

City of DeBary
SPECIAL CITY COUNCIL MEETING MINUTES
February 20, 2019 – 6:30 PM
City Council Chambers
16 Colomba Road, DeBary, Florida 32713

- I. CALL TO ORDER:** The meeting was called to order at 6:30 p.m.
1. Invocation
 2. Flag Salute

- II. ROLL CALL:** Mayor Chasez, Vice Mayor Benfield, Council Members Stevenson and Butlien are present. Council Member Bacon arrived at 6:35 p.m.

Others present: Alan Williamson, Public Works Director acting as City Manager; Kurt Ardaman, City Attorney; Dan Langley, City Attorney; Elizabeth Bauer, Finance Director; Matt Boerger, Growth Management Director; John Fletcher; Parks & Recreation Director; Eric Frankton, IT Director; David Hamstra, Stormwater Engineer; Kevin Hare, Construction Services Manager; Roger VanAuker, TOD/Economic Development Director; Steve Wood, Building Official; Laura Dodd, Planner; and Annette Hatch, City Clerk.

III. PUBLIC HEARINGS:

Mayor Chasez reviewed the quasi-judicial procedures for the Public Hearing item. Each Council Member disclosed the type and content of communications on the subject matter. Dan Langley, City Attorney, read Ordinance No. 02-19 into the record. All witnesses were sworn in by the City Clerk.

1. Request to approve a major amendment to the Progress Industry Industrial Planned Unit Development (IPUD).

Richard Zwolack, Global Engineering Associates and Justin LaRoche, Duke Energy presented for the project. D.J. Silverberg, GAI; Van Conoley; Morton Culligan; John Drake; Oliver Honan; and Eugene Kowalski addressed the Council. Mr. Kowalski presented copies of letters to Council, copies of which are attached to these minutes.

Motion by Council Member Butlien to approve the first reading of Ordinance No. 02-19. Seconded by Vice-Mayor Benfield. Motion passed 4-1. Council Member Bacon opposed.

IV. GROWTH MANAGEMENT AND DEVELOPMENT REVIEW:

1. Final plat approval for Springview Woods Phase 2; approval of Lots 50-98.

Motion by Council Member Bacon to approve the final plat for Springview Woods Phase

2. Seconded by Vice-Mayor Benfield. Motion passed unanimously.

Mayor Chasez called a recess at 8:02 p.m. The meeting was reconvened at 8:12 p.m.

V. OLD BUSINESS: None

VI. NEW BUSINESS:

1. City Manager Contract Negotiations/Approval

Kurt Ardaman, City Attorney, reviewed the contract and distributed a copy to Council, a copy of which is attached to these minutes.

Motion by Council Member Butlien to approve the City Manager contract with Carmen Rosamonda. Seconded by Council Member Bacon. Motion passed unanimously.

2. Staff is requesting City Council to execute the 4th of July Agreement between the City of DeBary and Citizen Event Organizers, Inc. (CEO) to assist the City in providing a quality event for the 4th of July holiday.

Motion by Council Member Butlien to approve the execution of the agreement. Seconded by Council Member Stevenson. Motion passed unanimously.

3. Construction Services Manager requesting approval of a proposal from Armor, Hill and Company, Inc., to provide a pre-demolition asbestos survey for six (6) former residences that have been acquired by the City.

Motion by Council Member Bacon to approve the proposal. Seconded by Council Member Stevenson. Motion passed unanimously.

4. Approval of final payment due to Mercer Group.

Motion by Council Member Butlien to approval the final payment to the Mercer Group in the amount of \$5,167. Seconded by Council Member Bacon. Motion passed unanimously.

VII. COUNCIL MEMBER/STAFF REPORTS

1. Board/Committee Appointments
2. Member Reports/Communications
 - A. Mayor and Council Members
 - B. City Manager
 - C. City Attorney

VIII. DATE OF UPCOMING MEETING AND/OR WORKSHOP

1. Regular City Council Meeting March 6, 2019 – 6:30 p.m.

IX. ADJOURNMENT: The meeting was adjourned at 9:03 p.m.

**CITY COUNCIL
CITY OF DEBARY, FLORIDA**

Karen Chasez, Mayor

ATTEST:

Annette Hatch, City Clerk

February 9, 2019
St Johns River Acres Community
DeBary, Florida 32713

Ms. Lynn Good CEO,
400 S Tryon St.
Charlotte, NC 28202

Subject: Duke Energy Solar Power Plant, Storm Water Damage, & Life Safety

Ms. Good,

We have been told that Duke Energy would like to be a good neighbor. Our community has met with Duke Energy staff including but not limited to Ms. Alicia Dasch, Mr. Justin La Roach, Ms. Amy Dieolf and Consulting Engineering Mr. Thomas Young PE, on October 17, 2018 and February 7, 2019. In addition numerous texts, emails and phone calls concerning the Duke Energy (Storm Water Damage & Life Safety) water flow from Duke Energy uplands DeBary Proposed Solar Power Plant, to no avail.

Duke Energy's storm water damage causes massive storm water damage to our roadway, our only access to our homes and ultimately is a severe life safety issue. Duke Energy's Proposed Solar Panel Plant uplands project will create storm water from Duke Energy causing a need for drainage infrastructure, such as storm pipes, under our only access road way or severe damage will continue to occur!

Mr. McLemore, City Manager, made it clear that the City of DeBary cannot help our community by virtue that our community lives on Dutchmans Bend Road being private roads owned by Duke Energy, a granted easement.

We prefer not to seek legal representation to request court action to ask Duke Energy to prevent any further Life Safety Issues to our community and from Duke Energy's proposed Solar Power Plant up lands storm water damage to our only access road to our homes.

Ms. Good can you please help us?
Does Duke Energy's Good Neighbor policy include flooding their neighbors causing life safety issues?

Respectfully Submitted,
St Johns River Acres Resident
Eugene Kowalski, 484 Detroit Terr, DeBary, Fl 32713
CC: Mr. Oliver Honan, Ms. Sharon Molle, Mr. John

February 13, 2019
St Johns River Acres Community
DeBary, Florida 32713

Mr. Justin LaRoche,
400 S Tryon St.
Charlotte, NC 28202

Subject: Duke Energy Solar Power Plant, Storm Water Damage, & Life Safety.

Mr. LaRoche,

First, please allow me to apologize for spelling your name incorrectly in prior correspondence.

I am writing in regards to our telephone conversation of February 12, 2019 discussing the Duke Energy Good Neighbor policy with respect to the Life Safety storm water damage issue to Dutchmansbend Road, originating from the Solar Panel plant site. We understand that Duke Energy is prepared to do the minimum legally required to prevent further storm water issues with further development.

Mr. LaRoche you indicated I am playing games by copying Ms. Good, CEO on our correspondence. Let me assure you, we are not playing any games, this is a serious Life Safety issue for the residents of St Johns River Acres Community. Under storm conditions we St Johns River Acres Community are being deluged by Duke Energy's storm water making emergency services impossible. This is in no way a game as you indicated. We have been communicating with all owners of this property for years to get some resolution to the water management issue on this road utilized by all parties but currently being maintained and rebuilt post storms, only by the community residents.

The St Johns River Acres Community is interested in having the life safety threat corrected by Duke Energy by installing under road storm water pipes to handle the damaging storm water flowing off the Duke Energy Property.

Mr. LaRoche, we The St Johns River Acres Community are interested in a resolution to our Life Safety storm water issue originating from the Duke Energy Solar Plant Property. Does Duke Energy's Good Neighbor policy condone flooding their neighbors causing serious life safety issues?

Respectfully Submitted,
St Johns River Acres Resident
Eugene Kowalski, 484 Detroit Terr, DeBary, FL 32713
CC: Mr. Oliver Honan, Ms. Sharon Molle, Mr. John Drake

February 11, 2019
St Johns River Acres Community
DeBary, Florida 32713

Mr. Justin La Roche,
400 S Tryon St.
Charlotte, NC 28202

Subject: Duke Energy Solar Power Plant, Storm Water Damage, & Life Safety,

Mr. La Roche,

I am writing in regards to the telephone conversation with Duke Energy's Mr. La Roach of February 10, 2019 discussing the Duke Energy Good Neighbor policy with respect to the Life Safety storm water damage issue to Dutchmansbend Road, originating from the Solar Panel plant site. Mr. La Roach has promised to seek available assistance for life safety road improvements. The Dutchmansbend Road easement allows us to access our home by crossing Duke Energy Property. Duke Energy has retained all rights to improve or relocate Dutchmansbend Road however the residents are left to their own resources for road repairs required after every storm to maintain access. We are at Duke Energy mercy every time a storm passes through our area.

Pursuant to your request the Volusia County recording information is:
Easement Agreement is dated January 4, 1974, 18680021,
Legal Description dated March 14, 1973, number 18680022,
Book 1329, page 242.

The St Johns River Acres Community is interested in having the life safety threat corrected by Duke Energy installing under road storm water pipes to handle the damaging storm water flowing off the Duke Energy Solar Plant Project Property.

Mr. La Roche, we The St Johns River Acres Community are interested in a resolution to our Life Safety storm water issue originating from the Duke Energy Solar Plant Property. Does Duke Energy's Good Neighbor policy condone flooding their neighbors causing life safety issues?

Respectfully Submitted,
St Johns River Acres Resident
Eugene Kowalski, 484 Detroit Terr, DeBary, FL 32713
CC: Mr. Oliver Honan, Ms. Sharon Molle, Mr. John Drake

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into on this _____ day of _____, 2019, by and between the City of DeBary, a Florida municipal corporation (hereinafter referred to as the “City”), and CARMEN ROSAMONDA, an individual (hereinafter referred to as “City Manager” or “Employee”), both of whom understand and agree as follows:

WHEREAS, the CITY desires to employ CARMEN ROSAMONDA as City Manager of the City of DeBary, Florida, as provided for in Article VI, Chapter 6 of the City Charter of the City of DeBary, Florida; and

WHEREAS, the CITY, through the City Council, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, CARMEN ROSAMONDA desires to accept employment as City Manager of the City of DeBary, Florida under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

ARTICLE 1

Appointment of City Manager

The CITY hereby appoints CARMEN ROSAMONDA as City Manager, and CARMEN ROSAMONDA hereby accepts such appointment, subject to the terms and conditions of this Agreement.

ARTICLE 2

Term

Employee’s employment with the City shall commence upon April 1, 2019 (the “Commencement Date”), until terminated by CITY or City Manager as provided in Articles 9 of this Agreement. During the period following the Effective Date of this Agreement and up to the Commencement Date (the “Preparation Period”), the City Council directs and authorizes the current interim City Manager, Ron McLemore, to coordinate with Employee and grant him reasonable access to City facilities, for the purpose of preparing Employee to assume the position of City Manager. During the Preparation Period, Employee shall not constitute an employee of the City, shall not be entitled to any compensation or benefits, and shall at all times be subject to direction by the current City Manager while on City property.

ARTICLE 3

Duties & Obligations

Section 3.1. The City hereby employs, effective on the Commencement Date, Employee as City Manager of said CITY to perform all functions and duties of the City Manager as specified in the City's Charter, ordinances, regulations, resolutions, this Agreement, and any and all other legally permissible and proper duties and functions as the City Council shall from time to time assign. Employee agrees to perform the aforesaid functions and duties and all other duties of the City Manager in accordance with State and Federal law.

Section 3.2. Powers and Duties: In accordance with Section 6.03 of the City Charter, the powers, duties, and responsibilities of City Manager in the performance of City Manager duties under this Agreement shall be as follows and/or as provided by the City Council:

- (a) To hire or fill existing positions and, when the City Manager deems it necessary for the good of the City service, suspend or remove City employees, except as otherwise provided by law or the City Charter.
- (b) To direct and supervise the administration of all employees, departments, and agencies of the City, except as otherwise provided by the City Charter or by law.
- (c) To attend all Council meetings unless excused by the Council, and shall have the right to take part in discussion but may not vote.
- (d) To ensure that all laws, provisions of the City Charter, and acts of the Council, subject to enforcement by the City Manager or by officers subject to the City Manager's direction and supervision, are faithfully executed.
- (e) To submit to the Council and make available to the public a complete report on the administrative activities of the City as of the end of each fiscal year.
- (f) To make such other reports as the Council may require concerning the operation of City departments, offices, and agencies subject to the City Manager's direction and supervision.
- (g) To keep the Council fully advised as to the condition and future needs of the City and to make written recommendations to the Council concerning the affairs of the City.
- (h) When needed, to perform the duties of City Clerk in addition to the duties of City Manager during any period of time so appointed by the Council.
- (i) To perform such other duties as are specified in this Charter or as may from time to time be assigned by the Council.

Section 3.3. Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote the City's

interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise (“Outside Employment”), which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to City. Additionally, Employee shall not undertake any Outside Employment. ~~except with the consent of the City Council.~~

Section 3.4. Employee shall at all times under this Agreement reside within the boundaries of the City, and failure to do so shall constitute a breach of this Agreement.

Section 3.5 Adherence and Accountability to the ICMA Code of Ethics. The CITY demands and the City Manager agrees to adhere to the ICMA Code of Ethics, a copy of which is attached to this Agreement and incorporated by reference. Any violation of said Code of Ethics shall constitute a breach of this Agreement.

ARTICLE 4 **Compensation & Benefits**

Section 4.1 Annual Base Salary: The CITY agrees to pay the City Manager for services rendered an annual base salary of \$120,000.00 payable in installments every two weeks in installments similar to other employees employed by the CITY.

- a) Upon receiving the ICMA Credentialed designation, the CITY shall increase the City Manager’s current annual base salary at the time of the designation by \$10,000.00. The effective date of this salary increase shall be the date the City Manager receives said designation and notifies the City Council in writing.
- b) After written notification by Employee to the City Council that Employee has received the ICMA Credentialed designation, any subsequent cost-of-living increases will be provided at the same time to the City Manager consistent with those provided to other CITY employees generally.
- c) The City Council, at any time, may in its sole discretion grant a superior performance salary increase or bonus recognizing the outstanding performance and achievement by the City Manager.

Section 4.2 Benefits: Unless otherwise provided in this Agreement, Employee shall be entitled to the same benefits as the other City employees.

Section 4.3 Life Insurance. The CITY shall pay for a life insurance policy for Employee in the amount of two times Employee’s annual base salary. Employee shall have the right to name the beneficiary of the life insurance policy.

Section 4.4 Automobile. City Manager’s duties require that he shall provide, at his expense, the exclusive and unrestricted use of an automobile at all times of his employment with the City. To help defray the expense of operating said automobile, the CITY shall pay the sum of \$500.00 per month to the City Manager as an automobile allowance.

In addition, for travel outside Volusia County incurred in the regular course of employment, the City Manager shall receive mileage at the rate prescribed by the Internal Revenue Service or by CITY policy, whichever is less.

The City Manager, at his own expense, shall be responsible for paying for adequate liability, property damage and comprehensive insurance coverage and for the purchase, operation, maintenance, repair and regular replacement of said automobile, whether used for personal or City purposes. Employee shall obtain, keep, and maintain during the course of employment with the City an automobile liability insurance policy with \$250,000/\$500,000/\$100,000 minimum coverage, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts arising out of the operation of the automobile. Employee shall cause such policy to be endorsed to cover his use of the automobile for City purposes.

Section 4.5 The parties acknowledge and agree that the City Manager is an exempt position under the Federal Fair Labor Standards Act, and shall not be entitled to any overtime pay.

ARTICLE 5

Personal Leave, Work Hours, and Holidays

Section 5.1 Paid Time Off (PTO): The CITY shall allocate to the City Manager 2 days per month for paid time off. The City Manager shall receive the first PTO allotment, in the amount of 24 total days, on the Commencement Date (April 1, 2019) and every anniversary date thereafter. There will be no limit of accrual of Paid Time Off (PTO).

Upon termination of City Manager's employment with or without cause, the City Manager shall be paid for any unused PTO at the City Manager's current annual base salary at the time of termination, in accordance with Article 9 of this Agreement and subject to the following limitations. With respect to the 24 days of PTO accruing at the beginning of each year, upon termination the City Manager's employment, the City Manager shall be entitled to payment for only the pro-rated portion of such 24 days of unused PTO corresponding to the months that City Manager has worked since the last anniversary of the Commencement Date and prior to the date of termination. In no event shall City Manager be paid for more than 60 total days of unused PTO.

Section 5.2 Work Hours & Availability: It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the CITY, and to that end, City Manager shall be allowed to establish an appropriate and flexible work schedule based on City needs. However, the City Manager shall dedicate a minimum of 40 hours per week to the City's business where he is present at City Hall except where it is necessary or advisable for the City Manager to be outside of the office on City business or in the performance of his duties as City Manager. Further, notwithstanding the amount of PTO to which the City Manager is entitled, City Manager shall not be absent from work at any time for more than two (2) consecutive weeks unless medically required. In all events, the City Manager shall be available to the Mayor, City Council, and City Council members twenty-four (24) hours a day, seven (7) days a week.

ARTICLE 6
Professional Association and Development

Section 6.1 Association Memberships, Dues, Subscriptions, and Professional Development. The CITY agrees to budget and pay for professional memberships, dues and subscriptions in national, state and local associations which includes but is not limited to International City/County Management Association (“ICMA”), Florida City and County Management Associations (“FLCMA”) and one civic organization necessary and desirable for the advancement and benefit of the CITY. Based on City Council approved budget, at the discretion of the CITY, the CITY shall pay the tuition, registration fees, travel, and subsistence expenses of City Manager for professional and official travel, short courses, seminars, meetings and occasions adequate to continue the professional development of City Manager adequate for the City Manager to pursue necessary official and other functions for the City. It is the desire of the City Council that the City Manager become a member and be credentialed by the ICMA. Subject to budgeting, the CITY agrees to pay for all costs associated with the membership and credentialing program, including any associated travel expense and attendance at the annual ICMA conference. The City Manager agrees to become a member and pursue and achieve the ICMA Credentials as quickly as the program allows.

ARTICLE 7
Performance Evaluation

Section 7.1 The City Manager and City Council recognize open and honest; two-way communication is one key to the success of any organization. This communication will occur often, providing feedback on the City Manager’s performance.

Section 7.2 At the City Council’s discretion, a formal evaluation of the City Manager’s performance shall occur in a format determined by the City Council.

ARTICLE 8
General Business Expense

Section 8.1 Office Equipment. The CITY shall provide the City Manager with the use of desktop and laptop computers with appropriate software, a cellular telephone (Smartphone) and such other equipment as may be necessary or appropriate for the City Manager to make himself available and perform his duties and to be able to maintain communication with the City Council, City staff and City residents at all times, as approved in the CITY’s budget.

ARTICLE 9
Termination and Severance Pay

Section 9.1 The City Manager shall serve at the pleasure of the City Council, and the City Council may terminate this Agreement and/or the City Manager’s employment at any time, for any reason or no reason. The City Manager shall be an at-will employee during his employment with the City.

Section 9.2 Termination without Cause. Should a majority of the City Council vote to terminate the employment of the City Manager “without cause”, then within ten (10) business days following the written termination, the CITY shall pay and authorizes the City Financial Director to issue any funds due directly to the City Manager on any accrued and unpaid salary and benefits earned including unused Paid Time Off subject to the limitations in Section 5.1.

Section 9.3 Within forty-five (45) calendar days of termination of employment “without cause”, the CITY shall pay and authorizes the City Financial Director to issue funds directly to the City Manager a lump sum severance pay equal to twenty (20) weeks salary in compliance with Section 215.425(4)(a), Florida Statutes to be paid at the City Manager’s rate of pay on the date of separation from employment.

The CITY shall pay and authorize City Finance Director to pay for City Manager’s health, life and disability benefit premiums as provided in this Agreement for the twenty (20) week period from the date of termination of employment.

The City Manager shall not be entitled to any of the severance pay described under this Section 9.3 or otherwise if he is terminated for misconduct as defined in Section 443.036(29), Florida Statutes, for violation of any ethical rule or regulation promulgated by the ICMA, for commission of any act described in Section 9.4 of this Agreement, or for violation of any material provision of this Agreement.

Further, the City Manager shall not be entitled to, and no severance pay shall be made, unless and until a mutually agreeable severance/separation agreement including a general release from the City Manager to the City for all matters is executed and delivered between the parties.

Section 9.4 Termination with Cause. In the event the City Manager is terminated for just cause, the City shall have no obligation to pay the amounts outlined in Section 9.3 of this Agreement. For purposes of this Agreement, just cause is defined in Section 215.425, Florida Statutes, in addition to any of the following:

- a) Misfeasance, malfeasance and or nonfeasance in the performance of his City duties and responsibilities.
- b) Conviction or plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld.
- c) Neglect of duty, including the inability and unwillingness to properly discharge the responsibilities of office.
- d) Violation of any substantive City policy, rule or regulation, which would subject any other City employee to termination.
- e) The commission of any fraudulent act against the interest of the City.

- f) The commission of any act which involves moral turpitude, or which causes the City disrepute.
- g) Violation of the International City/County Management Association Code of Ethics or being found to have committed an ethics violation by the Florida Commission of Ethics.
- h) Any other act of a similar nature of the same or greater seriousness.
- i) Breach or violation of any material provision of this Agreement.

Section 9.5 In the event the City terminates the employment of the City Manager and the City Council vote is less than unanimous, the City Manager may, within seven days of the dismissal motion by Council, submit to the Mayor a written request for reconsideration. Any action taken by the Council at the reconsideration hearing shall be final.

Section 9.6 In the event the City Council, at any time during the City Manager's employment, reduces the salary or other benefits of the City Manager, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time City employees, or in the event the City refuses to comply with any other material provision of this Agreement benefiting the City Manager, the City Manager shall notify the City Council in writing of the alleged violation. The City Council shall have forty-five (45) days from such notice within which to cure the violation; otherwise, the City Manager may at his option elect to terminate his employment as a termination "without cause" as of the date of the City's receipt of written notice of such alleged violation, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual salary and benefit level in effect on the date of the alleged violation.

Section 9.7 The City Manager may terminate his employment under this Agreement at any time by delivering to the City Council a written notice of termination not later than ninety (90) days prior to the effective date of the termination. If the City Manager terminates his employment under this Agreement, the City Manager thereby waives and relinquishes all of this rights under Section 9.3. If the City Manager voluntarily resigns his employment, the City shall pay to the City Manager all accrued compensation due to the City Manager up to the City Manager's final day of employment including any accrued Paid Time Off, as provided in this Agreement. The City shall have no further financial obligation to City Manager pursuant to this Agreement.

ARTICLE 10

Disability or Death

Section 10.1 Disability. If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) consecutive weeks beyond any accrued leave, the City shall have the option to terminate the City Manager's employment under this Agreement, subject to the severance pay provisions outline in Section 9.2 and Section 9.3 of this Agreement.

Section 10.2 Death. Upon the City Manager's death, the City's obligations under this Agreement shall terminate except for the following:

- a) Transfer of ownership of retirement funds, if any to his designated beneficiaries.
- b) Payment of accrued leave balances and any accrued unpaid salary in accordance with this Agreement.
- c) Any personal items belonging to the City Manager be delivered to his designed beneficiaries.

ARTICLE 11 **Legal Defense**

Section 11.1 In the event that the City Manager is subject to a lawsuit, criminal or civil action, investigation, ethics complaint, administrative proceedings, or other proceedings necessitating legal representation, the City shall pay the reasonable costs of the City Manager's legal defense with an attorney mutually agreeable to the parties, except that the City shall not be required to pay such costs if the City Council determines that the matter arises from an action or omission by City Manager that was outside the scope of his employment, was in bad faith, was with malicious purpose, or was in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In the event that the City provides payment for the City Manager's legal defense or any portion thereof, and it is later determined that the matter arises from an action or omission of the City Manager that was outside the scope of his employment, was in bad faith, was with malicious purpose, or was in a manner exhibiting wanton and willful disregard of human rights, safety, or property, then the City shall be entitled to reimbursement from City Manager for all such costs paid by the City.

Section 11.2 Section 11.1 shall extend beyond the termination of employment and the expiration and termination of this Agreement to provide protection for any such acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

ARTICLE 12 **Attorney's Fees**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of the parties in relation thereto, each party in such litigation shall bear their own attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

ARTICLE 13 **Bonding**

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance or law.

ARTICLE 14
General Provisions

Section 14.1 Other Terms. The City, only upon agreement with City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of DeBary Charter, local ordinances or any other law.

Section 14.2 Integration. This Agreement sets forth and establishes the entire understanding between the City and the City Manager relating to the employment of the City Manager by the City. Any prior discussions or representations by or between the City and City Manager are merged into and rendered null and void by this Agreement. The City and City Manager by mutual written Agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made part of this Agreement.

Section 14.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of City Manager and to the benefit of the City under the current and successor City Councils.

Section 14.4 Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both the City and City Manager subsequent to the expungement or judicial modification of the invalid provision.

Section 14.5 Precedence. In the event of any conflict between the terms, conditions, and provisions of this Agreement and the provisions of the City's ordinances or charter or any law or regulation existing as of the effective date of this Agreement (the "Law"), then unless otherwise prohibited by law, the provisions of the Law shall take precedence during the term of this Agreement.

Section 14.6 Authorization to Disburse Funds. In the event of termination of this Agreement or the Employee's employment with the City, the City Finance Administrator or Finance Director is hereby authorized to disburse funds needed to fulfill all provisions of this Agreement including severance provisions, consistent with the terms and provisions of this Agreement.

Section 14.7. Florida law shall govern this Agreement and any litigation that may arise from this Agreement shall be filed and litigated in Volusia County, Florida.

Section 14.8 The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term, and provision of this

Agreement shall be construed simply according to its fair meaning. The Employee and the City have had the opportunity to obtain independent and full legal review of this Agreement.

Section 14.9 This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

Section 14.10 This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only an Agreement in writing signed by the parties.

Section 14.11 The Effective Date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

Section 14.12 This Agreement is a contract for personal services between the City and City Manager. This Agreement may not be assigned by either party without the express written consent of the other party.

Section 14.13 Notice. Any notice or demand to be given or that may be given under this Agreement shall be in writing and shall be (i) delivered by hand, or (ii) delivered through United States mail, postage prepaid, certified, return receipt requested and addressed to the parties at the address provided below. Any notice or demand that may be given hereunder shall be deemed complete (i) one (1) day after mailing of such notice or demand in the United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) upon hand-delivery to the appropriate address as herein provided or in person. Any party hereto may change said address by notice in writing to the other parties in the manner herein provided.

CITY:

DeBary City Council
cc. City Attorney
16 Colomba Rd., DeBary, FL 32713
(Each Council Member to be given
Notice)

With a copy to the City ~~Attorney~~Attorney)

EMPLOYEE:

Carmen Rosamonda
21 Rosedown Blvd., DeBary, FL 32713

Article 15
Execution

Executed by the CITY this _____ day of _____, 2019.

ATTEST:

CITY OF DeBARY

City Clerk

Mayor Karen Chasez

WITNESSES:

CITY MANAGER

Carmen Rosamonda



ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2018. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2018.

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Tenet 2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

Tenet 3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service

to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Tenet 4. Serve the best interests of the people.

GUIDELINES

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, program, and services.

Tenet 5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

GUIDELINE

Conflicting Roles. Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

Tenet 6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

Tenet 7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

GUIDELINES

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

Tenet 8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

GUIDELINES

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

Tenet 9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

Tenet 10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

GUIDELINE

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

Tenet 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

GUIDELINE

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

Tenet 12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or

not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.