided.

SECTION 18. INDEMNIFICATION. To the extent permitted by law, DAYTONA BEACH and SOUTH DAYTONA agree to indemnify and hold each other harmless from the negligent acts or omissions of themselves, their officers, employees, or agents; provided, however, that neither party hereto waives its respective sovereign immunity, nor the dollar limits on liability associated therewith pursuant to Fla. Stat. 768.28.

SECTION 19. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained herein are not materially prejudiced and if the intentions of the Parties can continue to be affected.

SECTION 20. APPLICABLE LAW AND VENUE. This Agreement shall be governed by, construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the Circuit Court in and for Volusia County, Florida.

SECTION 21. EXECUTION IN COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 22. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, discussions, or representations, either oral or written, between the Parties and made with respect to the matters contained herein, and there are no warranties, representations, or other agreements among the Parties in connection with

the subject matter hereof, except as set forth herein. The Parties agree that they have each participated in the drafting of this Agreement, and that the rules with respect to construing ambiguities against the drafter of a contract shall not apply in any action or litigation regarding this Agreement.

IN WITNESS WHEREOF, DAYTONA BEACH and SOUTH DAYTONA have caused this Agreement to be executed and these presents to be signed by their respective officers' thereunto duly authorized as of the date indicated below.

The City of Daytona Beach

City of South Daytona

By _____
Derrick L. Henry, Mayor

By: _____
William C. Hall, Mayor

Date: _____

Date: _____

Attest: _____
Letitia LaMagna, City Clerk

By: _____
James L. Gillis, Jr. City
Manager/City Clerk

Approved as to legal form:

Approved as to legal form

By: _____
Robert Jagger, City Attorney

By: _____
Wade Vose, City Attorney

Exhibit List:

Exhibit A – Wholesale Meter Locations

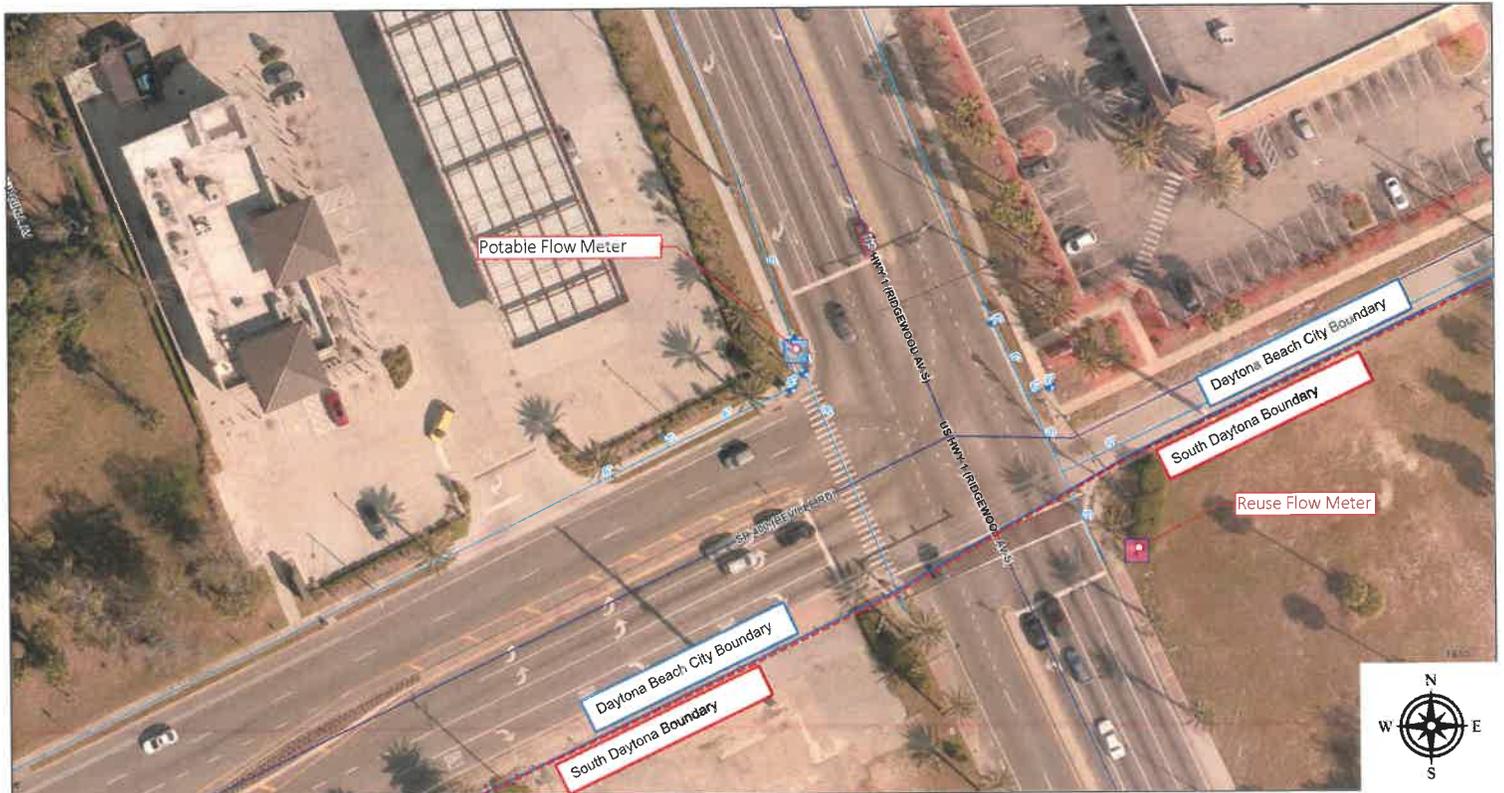
Exhibit B – South Daytona Service Area

Exhibit A

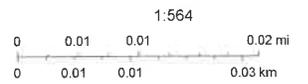
SOUTH DAYTONA METERED CONNECTION POINTS

LOCATION	GPS COORDINATES	CONNECTING UTILITY	TYPE	FUNCTION	SIZE	METER TYPE
US1 and Beville Rd	29.183856, -81.008716	City of South Daytona	Potable	Wholesale	6"	Turbo Meter
Beville and Margina	29.178348, -81.021802	City of South Daytona	Potable	Wholesale	6"	Turbo Meter
Carriage Cove Way (Entrance)	29.170587, -81.026210	City of South Daytona	Potable	Wholesale	10"	Turbo Meter
2090 S Nova Rd	29.162601, -81.023516	City of South Daytona	Potable	Wholesale	10"	Turbo Meter
1690 S Palmetto Ave	29.180970, -81.005226	City of South Daytona	Sewer	Wholesale	10"	Mag flow meter
1637 Lockhart St	29.176592, -81.016459	City of South Daytona	Sewer	Wholesale	8"	Mag flow meter
2090 South Nova Rd	29.162573, -81.023490	City of South Daytona	Sewer	Wholesale	6"	Mag flow meter
S Ridgewood Ave and Beville Rd	29.183619, -81.008259	City of South Daytona	Reuse	Wholesale	6"	Turbo Meter

US1 and Beville Rd- South Daytona- 6" Potable and 6" Reuse Flow Meter

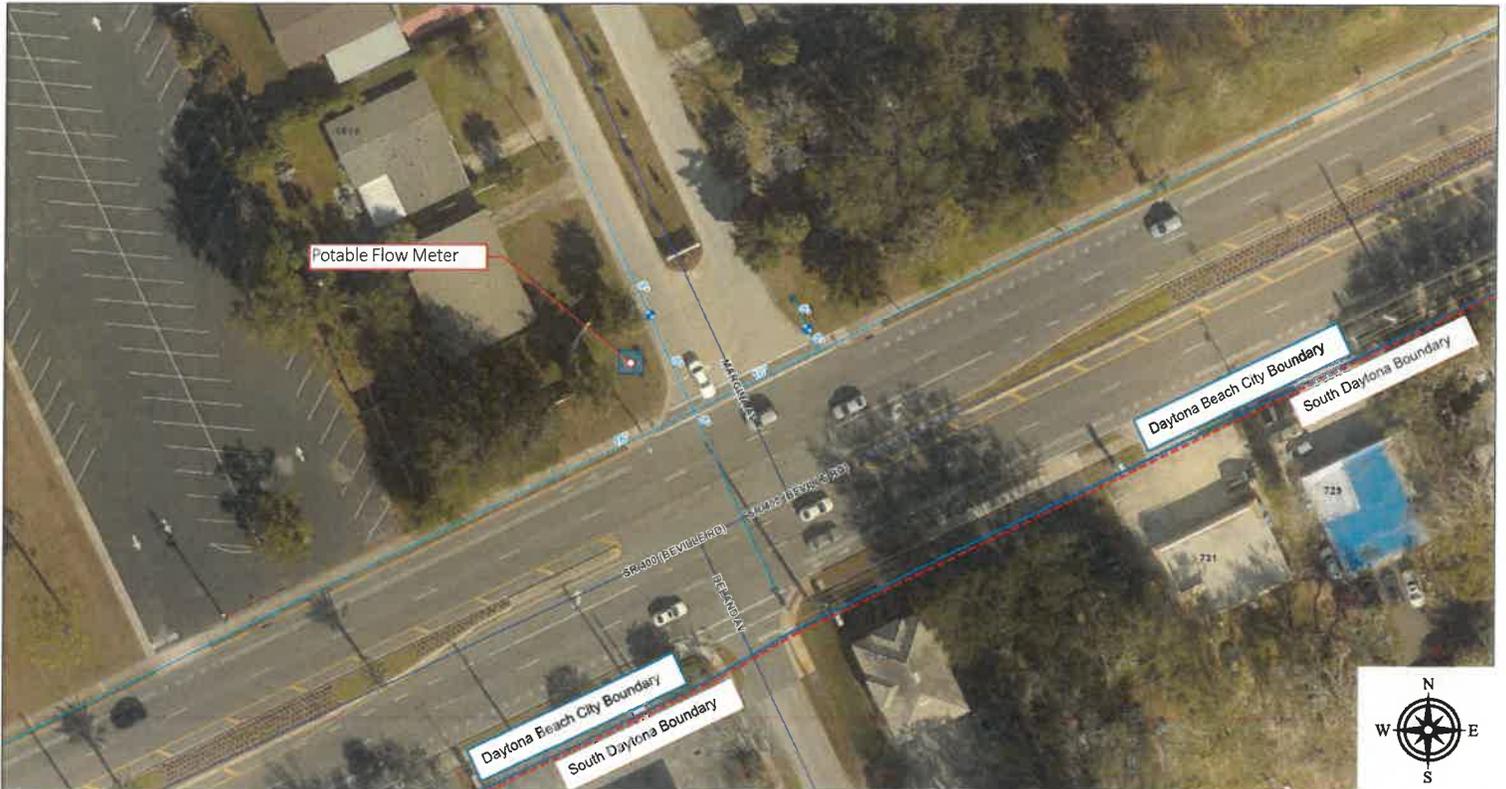


- Points
- Potable
 - Reuse
 - + Potable - Water Valves
 - Potable - Watermains
 - Centerline Street Name
 - Daytona Beach City Boundary
 - South Daytona Boundary

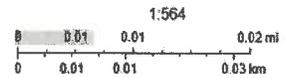


Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Beville Rd and Margina Av - South Daytona- 6" Potable Flow Meter



- Meter points**
-  Potable - Water Valves
 -  Potable - Watermains
 -  Centerline Street Name
 -  Daytona Beach City Boundary
 -  South Daytona Boundary



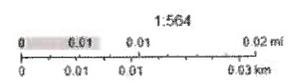
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

City of Daytona Beach
State of Florida. Maxx: Microsoft

Carriage Cove Way- South Daytona- 10" Potable Flow meter



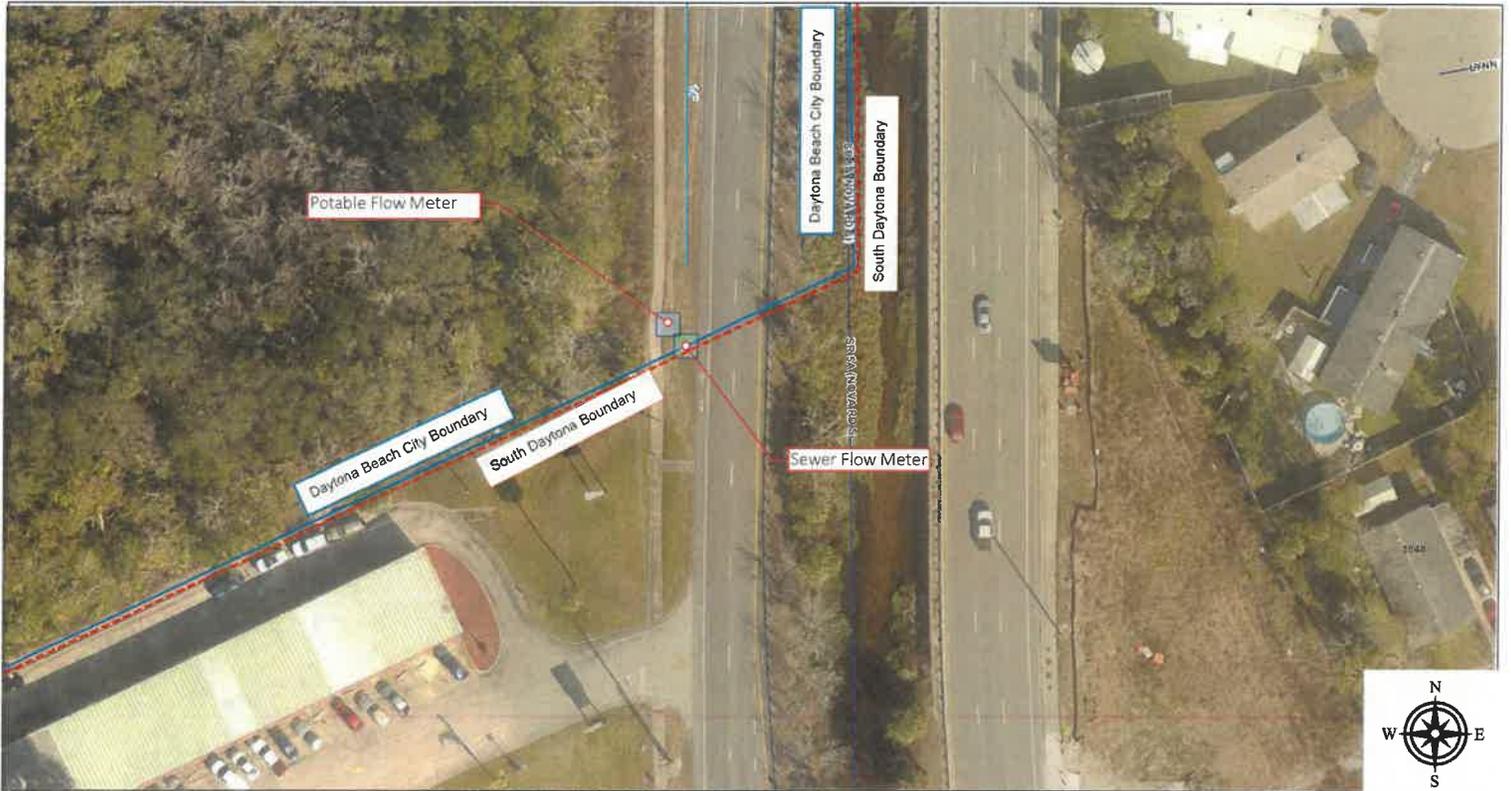
- Meter points**
- + Potable - Water Valves
 - Centerline Street Name
 - Potable
 - Potable - Watermains
 - Daytona Beach City Boundary
 - South Daytona Boundary



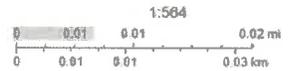
Source: Esri, Mapbox, [DeLorme](#), Earthstar Geographics, CNES/Airbus DS, USDA, USGS, [AeroGRID](#), IGN, and the GIS User Community

City of Daytona Beach
State of Florida, Mapbox (Microsat)

2090 S Nova Rd - South Daytona- 10" Potable and 6" Sanitary Sewer Flow Meter



- Meter points**
- Potable
 - Sewer
 - ◆ Potable - Water Valves
 - Potable - Watermains
 - Centerline Street Name
 - Daytona Beach City Boundary
 - South Daytona Boundary



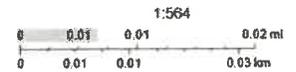
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

City of Daytona Beach
 State of Florida
 Maxar - Microsoft

1637 Lockhart St- South Daytona – 10" Sanitary Sewer Flow Meter



- Meter points**
- Potable
 - Sewer
 - Potable - Water Valves
 - Potable - Watermains
 - Daytona Beach City Boundary
 - South Daytona Boundary
 - Centerline Street Name



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

City of Daytona Beach
State of Florida, Maxar [Source:R]

Exhibit B to be provided by South Daytona