CITY COUNCIL MEETING
May 18, 2022 at 6:30 PM
City Council Chambers, 16 Colomba Rd.
DeBary, Florida 32713

AGENDA

CALL TO ORDER
  Invocation
  Flag Salute

ROLL CALL

PUBLIC PARTICIPATION: For any items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

DELETIONS OR AMENDMENTS TO THE AGENDA (City Charter Sec. 4.11)

GROWTH MANAGEMENT AND DEVELOPMENT
  1. The Applicant, Storch Law Firm (Joey Posey), on behalf of Joel White, requests to extend their Final Site Plan Development Order for the White Sign project.

NEW BUSINESS
  2. City Manager is requesting City Council accept and approve the Public Pedestrian & Bicycle Path Easement from Meadowlea Improvement Association, Inc.
  3. The City Manager and the Parks and Recreation Department are requesting City Council approve the attached agreements to begin the process of transitioning ownership of the Gateway Center for the Arts (GCA) building to the City.
  4. City staff requests City Council approve the City of DeBary Pay Plan, establishing a compensation structure to be implemented effective June 1, 2022, and to approve the resulting staff wage adjustments.
  5. City Manager is requesting City Council discuss and provide guidance on a proposed traffic and pedestrian safety ordinance.

COUNCIL MEMBER REPORTS / COMMUNICATIONS
  Member Reports/ Communications
    A. Mayor and Council Members
    B. City Manager
    C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP
  City Council Meeting June 1, 2022

ADJOURN
If any person decides to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.
REQUEST

The Applicant, Storch Law Firm (Joey Posey), on behalf of Joel White, requests to extend their Final Site Plan Development Order for the White Sign project.

PURPOSE

The Applicant has not begun construction yet and needs to extend their Final Site Plan Development Order another year in order to keep their project approvals active and avoid having to start the development entitlement process over again.

CONSIDERATIONS

On February 11th, 2021, a Final Site Plan (Engineering Plans) Development Order was issued for the White Sign project. If construction has not commenced or is not continuing in good faith to conclusion during this valid period, the Development Order shall expire, unless extended by the DeBary City Council. During the period of 90 days before and 90 days after the expiration of this Development Order, the developer may request an extension from the City Council. The applicant has submitted their application within the 90-day expiration window and is therefore eligible to request that City Council extend their Development Order again for a period of 360 days.

The project site is on 4.976 acres of land and located at 919 Old Deland Highway. The project consists of a 40’ tall office and light manufacturing facility that is approximately 45,000 square feet in size. Please see the attached final site plan and construction plans for more details.

COST/FUNDING

N/A

RECOMMENDATION

Staff recommends that the City Council approve the extension of the White Sign Final Site Plan Development Order for an additional 360 days.

IMPLEMENTATION

The applicant’s next step is to set a pre-construction with City Staff and then begin construction.
ATTACHMENTS

- Site Plan
- Development Order (February 11\textsuperscript{th}, 2021)
February 11th, 2021

Joel White
Filam 4 United, LLC
907 South Charles Richard Beall Boulevard, Suite A
DeBary, FL, 32713
Jwhite@whitesigncompany.com

Re: White Sign, Case #19-02-FSP-WhiteSign;
   Final Site Plan Development Order

Dear Mr. White:

This letter is the Final Site Plan Development Order for the above referenced project. This development order authorizes commencement of construction after a required pre-construction meeting, in accordance with the approved construction plans dated January 15th, 2021. Pursuant to the following findings, the City of DeBary Development Review Committee approved the final site plan providing for the following conditions of approval:

1) A pre-construction meeting with the City of DeBary must be held prior to the commencement of construction.

2) Prior to the pre-construction meeting, please submit a project construction schedule.

3) Please submit a certified Engineers Opinion of Cost for the project, to be verified by the City Engineer prior to setting up the pre-construction meeting.

4) Please bring payment, by check or money order, to the pre-construction meeting using the following formula to establish the development permit and inspection fee (2.0% of the first $125,000 of improvements; 1.0% of over $125,000 up to $500,000; 0.5% over $500,000).

5) In accordance with Section 122-59 county ordinances, if applicable, you must enter into a utility service agreement (USA) for sewer service before county staff may endorse the FDEP water and wastewater permit applications if applicable.

6) Coordinate with the Volusia County Water and Utility Services Group (Scott Mays, Utility Engineer) to provide for impact fees and two (2) sets of signed and sealed construction plans if applicable.

7) The applicant shall have erosion and sediment control procedures and equipment in place as well as any proposed tree protection barricades prior to commencement of construction.
Please contact Steve Wood, 386-601-0226 for approval prior to any on-site clearing and/or grading. A NPDES Erosion and Sediment Inspection will be performed by the City.

8) Provide a copy of the SJRWMD "Construction Commencement Notice" form (Form No. 40C-4.900(3)).

PLEASE NOTE: a pre-construction meeting will not be held without meeting the above requirements. Any site work, grading, fill dirt, or clearing of land prior to the required permits, development orders, or pre-construction meeting will result in violations of City Ordinance and be met with all applicable fines and/or penalties under local and state law.

The Building Permit Application process is initiated by submitting the completed application and appropriate plans. The Building Permit Application must be accompanied by the approved version of the site plan, and any approved addendum sheets. Copies of the approved version of the plan, signed and sealed have been provided to the City and are available upon request. A copy of the final plan and development order will be provided to the City of DeBary Building Department.

The valid period of this Development Order is 360 days from the date of this letter. If construction has not commenced or is not continuing in good faith to conclusion during this valid period, this Development Order shall expire, unless extended by the DeBary City Council. No construction may commence or continue if this Development Order has expired. During the period of 90 days before and 90 days after the expiration of this Development Order, the developer may request an extension from the City Council.

All plans and construction must be in substantial compliance with this Development Order. Deviations from the approved plans may require submittal of amended plans for review and approval by staff.

No final inspections will be performed by staff until the developer's engineer has certified that all construction has been completed in accordance with this Development Order and the approved plans. That certification must be submitted to the City before the final inspections will be scheduled. Please note additional inspection fees for inspection of site work i.e. stormwater pond may be required.

Please feel free to call me at 386-601-0238 if you have any questions or concerns.

Sincerely,

Carmen Rosamonda
City Manager
City of DeBary
cc: City File
City Council Meeting  
City of DeBary  
AGENDA ITEM

<table>
<thead>
<tr>
<th>Subject:</th>
<th>Public Pedestrian &amp; Bicycle Path Easement - Meadowlea</th>
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<tbody>
<tr>
<td>From:</td>
<td>Carmen Rosamonda, City Manager</td>
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<tr>
<td>Meeting Hearing Date</td>
<td>May 18, 2022</td>
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<tr>
<td>(x ) Supporting Documents/ Contracts</td>
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REQUEST

City Manager is requesting City Council to accept and approve the Public Pedestrian & Bicycle Path Easement from Meadowlea Improvement Association, Inc.

PURPOSE

The purpose is to complete the bike trail built by Rivington to River City Nature Park.

CONSIDERATIONS

- The Board of Directors from Meadowlea Improvement Association, Inc., unanimously approved this easement agreement allowing the bike trail to cross Leisure World Drive. Leisure World Drive is a private road.

- Rivington, as part of their development agreement, constructed a bike trail from the intersection of Barwick Rd and Ft. Florida Rd to Leisure World Drive. For nearly 2 years, the bike trail dead ended at Leisure World Drive.

- By accepting and approving this easement, the City will design and build a table top crossing into River City Nature Park. The City will work with Meadowlea to ensure proper signage and all safety measures are implemented.

- The City’s strategic initiative is to take the bike trail to the parking lot at River City Nature Park. The City has an agreement with Rivington to construct a bike trail from Barwick Road to the SunRail station and DeBary Main St. Approving this easement will set in motion the full implementation of the bike trail connecting the SunRail to River City Nature Park.

COST/FUNDING

There is no cost to accept and approve the easement. The cost of design and construction will be allocated in future budgets.
RECOMMENDATION

It is recommended that the City Council accept and approve the Public Pedestrian & Bicycle Path Easement from Meadowlea Improvement Association, Inc.

IMPLEMENTATION

Immediately upon Approval

ATTACHMENTS

Pubic Pedestrian & Bicycle Path Easement
Trail Site Map
PUBLIC PEDESTRIAN & BICYCLE PATH EASEMENT

THIS PUBLIC PEDESTRIAN & BICYCLE PATH EASEMENT made this 9 day of May 2022, by Meadowlea Improvement Association, Inc., a Florida Not for Profit Corporation, 1 Leisure World Drive, DeBary, Florida 32713, hereinafter referred to as “Grantor,” in favor of the CITY OF DEBARY, a Florida municipal corporation, 16 Colomba Road, DeBary, Florida 32713 hereinafter referred to as “Grantee.”

WITNESSETH:

WHEREAS, the Grantor is the fee simple owner of and the entity responsible for maintenance of that certain private road called Leisure World Drive located in DeBary, Florida, which provides access to the Meadowlea on the River neighborhood (“Leisure World Drive”); and

WHEREAS, Grantee desires to cause the installation, operation and maintenance of a public pedestrian and bicycle path crossing Leisure World Drive in order to provide a public amenity benefitting, in part, the Meadowlea on the River neighborhood; and

WHEREAS, the Grantee desires to obtain and the Grantor desires to grant to Grantee, a public pedestrian and bicycle path easement over, under and through a fifty foot (50’) wide portion of Leisure World Drive in the area legally described in the sketch and legal description attached hereto as Exhibit “A” and incorporated herein by this reference (“Easement Area”).

NOW THEREFORE, the Grantor, for and in consideration of the mutual benefits, covenants and conditions herein contained, and in consideration of the sum of Ten & No/100 Dollars ($10.00) paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby give and grant unto the Grantee and its successors and assigns, a perpetual public pedestrian and bicycle path easement, for the construction, installation, operation, control, regulation, maintenance and the repair of a public sidewalk and/or bicycle path improvements for the benefit of the public over, under and through the Easement Area.

TO HAVE AND TO HOLD the same unto the Grantee, its successors and assigns forever.

This Easement is a non-exclusive perpetual easement granted to the Grantee for the sole purpose of the public pedestrian and bicycle easement as provided above. The rights of Grantee hereunder include the right to allow the public’s use of the Easement area for public sidewalk
and bicycle path purposes subject to Grantee's regulation and control. Grantee's rights include the right to modify the topography and grade of Leisure World Drive, to alter the existing improvements of the Leisure World Drive to accommodate the Grantee's improvements and to make drainage connections as needed to install, repair and maintain the contemplated public sidewalk and bicycle path improvements. After completion of the construction and the installation of the sidewalk and bicycle path, Grantee at its sole cost and expense shall maintain said path or sidewalk in a good, safe and serviceable condition as Grantee deems necessary for the benefit of the public. The Grantee shall have discretion and control over the timing of and materials used in the installation of the sidewalk and/or bicycle path improvements. The Grantor shall have no obligation to maintain the path or sidewalk constructed within the Easement Area, provided that the Grantor may modify, amend, repair, replace and maintain improvements within the Easement Area so long as the use of the Easement Area as a public sidewalk and bicycle path is not impaired or obstructed. Except for the public sidewalk and bicycle path improvements maintained by Grantee, Grantor shall be responsible for maintenance of the Easement Area for all other purposes.

Grantor hereby warrants and covenants: (a) that Grantor is the owner of the fee simple title to Leisure World Drive within the Easement Area, (b) that Grantor has full right and lawful authority to grant and convey this easement to Grantee, (c) that Grantee shall have quiet and peaceful possession, use and enjoyment of this easement; and (d) that other than as provided for herein the Grantor shall not interfere with the public sidewalk and/or bicycle path that is installed within the Easement Area by Grantee and the rights granted to Grantee hereunder.

To the extent permitted by law and up to the maximum limits of liability as set forth in Section 768.28(5), Florida Statutes, regardless of the type, nature or basis of the cause of action, claim or damage, Grantee shall indemnify and hold Grantor harmless from and against and reimburse Grantor for any and all liabilities, obligations, losses, damages, injunctions, suits, actions, penalties, claims, demands, costs and expense of every kind or nature, including reasonable attorneys' fees and court cost, incurred by Grantor arising directly or indirectly from or out of the negligent acts or omissions of the Grantee or Grantee's employees, contractors and agents relating to: (a) any accident, injury or damage which shall happen at, in or upon the Easement Area or the public sidewalk and bicycle path infrastructure related thereto; or (b) the condition, occupation, maintenance, alteration, repair, or use by any person on or about the public sidewalk and bicycle path infrastructure upon the Easement Area. This provision shall not be construed in any way as requiring Grantee to indemnify and hold harmless the Grantor to the extent any such liabilities, obligations, losses, damages, injunctions, suits, actions, penalties, claims, demands, costs or expenses are the result of any negligent or reckless acts or omissions of Grantor, or Grantor's employees, directors, members, agents, invitees, licensees or contractors. This Easement shall be governed by the laws of Florida. Nothing herein shall be
construed as a waiver of the Grantee’s right to sovereign immunity or of any other defense, privilege or immunity afforded under Florida law.

All covenants, terms, provisions and conditions herein contained shall inure and extend to and be obligatory upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal the day and year first above written.

Signed, Sealed and Delivered in the presence of:

GRANTOR:

Meadowlea Improvement Association, Inc.

By:  
Name:  Dave Sullivan  
Its:  President

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 9 day of MAR, 2021, by Dave Sullivan, as President of Meadowlea Improvement Association, Inc., who is personally known to me or has produced as identification.

Deborah R. Dillard  
NOTARY PUBLIC  
Print Name: Deborah R. Dillard  
My Commission Expires: July 27, 2025

s/Deborah R. Dillard, Notary Public-State of Florida  
Commission # HH 158179  
My Commission Expires  
July 27, 2025
LEISURE WORLD DRIVE CROSSING
CITY OF DEBARY, FLORIDA

SURVEYOR'S REPORT:

1. This SKETCH OF DESCRIPTION has been prepared to describe that certain proposed City of DeBary Trail Crossing of Leisure World Drive as directed by the City of DeBary, Florida personnel.

2. Bearings, shown hereon refer to the South Line of RIVINGTON PHASE 1B, Plat Book 62, Pages 61 through 65, Public Records Volusia County, Florida, being North 89°35'07" East, assumed.

3. Dimensions are shown in United States standard survey feet and decimals thereof.

4. This Sketch does not determine ownership of the lands shown hereon.

5. This Sketch was prepared without benefit of an abstract, title search, title opinion or title commitment. A title search may reveal additional information affecting the parcel as shown.

6. Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.

7. Recorded information shown hereon was obtained from the Volusia County Property Appraisers web site.

8. Attention is directed to the fact that these Maps may have been altered in sizes by reproduction. This must be considered when obtaining scaled data.

9. This Sketch of Description or the copies thereof, are not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

10. I hereby Certify that the SKETCH OF DESCRIPTION of the Parcel described on sheet 3 is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Standards of Practice for Land Surveying Chapter 5J-17 Requirements of Florida Administration Code. NOT VALID without sheets 1-3.

NOTICE OF LIABILITY:
This survey is certified to those individuals shown on the face thereof. Any other use, benefit or reliance by any other party is strictly prohibited and restricted. Surveyor is responsible only to those certified and hereby disclaims any other liability and hereby restricts the rights of any other individual or firm to use this survey, without express written consent of the surveyor.

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<tr>
<td>Neel Schaffer, Inc</td>
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<tr>
<td>Job Number:</td>
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<td>MJS</td>
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<td>Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that THIS IS NOT A SURVEY.</td>
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<td>SHEET 1 OF 3</td>
<td>SEE SHEET 2 FOR SKETCH OF DESCRIPTION</td>
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Drawing No. 66667001
LEISURE WORLD DRIVE CROSSED CITY OF DEBARY, FLORIDA
SKETCH OF DESCRIPTION

RIVINGTON PHASE 1B
PB 62, PGS 61 THRU 65

POINT OF COMMENCEMENT
SOUTHWEST CORNER OF TRACT OS-9,
RIVINGTON PHASE 1B, AS DESCRIBED
AND RECORDED IN PLAT BOOK 62,
PAGES 61 THROUGH 65, PUBLIC
RECORDS VOLUSIA COUNTY, FLORIDA

GOVERNMENT LOT 1

POINT OF BEGINNING

N89°35'07"E 608.69(P)
536.40'

SOUTH LINE PER PB 62,
PGS 61 THRU 65

LEISURE WORLD DRIVE
30.00' LESS OUT OF DESCRIPTION (P)
SOUTH LINE GOVERNMENT LOT 1
PER PB 62, PGS 61 THRU 65

NORTH LINE GOVERNMENT LOT 5
PER PB BOOK 62, PGS 61 THRU 65

RIVER CITY NATURE PARK
(CITY OF DEBARY, FLORIDA)

ABBREVIATIONS
CL = CENTERLINE
ORB = OFFICIAL RECORDS BOOK
PGS = PAGES
(P) = PER PLAT
PB = PLAT BOOK

SECTION 8, TWP 19 S, RNG 30 E
THIS IS NOT A SURVEY
NOT VALID WITHOUT SHEETS 1 THROUGH 3

NOT PLATTED

GOVERNMENT LOT 5

Scale: 1" = 20'
GRAPHIC SCALE

Drawing No. 66667001
Job No. 66667
Date: JUNE 24, 2021
Sheet 2 OF 3
See Sheet 3 for Description

SOUTHEASTERN SURVEYING
AND MAPPING CORPORATION
6500 All American Boulevard
Orlando, Florida 32810-4350
(407) 292-8380
e-mail: info@southeasternsurveying.com
DESCRIPTION:

THAT PART OF:

Government Lot 1, Section 8, Township 19 South, Range 30 East, Volusia County, Florida.

DESCRIBED AS FOLLOWS:

Commencing from the Southwest corner of Tract OS-9, as described and recorded in RIVINGTON PHASE 1B, Plat Book 62, Pages 61 through 65, Public Records of Volusia County, Florida run North 89 degrees 35 minutes 07 seconds East 536.40 feet along the South line of said RIVINGTON PHASE 1B for the POINT OF BEGINNING; thence continue North 89 degrees 35 minutes 07 seconds East 50.00 feet along said South line; thence South 00 degrees 24 minutes 39 seconds East 30.00 feet to a point on the North line of Government Lot 5, Section 8, Township 19 South, Range 30 East, Volusia County, Florida as shown on said RIVINGTON PHASE 1B; thence South 89 degrees 35 minutes 07 seconds West 50.00 feet along said North line; thence North 00 degrees 24 minutes 39 seconds West 30.00 feet to the Point of Beginning.

CONTAINING: 1500 Square feet, more or less.

This legal description prepared under the direction of:
Michael L. Dougherty, PSM # 4841
Southeastern Surveying and Mapping Corporation LB 2108
6500 All American Blvd.
Orlando, Florida 32810
Phone: (407) 292-8580
Date: June 24, 2021

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AGENDA ITEM

Subject: Gateway Center for the Arts Agreement

From: Jason Schaitz Parks and Recreation Director

Attachments: ( ) Ordinance
( ) Resolution
( ) Supporting Documents/ Contracts
( ) Other

Meeting Hearing Date 05/18/2022

REQUEST

The City Manager and Parks and Recreation Department is requesting City Council approve the attached agreements to begin the process of transitioning ownership of the Gateway Center for the Arts (GCA) building to the City.

PURPOSE

The request is needed at this time to start the process of turning over ownership and management of the Gateway Center of the Arts’ 17,514 square foot building to the City.

CONSIDERATIONS

- The City has had a long standing positive relationship with Gateway Center for the Arts Inc., partnering with them on events and to promote the arts throughout the local community.

- The City believes that art services are an essential component to a close-knit, quality of life community. For the past 14 years, Gateway Center of the Arts, a non-profit organization, has provided these art services and programs to our community.

- Generally, there are three factors leading up to this transaction, an aging building requiring additional expenses to maintain, Art Center’s inadequate long-term comprehensive business plan, and COVID-19.

- The City of DeBary conducted a workshop in March 2021 to gauge the interest for art services in our community. Members of the community and representatives from the Gateway Center for the Arts made presentations to Council showing all of the positive impacts not only in the community, but individual lives. GCA also presented the need for help in order to continue to offer these programs.
• Over the last three years, the City Manager has worked with the Board to stabilize and energize Gateway operations. New board members, business approach and strategic plan has laid the foundation for success moving into the future.

• The Gateway facility is in dire need of repair, specifically the roof. There is a pending insurance claim and lawsuit against their insurance company regarding the roof and associated damage. These agreements are contingent on Gateway Center for the Arts Inc. resolving those issues prior to the City taking over control and management of the building.

• Mediation between Gateway Center of the Arts, Inc. and Insurance Company is scheduled for on or about June 28, 2022.

• Approval of these agreements at this time will provide reassurances to the organization and improve their fund raising opportunities going forward.

• The City has been very successful in implementing best practices in working with expert non-profit organizations to provide essential services within our community. The Facility Use Agreement, even though customized for Gateway, models the same philosophy as with other organizations. This agreement also provides various GCA equipment and furnishings being transferred to the City that are essential to the operation of the building.

• The term is a 5-year agreement, with 5 one-year renewals. Gateway will also provide financial statements every year. This agreement ensures dual use of the building for both Gateway and the City. The City may conduct meetings and events and lease the space to other entities. This partnership allows for a real time calendar to collaborate events and building use.

**COST/FUNDING**

In the FY 2021-22 budget, the City Council approved $100,000 allocated towards the facility for maintenance and repairs in anticipation of taking over the Gateway building.

**RECOMMENDATION**

It is recommended City Council approve the Contingent Agreement for the Termination of the Sublease, Agreement for Termination of Sublease, Facility Use Agreement and Quit Claim Deed.
IMPLEMENTATION

Upon approval, these agreements will remain in escrow until such time the lawsuit is settled and the roof is repaired. The City will continue to work with Gateway Center for the Arts as normal until we are able to move forward with transitioning building ownership to the City.

ATTACHMENTS

Attachment A: Contingency Agreement
Attachment B: Exhibit 1 – Sublease Termination
Attachment C: Exhibit 2 – Facility Use Agreement
Attachment D: Exhibit 3 – Quit Claim Deed
CONTINGENT AGREEMENT BETWEEN CITY OF DEBARY AND GATEWAY CENTER FOR THE ARTS, INC. FOR TERMINATION OF SUBLEASE

This Agreement between City of DeBary and Gateway Center for the Arts, Inc. for Termination of Sublease (the “Agreement”) is made and entered into this 28th day of May, 2022 by the City of DeBary, a Florida municipal corporation whose principal address is 16 Colomba Road, DeBary, Florida 32713 (the “City”), and Gateway Center for the Arts, Inc., a Florida not-for-profit corporation whose principal address is 880 N. Highway 17-92, DeBary, FL 32713 (“Gateway”) (collectively the “Parties” and individually “Party”).

RECITALS

A. On or about September 27, 1995, the City and the Board of Trustees of the Internal Improvement Fund of the State of Florida entered into that certain lease agreement whereby the City leased certain property from the State of Florida (the “State Lease Property”);  

B. On or about October 25, 2004, the Parties to this Agreement entered into that certain Sublease Agreement (the “Sublease”) for the sublease of approximately 4.9 acres of the State Lease Property (the “Property”), pursuant to which, Gateway agreed to construct a Center for the Arts Facility (“Facility”) on such Property and host cultural and other similar civic events for the benefit of DeBary residents;  

C. On or about October 25, 2005, the Parties entered into that certain First Amendment to Sublease Agreement;  

D. On or about October of 2020, the Parties entered into that certain Second Amendment to the Sublease Agreement;  

E. Gateway no longer desires to be responsible for the Property under the Sublease and wishes to return such Property to the control and stewardship of the City; however, Gateway would like to continue to use the Property on an intermittent, ongoing basis pursuant to a separate Facility Use Agreement;  

F. Regardless of the foregoing, the Facility located on the Property has suffered damage due to inclement weather conditions, and Gateway is in the process of disputing an insurance claim and repairing same;  

G. The City desires to accept Gateway’s termination of the Sublease and assume responsibility for the stewardship and management of the Property and the Facility located thereon; however, the City requires that certain pre-conditions, including necessary repairs to the Facility, occur prior to such termination and assumption;  

H. Gateway represents and warrants to the City that there are no liens, mortgages, or other encumbrances on the Property as improved; and  

I. The Parties wish to terminate the Sublease Agreement, as amended, in accordance with the terms of this Agreement and upon the occurrence of those certain conditions set forth herein.
AGREEMENT

1. **Recitals.** The foregoing Recitals are hereby ratified as true and correct and are incorporated as material provisions of this Agreement.

2. **Termination of Sublease.** The Parties’ agree to terminate the Sublease as amended, upon the occurrence of both of the following preconditions and subject to the other provisions of this Agreement:

   (a) Execution of this Agreement by both the City and Gateway;

   (b) Completion of the repairs acceptable to the City in the City’s sole discretion to the Facility roof and other damage to the Facility caused by inclement weather and the conclusion of any litigation or other disputes between Gateway and its insurers or any other persons or entities that may be liable to Gateway or to which Gateway is liable in connection with such repairs; and

   (c) Within five (5) days following the City’s determination that both of the foregoing preconditions (a) and (b) supra have been satisfied, Gateway must provide the City with all contracts, notices, insurance policies, claims, sub-sub leases, licenses, vendor/vendee contracts, and any other documents setting forth any obligations, rights, or liabilities of Gateway that pertain to the premises subject to the Sublease and any other structures or facilities located thereupon. The City shall examine any such documents and determine, in its sole discretion, whether any such documents create either a liability or other obligation to or of the City with regard to the Property or the Facility. If the City determines that any such document creates a new obligation or liability to the City with regard to the Property or Facility, the City will have the right to terminate this Agreement and/or refuse to accept termination of the Sublease and assumption of custody and control over the Property as contemplated herein.

Confirmation that such preconditions have occurred will be in writing pursuant to the Confirmation Agreement ("Confirmation") attached hereto as **Exhibit 1.** Furthermore, Gateway will be permitted to continue its use of the Property subject and pursuant to the Facilities Use Agreement attached hereto as **Exhibit 2,** which will be duly executed and entered into by and between the Parties simultaneously with the Confirmation. Regardless, upon execution of this Agreement, the Confirmation, Facilities Use Agreement, and Quit Claim Deed all rights, privileges, and interests in the Property granted by the City to Gateway pursuant to the Sublease will cease to be vested in Gateway and will revert back to and inure to the benefit of the City subject then only to Gateway’s rights under the Facility Use Agreement.

3. **Ownership of Improvements.** Upon termination of the Sublease as contemplated in paragraph 2 of this Agreement, Gateway expressly disclaims any right, title, interest, ownership, possessory, tenancy interest, or other interest in the Property, including any building, facility, or other improvement or structure located thereupon, and, as further consideration for the City’s Agreement to terminate the Sublease and retake possession of the Property, Gateway shall execute and deliver to the City the Quit Claim Deed attached hereto as **Exhibit 3** for all improvements located on the Property. Further, Gateway shall execute the Facility Use Agreement attached hereto as **Exhibit 2** and any other document or instrument that the City may require, in the City’s sole discretion, to effect the transfer of ownership of any
building, facility, or other improvement located on the Property from Gateway to the City or any other entity, or to otherwise disclaim Gateway's ownership of any such building, facility, or other improvement on the Property.

4. **Equipment.** Upon termination of the Sublease, that certain equipment located on the Property and described in the attached **Exhibit 2 Facility Use Agreement** will become the property of the City, and Gateway must execute a bill of sale as required by the City to evidence and effect such ownership.

5. **No City Liabilities.** The Parties expressly agree that this Agreement and any transfer of property provided for herein will in no event result in the City taking on or becoming subject to any liability, contract, claim, or other matter to which Gateway may be subject with respect to the Property or any improvement thereon. Further, Gateway agrees to indemnify and hold harmless City, its representatives, employees, and elected and appointed officials, from and against all and any claims, judgments, damages, losses, penalties, and expenses, including reasonable attorneys' fees, paralegals' fees, experts’ fees and litigation costs incurred at all trial and appellate levels with attorneys selected by City, arising out of or resulting from any act or omission caused in whole or part by Gateway’s or its officers, employees, contractors, subcontractors, or volunteers with respect to the Property, the Facility, or any other improvement thereon. Neither this Agreement nor any agreement or contract executed pursuant to this Agreement will inure to the benefit of any third parties or confer any rights to any such third parties to maintain a cause of action against the City. This paragraph 5 survives the termination of the Sublease, the Facility Use Agreement, the Confirmation, and performance of the Parties’ obligations hereunder.

6. **Effective Date.** This Agreement will be effective as of the date last executed by the Parties (the “Effective Date”).

EXECUTED:

CITY OF DEBARY
CITY COUNCIL

Karen Chazez, Mayor

Witness

Print Name

Date

Witness

Print Name
Saundra H. Gray
Witness

Saundra H. Gray
Print Name

Sudh Vihien
Board President

Signature

Sid Vihien
Board President

Print Name & Position

5/9/22
Date

Ronald F. Weller
Witness

Ronald F. Weller
Print Name
AGREEMENT BETWEEN CITY OF DEBARY AND GATEWAY CENTER FOR THE ARTS, INC. FOR TERMINATION OF SUBLEASE

This Agreement between City of DeBary and Gateway Center for the Arts, Inc. for Termination of Sublease (the “Agreement”) is made and entered into this 24th day of MAY, 2022 by the City of DeBary, a Florida municipal corporation whose principal address is 16 Colomba Road, DeBary, Florida 32713 (the “City”), and Gateway Center for the Arts, Inc., a Florida not-for-profit corporation whose principal address is 880 N. Highway 17-92, DeBary, FL 32713 (“Gateway”) (collectively the “Parties” and individually “Party”).

RECITALS

A. On or about September 27, 1995, the City and the Board of Trustees of the Internal Improvement Fund of the State of Florida entered into that certain lease agreement whereby the City leased certain property from the State of Florida (the “State Lease Property”).

B. On or about October 25, 2004, the Parties to this Agreement entered into that certain Sublease Agreement (the “Sublease”) for the sublease of approximately 4.9 acres of the State Lease Property (the “Property”).

C. On or about October 25, 2005, the Parties entered into that certain First Amendment to Sublease Agreement.

D. On or about October of 2020, the Parties entered into that certain Second Amendment to the Sublease Agreement.

E. Gateway represents and warrants to the City that there are no liens, mortgages, or other encumbrances on the Property as improved.

F. The Parties wish to terminate the Sublease Agreement, as amended, in accordance with the terms of this Agreement.

AGREEMENT

1. **Recitals.** The foregoing Recitals are hereby ratified as true and correct and are incorporated as material provisions of this Agreement.

2. **Termination of Sublease.** The Parties hereby terminate the Sublease, and any subsequent amendments thereto, as of the Effective Date of this Agreement. It is contemplated that Gateway may, in the future, continue its use of the Property subject to a Facilities Use Agreement to be negotiated and duly executed and entered into by and between the parties. Regardless, upon execution of this Agreement, all rights, privileges, and possessory interests in the Property granted by the City to Gateway pursuant to the Sublease will cease to be vested in Gateway and will revert back to and inure to the benefit of the City.

3. **Ownership of Improvements.** Gateway expressly disclaims any ownership, possessory, or tenancy interest in the Property, including any building, facility, or other improvement or structure
located thereupon, and, as further consideration for the City’s Agreement to terminate the Sublease and retake possession of the Property, execute and deliver to the City the Deed attached hereto as Exhibits 1 for all improvements located on the Property. Further, Gateway shall execute any other document or instrument that the City may require, in the City’s sole discretion, to effect the transfer of ownership of any building, facility, or other improvement located on the Property from Gateway to the City or any other entity, or to otherwise disclaim Gateway’s ownership of any such building, facility, or other improvement on the Property.

4. Equipment. That certain equipment located on the Property and described in the attached Exhibit 2 will become the property of the City, and Gateway must execute a bill of sale as required by the City to evidence and effect such ownership.

5. No City Liabilities. The Parties expressly agree that this Agreement and any transfer of property provided for herein will in no event result in the City taking on or becoming subject to any liability, contract, claim, or other matter to which Gateway may be subject with respect to the Property or any improvement thereon. Further, Gateway agrees to indemnify and hold harmless City, its representatives, employees, and elected and appointed officials, from all and any claims, judgments, damages, losses, penalties, and expenses, including reasonable attorneys’ fees, paralegals’ fees, experts’ fees and litigation costs incurred at all trial and appellate levels with attorneys selected by City, arising out of or resulting from any act or omission caused in whole or part by Gateway’s or its officers, employees, contractors, subcontractors, or volunteers with respect to the Property or any improvement thereon.

6. Effective Date. This Agreement will be effective as of the date last executed by the Parties (the “Effective Date”).

EXECUTED:

CITY OF DEBARY
CITY COUNCIL

Karen Chasez, Mayor

Witness

Print Name

Date

Witness

Print Name
Facility Use Agreement
Gateway Center for the Arts, Inc. and the City of DeBary

WHEREAS, the City of DeBary ("City") is agreeable to allowing the Gateway Center for the Arts, Inc. ("GCA") use of said facilities on park property owned or leased by the City; and

WHEREAS, it is desirable that the respective duties and responsibilities of the parties be set forth in a written agreement (the "Agreement" or the "Contract"); and

WHEREAS, both parties hereto agree that the services and instruction rendered by GCA and the land provided by the City are for the good and betterment of the community and in the best interest of the public;

NOW, THEREFORE, in consideration of the mutual covenants and understandings set forth herein and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

WITNESSETH:

1. For and in consideration of the covenants herein contained, the City hereby agrees to the use of the Gateway Center facility located at 880 US-17, DeBary, FL 32713 ("Facility") by GCA for events and programs as described herein, and, in order for any such use to be granted, GCA must supply the City with any Facility use requests by the dates outlined in this agreement. Any changes to program and event dates must be submitted to the City at least two weeks in advance to confirm date, time, availability, and location of needs. Failure to timely submit schedules or schedule changes outlines in this agreement may result in the facility not being available for GCA’s use. The right of use granted hereunder is in the nature of a license revocable by the City at any time pursuant to the terms of this Agreement and confers no estate, tenancy, lease, or other similar rights in connection with the Facility upon GCA or any other entity.

2. This Agreement is for a term of five-years with five (5) additional one-year renewals conditioned upon the mutual consent of the parties and the parties’ compliance with the renewal terms set forth herein. The term of this Agreement is for the five-year period commencing upon execution of this Agreement, and will be subject to renewal by exchange of written notice between the parties as set forth herein. Notwithstanding the preceding, either party may cancel this Agreement at will and in its sole discretion at no penalty to either party upon thirty (30) days written notice to the other party. If this Agreement is renewed after the initial five-year term, such renewal term will commence September 1st of each subsequent year and be expressly conditioned upon the following terms:

A. That both parties are willing to renew the Agreement.

EXHIBIT 2
B. That GCA must make a request for renewal in writing to the City in August of each year. As a condition of any such renewal, GCA must provide financials and an annual report for the previous four quarters to the City.

C. GCA shall furnish to the City the following information:

(1) A financial report covering the prior period of the Agreement, indicating the complete revenues and expenditures of the GCA during such term.

(2) A statement relative to the goals set for the coming year and how they are proposed to be accomplished.

3. GCA agrees to and will at all times indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, agents, and employees from and against all liability, claims, demands, damages, and costs of every kind and nature, including attorney's fees at trial or appellate levels and all court costs arising out of GCA's use or occupation of the Facility or property upon which Facility is located, including any injury to or death of the GCA's employees, agents, invitees, guests, members, and youth players, and damage to any and all property, including loss of use thereof, resulting from or in connection with activities or use of the above facilities by GCA, its agents, servants, employees, volunteers, members, guests, invitees or youth players, or resulting from the negligence, intentional torts, and criminal actions of GCA, its agents, servants, employees, volunteers, members, guests, invitees and youth players or participants. GCA and the City acknowledge and agree that GCA is solely responsible for the reasonable supervision, control, protection and safety of the GCA's agents, servants, employees, volunteers, members, guests, invitees and youth players or participants. GCA shall, upon request from the City, defend and satisfy any and all suits arising from the GCA's use of the Premises. This paragraph and all indemnification and hold harmless provisions of this Agreement will survive the termination and expiration of this Agreement. Further, the City expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with § 768.28, Florida Statutes. Regardless of anything set forth in any section or part of this Agreement to the contrary, nothing in this Agreement may be deemed as a waiver of sovereign immunity or the limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

4. GCA agrees to duly turn over ownership of all building equipment, furnishings, fixtures, and appliances essential to the operation of the building, including, but not limited to, theatre lighting, electronics, sound and projection equipment, tables, chairs, refrigerators, and other similar equipment, furnishings, and fixtures to the City, and the City will be responsible for maintaining, repairing, and replacing these items.
GCA will maintain ownership of equipment and electronics that are used for its business and program operations such as computers, art supplies, theatre supplies and props, crafts and homemade jewelry, art displays, and other consumables. GCA will be solely responsible for maintenance, replacement, and repair of these items.

5. The City agrees to:

A. Perform Facility Repair and Maintenance with regard to the interior and exterior of the Gateway Center facility and property in accordance with the standards deemed appropriate by the City. Such duties include, but are not limited to, mowing, landscaping, repairs, and facility maintenance. Any other requests or instructions regarding facility repair and maintenance must be submitted in writing by GCA and approved by the City.

B. Facility Repair and Maintenance is further defined to include repair and maintenance of the following items located at the Gateway Center facility or city-owned property upon which such facility is located:
   1. AC Service, Repairs, and Replacement
   2. Electrical
   3. Plumbing
   4. Sewer and Lift Station
   5. Fire Suppression System and Extinguishers
   6. Alarm System
   7. Drywall Repair
   8. Structural and Mechanical
   9. Interior and Exterior Lighting
   10. Irrigation Repair and Maintenance
   11. Well Maintenance and Repair
   12. Pest Control
   13. Preventative maintenance and daily cosmetic concerns such as painting, patching, etc.
   14. Maintenance and repair of floors, including hard wood floors and stage.
   15. Parking Lot and Sidewalks
   16. Roof and Gutters

C. Cause daily general cleaning of the facility to be performed, regardless of whether such is performed by a contractor, agent, or the personnel of the City itself. This does not include cleaning up after or putting away supplies and equipment used in connection with GCA programs and events, for which GCA shall remain responsible.

D. Provide or otherwise keep extra tools on-site at all times for minor facility repairs.

E. Assume payment of all utilities. The City reserves the right to issue guidelines to GCA and others concerning utility usage.

EXHIBIT 2
F. Provide trash receptacles and trash collection (dumpster and solid waste collection services).

G. The City will responsible for coordinating and cleaning up after all private rentals by entities other than GCA as well as any City events or programs.

6. GCA agrees that it will:

A. Coordinate art services programs, activities, and events and provide all staff or volunteers essential for operating or otherwise conducting such programs, events, or activities based on the standards set forth in this agreement.

B. Timely provide to the City for pre-approval, a copy of schedules for desired space needs (by predetermined due dates in this agreement).

C. Clean all appliances as needed and as otherwise may be desired by the City following conduct of a GCA activity, program, or event.

D. Maintain organization and cleanliness before, during, and after all GCA programs and events to include, but not be limited to: removing trash, cleaning and sanitizing touchable surfaces, cleaning the floors, and putting away equipment is proper storage areas.

E. Install supplies (provided by the City) for restroom facilities, including toilet paper, soap, paper towels, disinfectants, and other cleaning implements, and keep facilities clean during GCA and GCA sponsored programs and events as a backup function when City maintenance is unavailable.

F. Provide concession services in accordance with specifications established by the State Sanitary Code.

G. Provide all equipment and supplies required in connection with said activities, e.g., theatre equipment, props, art supplies, event supplies, camp supplies, etc.

H. Not add any structural materials or make any physical improvements to the facility without the consent of the City. GCA will obtain the prior written approval of the City before GCA may make or authorize physical improvements or structural additions to any part of the facility. Unapproved structural changes or physical improvements to the facilities will, upon the request of the City, require GCA to restore or otherwise cause to be restored the facilities back to their original condition at GCA’s expense.

I. Report damage, vandalism, problems, and safety hazards to the City immediately.

J. Provide one individual to act as the GCA representative and liaison between the GCA and the City.

EXHIBIT 2
K. Maintain control of participants, visitors, and spectators, and ask rule violators to leave the facility or contact appropriate law enforcement agency as necessary. GCA agrees to have a GCA official at the facility during the conduct of all GCA or GCA sponsored or hosted programs, activities, and events. The City will assist with co-sponsored events and will be solely responsible for the City's own participants and invitees for City sponsored or hosted events and functions.

L. Provide the City with a complete list (including names, phone numbers, and emails) of all GCA Employees and Board Members. GCA will provide a written statement listing the total number of registered program participants that are City residents and non-residents.

M. Provide the City with a copy of the GCA regulations, charter, policies, procedures, guidelines, and organizational chart.

N. Report all accidents or injuries to employees, spectators, visitors and participants occurring on facility property within 48 hours, by both telephone and a follow up written report.

O. Provide the City with details of registration information and events (dates, times, locations, costs, etc.).

P. The City will issue any necessary codes/combinations/ and or keys to be used by the GCA employees and board members. These items are not to be duplicated or shared outside of the GCA needs.

Q. Operate concession facilities during non-GCA related activities and/or special events. If the GCA cannot operate concessions during these pre-determined dates, the City reserves the right to operate and/or assign this service to outside vendors.

R. Give the City two weeks' notice on any schedule changes or additions. Schedule changes or additions can be accommodated only if space is available.

S. Set GCA operating hours at the facility where GCA staff or volunteers will be on site and give these hours to the City. Any changes to building and GCA operating hours must be given to the City with two weeks' advance notice.

T. Communicate building information and rental pricing and provide tours of the facility during set operating hours to those interested in renting the facility for events, functions, and other activities. GCA shall further refer any entities interested in booking or reserving the facility to the City to make any such arrangements.

U. Open the facility during operating hours and lock and secure the facility daily upon closing. Any facility damage, vandalism, or stolen goods that occur due to negligence of the GCA securing the facility will be the responsibility of the GCA to remedy at their own expense.

EXHIBIT 2
7. GCA will have the use of the above referenced facility as set forth in this Agreement. The facility will be scheduled for programming by school calendar year. GCA shall submit to the City, for City approval, a proposed schedule of programs, activities, and events for each subsequent school year by May 31st of each year.

Upon receipt and approval of GCA’s annual schedule request, the City will, provided that it notes no basis for objection or modification of such request, book the facility for the proposed programs, activities, and events through a live calendar in which GCA will have access to. Any new GCA calendar bookings throughout the year can be taken first come first serve alongside rentals and City programs or events.

If GCA desires to change its approved schedule of activities submitted to the City, GCA shall request in writing such change from the City Parks and Recreation Director. Any such changes to program and event dates must be submitted to the City a minimum of two weeks in advance to confirm date, time, availability, and location of needs. The City Parks and Recreation Director, in his or her sole discretion, will have the right to grant or deny GCA’s request for a schedule change. GCA shall release use of the facilities at times when they are not scheduled or when they are required for use by the City for purposes of maintenance or use by others.

8. GCA must provide art and cultural services year round. Failure to provide programs, activities, and events on a year-round basis to meet the needs of the community may result in termination of this Agreement. Programs include, but are not limited to, art and theatre classes, art and theatre camps, art galleries, theatre productions, and other stage entertainment. Programs, activities, and events provided shall be outlined in GCA’s annual report to the City each year.

9. Scheduling of all facilities is at the sole discretion of the City. GCA acknowledges and agrees that there may be times when the City will need to utilize the facilities or otherwise deny GCA’s use of the facilities on its scheduled day(s), whether due to an emergency or any other important event that may occur, which as determined by the City in its sole discretion, requires the City to deny GCA’s use of the facilities. If the City denies GCA’s use of the facilities on one or more approved scheduled days, the GCA shall relinquish use of the facilities immediately upon receiving notice thereof from the City. Throughout the year, no other entity may use GCA’s equipment or fixtures without GCA’s express permission.

10. The City reserves the right to coordinate any programs or events in the building or on the property at any time for the City’s programs, events, or for emergency use as stated above. The City should plan and book City programs and events only after the proposed GCA event calendar is submitted to the City by May 31st each year.

11. The City will be responsible for managing the building calendar and booking all private facility rentals such as weddings, receptions, parties, meetings, etc. All private rental fees will be set by the City, and all private rental revenue will go to the City. If GCA gets an
inquiry for a private rental, GCA should direct all such inquiries to the City’s Parks and Recreation Department for booking based upon availability as scheduled around previously scheduled programs, activities, and events. Any contractual agreements for private rentals currently in place with GCA prior to this agreement may stay in place with GCA until those agreements end. Any such rental dates must be included in the GCA calendar of events submitted to the City in order to guarantee that space and capacity will be available.

12. GCA at its own cost and expense shall keep in force during the term of this Agreement; insurance from an insurance company licensed in the State of Florida and rated “A”, Class “X” or better by A.M. Best. The required insurance shall be evidenced by a certificate of insurance, which must be submitted to and approved by the City prior to the effective date of this Agreement.

The City of DeBary must be listed as an additional named insured under the Comprehensive General Liability Insurance policy, and the City must be provided with a thirty-day (30) notice in the event of cancellation, non-renewal or adverse change to the policy.

GCA shall provide Comprehensive General Liability Insurance with a minimum limit of $1,000,000.00 per occurrence, combined single limit. Such policy may not allow the policy limits to be reduced by defense and claim expenses. Such insurance must be issued on an occurrence basis and include coverage for GCA’s operations, independent contractors, subcontractors and “broad form” property damage coverages protecting itself, its employees, agents, contractors, or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations, including what is commonly known as groups A, B, and C. Such policies must include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by GCA or by any of its subcontractors arising from operations conducted under this Agreement. Public liability coverage must include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly GCA’s Agreement to indemnify, defend and hold harmless the City as provided in the Agreement. The commercial general liability policy must provide coverage to the City when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability that would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Contractors, Property of the City in GCA’s Care, Custody or Control or Property of City on which operations are being conducted. When the City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent must be used and must provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. GCA shall require any subcontractors performing work or providing services in connection with this Agreement to add the City to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. The commercial general
liability policy must provide a waiver of subrogation in favor of the City and any other party required by this Agreement to be named as an additional insured.:

Failure to comply with this requirement will render this Agreement void at the election of the City except that all indemnification and hold harmless provisions and provisions pertaining to the City's sovereign immunity protections shall survive.

13. Any vendors or other contractors operating on property or within the facility that are not GCA staff or volunteers must have and maintain $1,000,000 in general liability insurance with the City listed as an additional named insured. Such vendors or other contractors must also execute a contractual agreement with the City, in a form prescribed by the City, describing the services or activities that such vendors or contractors will be providing or otherwise engaged in on the City's property and agreeing to indemnify, defend, and hold the City harmless from any and all liability arising from their activities on City-owned property. Copies of such contractual agreements and proof of insurance must be kept current by GCA and provided to the City upon request. Failure to comply with this paragraph will result in non-compliant vendors or contractors being barred from City property, including the facility.

14. Any paid contracted instructors hired by GCA must have a signed W9 and waiver holding GCA and the City harmless while conducting any classes, programs, or events on City property or within the facility. Copies of the W9 and waivers must be kept current by GCA and provided to the City upon request.

15. If GCA operates a concession facility or in any way distributes or sells food, beverages, candy or foodstuffs of any description, GCA agrees to fully indemnify, defend, and hold harmless the City (in accordance with paragraph 3 herein) from and against any claim, damages, or costs arising from or in connection with the provision of such foodstuffs.

16. This Agreement may not be assigned or transferred in any manner by GCA or the City and any such assignment or transfer is expressly prohibited.

17. This Agreement is binding upon the parties hereto and their successors and assigns.

18. Any previously existing oral or written agreements are terminated as of the effective date of this Agreement and will be deemed to be hereafter null and void and of no further force and effect whatsoever.

19. No modifications, amendments, or alterations in the terms or conditions contained in this Agreement will be effective unless contained in a written document executed by the parties.

20. This Agreement is governed by and must be interpreted in accordance with the laws of the state of Florida. Any and all legal action arising out of this Agreement will, if in state court, have its exclusive venue in a court of appropriate and proper jurisdiction located in Volusia County, Florida, or if in federal court, the Middle District of Florida, Orlando Division.

EXHIBIT 2
21. If any terms or provisions of this Agreement, or the application thereof to any person or circumstance is, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ___ day of May, 2022.

Date: 5/9/22

BY:

[Signature]
GCA Board President
Gateway Center for the Arts, Inc.

Date: 5/9/22

BY:

[Signature]
Witness
Gateway Center for the Arts, Inc.

Print Name: Saundra H. Gray

Date: ____________

BY:

[Signature]
Mayor
City of DeBary

EXHIBIT 2
QUIT-CLAIM DEED

THIS QUIT-CLAIM DEED, executed this 5th day of MAY, 202_, by GATEWAY CENTER FOR THE ARTS, INC., a Florida not-for-profit corporation, formerly known as DEBARY ART LEAGUE, INC., a Florida not-for-profit corporation (hereinafter "Grantor"), whose address is 880 N. Highway 17-92, DeBary, Florida 32713, to the CITY OF DEBARY, a Florida municipal corporation (hereinafter "Grantee"), whose address is 16 Colomba Road, DeBary, Florida 32713.

WITNESSETH

WHEREAS, on or about September 27, 1995, Grantee and the Board of Trustees of the Internal Improvement Fund of the State of Florida entered into that certain lease agreement whereby Grantee leased certain property from the State of Florida (hereinafter the "State Lease Property").

WHEREAS, on or about October 25, 2004, the Grantor and Grantee entered into that certain Sublease Agreement (hereinafter the "Sublease") whereby Grantee leased to Grantor approximately 4.9 acres of the State Lease Property more particularly described on the attached Exhibit "A" (hereinafter the "Property").

WHEREAS, on or about October 25, 2005, Grantor and Grantee entered into that certain First Amendment to the Sublease.

WHEREAS, on or about October of 2020, Grantor and Grantee entered into that certain Second Amendment to the Sublease.

WHEREAS, during the term of the Sublease, Grantor constructed buildings, facilities and other improvements (hereinafter the "Improvements") on the Property.

WHEREAS, Grantor and Grantee have entered into that certain Agreement for Termination of Sublease, whereby Grantor and Grantee have mutually agreed to terminate the Sublease.

EXHIBIT 3
WHEREAS, pursuant to said Agreement for Termination of Sublease, Grantor has also agreed to provide Grantee with this Quit-Claim Deed conveying any interest that Grantor may have in the Property and/or the Improvements to Grantee.

NOW THEREFORE, in consideration of the sum of ten dollars and other valuable consideration, the receipt whereof is hereby acknowledged, Grantor does hereby remise, release and quit-claim unto the said Grantee forever, all the right, title, interest, claim, ownership, and demand that Grantor has in and to the Property and/or Improvements.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee forever.

Wherever used herein, the terms "Grantor" and "Grantee" shall include the successors and assigns of Grantor and Grantee.

[Signatures on following page]
IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Saundra H. Gray
(Witness Signature)
Saundra H. Gray
(Witness Print Name)

Ronald F. Weller
(Witness Signature)
Ronald F. Weller
(Witness Print Name)

Gateway Center of the Arts, Inc., a Florida not-for-profit corporation formerly known as DeBary Art League, Inc. a Florida not-for-profit corporation

By: ____________________________
Print Name
Its: ____________________________

STATE OF FLORIDA:
COUNTY OF Volusia:

The foregoing instrument was acknowledged before me by means of physical presence this 9 day of May, 2022, by Sid Vihlen, as President of Gateway Center of the Arts, Inc., a Florida not-for-profit corporation formerly known as DeBary Art League, Inc., a Florida not-for-profit corporation, on behalf of the corporation.

Flora B. Sweat
(Notary Signature)

Flora B. Sweat
(Notary Printed Name)
My Commission Expires:

Personally known OR Produced Identification FL DL
Type of Identification Produced 4Y1450-792-410-471-0

FLORA B. SWEAT
Commission # GG 936007
Expires April 1, 2024
Bonded thru Troy Fain Insurance 800-385-7019
EXHIBIT “A”

All interest, ownership and rights in any building, facility, structure, or other improvements, which Grantor has in, or on the following described property:

That portion of the Northeast ¼ of the Northwest ¼ of the Southeast ¼, and of the Northwest ¼ of the Northeast ¼ of Section 22, Township 18 South, Range 30 East, lying West of State Road Number 3 (assuming same to 100 feet in width) of Section 22, Township 18 South, Range 30 East, less, beginning at the Southwest corner of the Northeast ¼ of the Northwest ¼ of the Southeast ¼ of said Section 22, run thence South 89°58’01.8” East along the south line thereof a distance of 530.166 feet to the westerly right of way line of U.S. Highway 17 & 92; thence North 14°05’50.7” East along said right of way line a distance of 33.923 feet to the extension of an existing east-west fence; thence South 88°54’20.5” West along said fence a distance of 538.796 feet to the west line of the Northeast ¼ of the Northwest ¼ of the Southeast ¼ of said Section 22; thence South 00°41’24.5” East along said west line a distance of 22.309 feet to the Point of Beginning.

Less and except the follow described lands:

From the Southwest corner of the Northwest ¼ of the Southeast ¼ of Section 22, Township 18 South, Range 30 East, Volusia County, Florida, run North 89 degrees 59 minutes 41 seconds East 1015.46 feet along the South boundary of said Northwest ¼ of the Southeast ¼ to a point on the West right-of-way line of State Road 15 and 600 as shown on the Florida Department of Transportation Maintenance Map for State Road #15/600 as recorded in Road Plat Book 1, Page 26, Public Records of Volusia County, Florida: thence run North 14 degrees 07 minutes 30 seconds East 101.71 feet along said West right-of-way line; thence run North 14 degrees 06 minutes 19 seconds East 528.60 feet along said West right-of-way line; thence run North 14 degrees 03 minutes 36 seconds East 602.36 feet along said West right-of-way line for the POINT OF BEGINNING; thence continue North 14 degrees 03 minutes 36 seconds East 138.21 feet along said West right-of-way line to point of the North boundary of the Southeast ¼ of Section 22, Township 18 South, Range 30 East, Volusia County, Florida; thence run North 89 degrees 54 minutes 02 seconds West 5.15 feet along said North boundary to a point on a line parallel with and 5.00 feet of Westerly of, when measured at right angles to, said West right-of-way line; thence run South 14 degrees 03 minutes 36 seconds West 136.96 feet along said parallel line; thence run South 75 degrees 56 minutes 24 second East 5.00 feet to the Point of Beginning;

Also less and except the following described lands:

From the Southwest corner of the Northwest ¼ of the Southeast ¼ of Section 22, Township 18 South, Range 30 East, Volusia County, Florida, run North 89 degrees 59 minutes 41 seconds East 1015.46 feet along the South boundary of said Northwest ¼ of the Southeast ¼ to a point on the West right-of-way line of State Road 15 and 600 as shown on the Florida Department of Transportation Maintenance Map for State Road #15/600 as recorded in Road Plat Book 1, Page 26, Public Records of Volusia County, Florida; thence run North 14 degrees 07 minutes 30 seconds East 101.71 feet along said West right-of-way line; thence run North 14 degrees 06 minutes 19 seconds East 528.60 feet along said West right-of-way line; thence run North 14 degrees 03 minutes 36 seconds East 332.36 feet along said West right-of-way line for the POINT OF BEGINNING; thence continue North 14 degrees 03 minutes 36 seconds East 20.00 feet
along said West right-of-way line; thence run North 75 degrees 56 minutes 24 seconds West 20.00 feet; thence run South 14 degrees 03 minutes 36 seconds West 20.00 feet; thence run South 75 degrees 56 minutes 24 seconds East 20.00 feet to the Point of Beginning.
REQUEST

City staff requests City Council to approve the City of DeBary Pay Plan, establishing a compensation structure to be implemented effective June 1, 2022 and to approve resulting staff wage adjustments.

PURPOSE

Pay plans establish ranges of wages to be paid based upon scope of work to be performed. The purpose is to approve and establish a pay plan approaching market rates, to adjust current wages in accordance with the approved plan and provide for parity in wages.

CONSIDERATIONS

- The City of DeBary Pay Plan has not been reviewed or revised since at least 2014.

- The lack of an adequate and appropriate pay plan has resulted in wages for staff at below market rate and provided for challenges in recruitment and retention.

- Overall, the pay of DeBary’s workforce is 20-25% less than the average wages of similar positions in other mid-sized Volusia municipalities.

- The adoption of a revised pay plan is necessary to ensure that the City of DeBary is compensating staff near or at market rate.

- The City of Deltona and the City of New Smyrna Beach recently completed paid compensation studies (2021 and 2020, respectively). This data was utilized in the development of the City of DeBary pay plan.

- The establishment of pay ranges approaching market rate will assist the City of DeBary with recruitment.
• Between April 2021 and April 2022, the City had an 18% turnover rate. Adjusting rates may prevent skilled and experienced staff from seeking other employment and could protect and preserve institutional knowledge.

• DeBary provides the same services as other communities but utilizes a smaller workforce that is dynamic and diverse.

• It is expected and anticipated that the pay plan will be reviewed annually to maintain competitiveness, to ensure that roles are classified appropriately, and to ensure that positions are being paid at or near market rate.

• This item applies to the implementation of an updated pay plan. Consideration of Cost-of-Living adjustments and/or other changes to compensation will occur during the normal budget process for FY2023.

COST/FUNDING
The salary expense for FY2021-22 budget will be approximately $96,127.77. The additional cost will be allocated from either a budget amendment from the current FY budget or general fund reserves dependent upon availability. The increase in the annual costs ($288,383.32) will be absorbed in the normal budget process.

RECOMMENDATION
It is recommended that the City Council approve the City of DeBary Pay Plan with an effective date of June 1, 2022 and authorizing the City Manager to execute the necessary documents to adjust current wages.

IMPLEMENTATION
Providing for a Pay Plan effective date of June 1, 2022. Salary increases, as per Personnel Policy, will be effective June 5, 2022.

ATTACHMENTS
#1 – Employee Pay Plan Proposal
#2 – Draft Pay Plan
#3 – Actual Comparative Salaries – Volusia County
#4 – Actual Comparative Salaries – Executives in Medium-Sized Municipalities (Volusia)
#5 – Financial Impact Summary
Employee Pay Plan Proposal

The purpose of this pay proposal is to accomplish two things, 1) develop an up-to-date and consistent pay scale with better pay ranges for the entire organization, and 2) provide competitive pay adjustments to our entire workforce to improve employee recruitment and retention. Using this methodology prevents compression issues which ultimately becomes too expensive and a financial burden on the organization.

BACKGROUND

Similar to our Personnel Policies and Procedures, the City’s pay plan and scale was severely out of date. The pay plan, position descriptions, and pay grade scale had not been adjusted since 2014. The root cause of the problem was lack of HR talent and expertise and poor leadership. Even though employees were receiving cost of living raises annually, pay scales were never adjusted. As position duties and responsibilities were evolving, position descriptions were never updated to meet the job market. The pay plan and scale were inconsistent, as the Maintenance Worker classifications had a separate pay plan than other employees.

Since April 2019, the City Manager and HR Director have been slowly updating job descriptions, adjusting pay grade scales and upgrading & downgrading positions to meet work demands and regulations, improve business processes and to compete within an ever-changing external business environment.

CURRENT SITUATION

Today, our organization is poised for excellence. We have significantly improved our business processes, teamwork environment and productivity. We have brought in new talent and expertise that not only approved our agility, but the precision of our execution. Running a full-service government with just 44 employees to meet service demands and expectations takes a high quality, professional workforce from top to the bottom of the organization.

The City of DeBary is a medium-sized community with all of the service demands of other communities. Our business philosophy reduces unnecessary government overhead and optimizes results. However, a small workforce does not mean small wages. Contrary to perception, our workforce is more talented and experienced person-to-person than other organizations. Labor heavy organizations with large staffs tend to be more specialized with narrowly focused job descriptions. Our City’s workforce is more dynamic with experience in a multitude of business processes and departments in addition to their own.

In today’s government industry and environment, our biggest threat is employee recruitment and retention. Turnover has begun, experiencing 18% this past year. We are also struggling with recruitment with the prime example being the search for a Growth Management Director, as well as other positions. We have a great family-oriented, close-knit work environment with
great leadership. Unfortunately, pay scales of like organizations will incentivize employees to seek other opportunities, ultimately eroding our workforce and our ability to provide the services needed in our community. Overall, the pay of our workforce is 20-25% less than the average pays of similar positions in other medium-sized Volusia municipalities.

It is with these business principles that we present this business case to the City Council. Over the last three years, we have been extremely successful as an organization. We have built a lot of momentum and prestige. Our residents have noticed, but so have our industry competitors. It is necessary at this time to make a business decision to make provide a competitive work adjustment for our staff.

PROPOSAL

This proposal is a multiphase action plan for our workforce. Over the next few years, we plan to revisit and evaluate our positioning with our industry competitors.

First, we acquired the City of Deltona’s paid compensation study (performed by the Archer Group) as well as how Deltona has implemented the recommended changes. I would like to emphasize that Deltona took the recommendations of the consulting firm and took immediate action to implement. In the end, due to the difficulty in recruiting, Deltona actually implemented a plan that exceeded the consultant’s recommendations.

Reliance in Deltona’s plan has not occurred in a vacuum. Before deciding to concentrate on the Deltona findings, I reviewed numerous other paid studies (Flagler County and New Smyrna Beach are all recent). I have also utilized ad hoc (unpaid but based on public records) compensation surveys conducted by the City of DeLand, Ormond Beach and myself as well as the Florida Public Human Resource Association’s Annual Compensation Survey. Benefit packages and offerings for all organizations are comparable and are not discussed in this proposal.

PAY PLAN AND BANDS

Using Deltona as a benchmark, we identified the position titles in Deltona’s pay plan and aligned them with those utilized by the City of DeBary. From here, we derived a base classification system, grouping jobs with similar duties, responsibilities, knowledge, skills and educational requirements together.

The lowest paid, full-time position in the Deltona pay plan is a facility maintenance worker with a starting rate of pay of $15.00 per hour ($31,200). Deltona and DeBary both share a Maintenance Tech/Maintenance Worker position, nearly identical in scope. Archer recommended a starting rate of $13.60, but Deltona is currently recruiting at a starting pay at $15.85 per hour.
We utilized this starting pay point for the City of DeBary pay plan. From there, we calculated the standard 7% increase to determine the minimum rate for each band. The maximum of each pay band is a standard 150% above the respective minimum. Exhibit #1 is the new proposed City of DeBary pay plan and bands.

**PROFESSIONAL, SUPERVISORY & NON-SUPERVISORY LEVEL**

For our professional, supervisory and non-supervisory personnel, we utilized the Deltona implementation model. As noted above, Deltona implemented a pay plan that exceeded the recommendation of the paid consultant. Archer recommended a beginning minimum rate for their most entry-level position of $12.75 with a phased-in approach to meet the $15.00 minimum wage requirement by 2026. Deltona, instead, chose to implement immediately. Therefore, they shifted their pay plan upwards based on their new minimum of $15.00. They did this by taking the difference between $12.75 and $15.00 per hour ($2.25) and adding it across the board to every pay band. Therefore, the Maintenance Tech position starting rate went from $13.60 to $15.85.

Once Deltona decided to increase all of the recommendations of the Archer Group by $2.25 per hour (minimum starting rate), or $4,680.00 annually, Deltona gave every current employee a minimum of a $4,680 annual increase. This was to address any potential compression issues as well as maintain separation from the minimum for those with institutional longevity. If this increase placed the employee within their new salary range based upon their position, this was the employee’s new rate of pay. If it did not, the employee was brought up to the new minimum wage for their position.

DeBary’s formula is calculated in similar fashion. Our minimum hourly pay for Maintenance Worker I is $13.94 per hour or $1.91 per hour lower than Deltona recruitment. Therefore, we utilized the pay differential for all non-Director positions as $1.91 per hour or the minimum of the new paygrade. Exhibit #2 is the itemized list of the positions and their adjusted new salary.

**DIRECTOR LEVEL**

At the Director Level, the salaries are market driven. Unfortunately, our Directors are so underpaid we took a market driven approach utilizing the actual salaries from other Volusia municipalities. Directors generally have the same duties and responsibilities in each city.

There are 16 municipalities in Volusia County. Each has their own organizational structure. We have divided the municipalities into 3 categories to determine pay scale, Large Cities (population > 40,000); Medium Cities (population 4,000 – 40,000) and Small Cities (population < 4,000). Using this scale, there are 4 Large Cities (Daytona Beach, Deltona, Ormond Beach, Port Orange), 8 Medium Cities (Daytona Beach Shores, DeBary, DeLand, Edgewater, Holly Hill, New Smyrna, Orange City, and South Daytona) and 4 Small Cities (Lake Helen, Pierson, Ponce Inlet and Oak Hill). No County position is included in this study. Exhibit #3 is the table itemizing actual salaries of each Director position in each City.
For the purposes of this study, we focused our newly established pay plan ranges and current salaries on the 8 medium sized cities. Not all cities have a specific director positions, as some of their duties are merged into other job classifications. For example, Edgewater uses an administrative clerk as their IT Director. These anomalies are not included in the pay analysis. These calculations are in Exhibit #4.

Figure #1 is the table comparing the average salaries for each position for countywide and medium sized municipalities. For example, there are 15 Finance Directors out of the 16 Volusia municipalities. Of all the Municipal Finance Directors in this County, the average salary is $120,030.87. Of the 8 medium sized cities, the average salary is $114,504.91. Each Director is $7,000 - $25,000 below the average salary of similar positions in the medium sized cities. It is at the Directors Level our organization will have to take a multiyear approach to normalize their salaries.

Our allocation of new salaries is based upon the average salary of the medium sized municipalities, or the minimum of their new pay grade whichever is greater. Considerations were also given based upon the employee’s tenure with the City and their overall performance. The City Manager has conducted performance evaluations on each Director level employee. All perform well above average, many are exemplary.

<table>
<thead>
<tr>
<th>Director Position</th>
<th>Volusia Cities</th>
<th>Medium Sized Cities</th>
<th>Current Salary</th>
<th>Recommend Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#</td>
<td>Avg. Salary</td>
<td>#</td>
<td>Avg. Salary</td>
</tr>
<tr>
<td>Finance Director</td>
<td>15</td>
<td>$120,030.87</td>
<td>8</td>
<td>$113,467.40</td>
</tr>
<tr>
<td>IT Director</td>
<td>8</td>
<td>$104,820.42</td>
<td>4</td>
<td>$99,349.45</td>
</tr>
<tr>
<td>HR Director</td>
<td>12</td>
<td>$106,385.11</td>
<td>7</td>
<td>$98,068.97</td>
</tr>
<tr>
<td>P&amp;R Director</td>
<td>12</td>
<td>$108,532.48</td>
<td>7</td>
<td>$94,414.17</td>
</tr>
<tr>
<td>GM Director</td>
<td>9</td>
<td>$116,129.39</td>
<td>5</td>
<td>$105,823.16</td>
</tr>
<tr>
<td>PW Director</td>
<td>14</td>
<td>$121,002.07</td>
<td>7</td>
<td>$114,707.71</td>
</tr>
<tr>
<td>Econ/GA/Comm</td>
<td>4</td>
<td>$114,293.38</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>City Engineer</td>
<td>9</td>
<td>$111,593.21</td>
<td>3</td>
<td>$110,469.65</td>
</tr>
</tbody>
</table>

**COST OF PROPOSAL**

The total cost of the proposal, which includes wages, taxes and retirement is $288,383.32 annually. This amount can be accounted for and absorbed in the FY 2022-23 budget. For current FY 2021-22, the cost of this proposal is $96,127.77. It is proposed these increases will take effect June 1, 2022.
FUTURE STRATEGIES

A key personnel strategy is the implementation of a pay for performance system, which is statistically based. It is envisioned that employees will receive annual cost of living increases along with a pay for performance additive. This strategy will not only promote excellence, but keep employee salaries competitive with the local government market.

Local governments have not developed a statistically based, pay for performance system. Pay for performance systems that are not statistically based ultimately fail. Establishing statistical measurement system involves leader and employee education, developing evaluation measurements and programming computerized measurement system.

CONCLUSION

The DeBary team is comprised of top notch leadership, skills and expertise who are dedicated to quality public service. We have been very successful in turning around this organization over the last 3 years. We have resolved long-standing problems, improved our performance and have become more financially secure. We are at the pinnacle of extraordinary things in DeBary, and it is our recommendation to continue our momentum by keeping this team together, approving this pay plan and salary increases. Government is worthless without good people.
<table>
<thead>
<tr>
<th>DeBary Title</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>MW I IT Technician</td>
<td>101</td>
<td>$15.85</td>
<td>$23.78</td>
<td>$32,968.00</td>
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<tr>
<td>MW II Program Coordinator</td>
<td>102</td>
<td>$16.96</td>
<td>$25.44</td>
<td>$35,275.76</td>
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<tr>
<td>MW III Communications Specialist</td>
<td>103</td>
<td>$18.15</td>
<td>$27.22</td>
<td>$37,745.06</td>
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<tr>
<td>MW III Planning Technician</td>
<td>104</td>
<td>$19.42</td>
<td>$29.13</td>
<td>$40,387.22</td>
</tr>
<tr>
<td>MW III Recreation Supervisor</td>
<td>105</td>
<td>$20.78</td>
<td>$31.16</td>
<td>$43,214.32</td>
</tr>
<tr>
<td>Program Coordinator</td>
<td>106</td>
<td>$22.23</td>
<td>$33.35</td>
<td>$46,239.33</td>
</tr>
<tr>
<td>Accountant</td>
<td>107</td>
<td>$23.79</td>
<td>$35.68</td>
<td>$49,476.08</td>
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<td>Recreation Manager</td>
<td>108</td>
<td>$25.45</td>
<td>$38.18</td>
<td>$52,939.40</td>
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<tr>
<td>Senior Accountant</td>
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<td>$27.23</td>
<td>$40.85</td>
<td>$56,645.16</td>
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<td>Budget/Purchasing Mgr.</td>
<td>110</td>
<td>$29.14</td>
<td>$43.71</td>
<td>$60,610.32</td>
</tr>
<tr>
<td>City Clerk</td>
<td>111</td>
<td>$31.18</td>
<td>$46.77</td>
<td>$64,853.05</td>
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<td>Parks &amp; Recreation Director</td>
<td>112</td>
<td>$33.36</td>
<td>$50.04</td>
<td>$69,392.76</td>
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<tr>
<td>Public Works Director</td>
<td>113</td>
<td>$35.70</td>
<td>$53.55</td>
<td>$74,250.25</td>
</tr>
<tr>
<td>HR Director</td>
<td>114</td>
<td>$38.20</td>
<td>$57.29</td>
<td>$79,447.77</td>
</tr>
<tr>
<td>IT Director/Records Manager</td>
<td>115</td>
<td>$40.87</td>
<td>$61.30</td>
<td>$85,009.11</td>
</tr>
<tr>
<td>Growth Mgmt. Director</td>
<td>116</td>
<td>$43.73</td>
<td>$65.60</td>
<td>$90,959.75</td>
</tr>
<tr>
<td>Communications Mgmt. Director</td>
<td>117</td>
<td>$46.79</td>
<td>$70.19</td>
<td>$97,326.93</td>
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<tr>
<td>Engineer</td>
<td>118</td>
<td>$50.07</td>
<td>$75.10</td>
<td>$104,139.82</td>
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<tr>
<td>Finance Director</td>
<td>119</td>
<td>$53.57</td>
<td>$80.36</td>
<td>$111,429.61</td>
</tr>
<tr>
<td>Engineer et.al.</td>
<td>120</td>
<td>$57.32</td>
<td>$85.98</td>
<td>$119,229.68</td>
</tr>
<tr>
<td>Engineer et.al.</td>
<td>121</td>
<td>$61.33</td>
<td>$92.00</td>
<td>$127,575.76</td>
</tr>
<tr>
<td>Engineer et.al.</td>
<td>122</td>
<td>$65.63</td>
<td>$98.44</td>
<td>$136,506.06</td>
</tr>
</tbody>
</table>

Attachment #2

May 2021
### Leadership Positions
#### Actual May 2022

<table>
<thead>
<tr>
<th>Organization</th>
<th>Population</th>
<th>Finance Director</th>
<th>IT Director</th>
<th>Public Works Director</th>
<th>Human Resource Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daytona Beach</td>
<td>70,617</td>
<td>$188,039.52</td>
<td>$133,996.32</td>
<td>$174,919.32</td>
<td>$174,919.32</td>
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<tr>
<td>Daytona Beach Shores</td>
<td>4,860</td>
<td>$136,323.00</td>
<td>N/A</td>
<td>$137,820.00</td>
<td>$108,180.00</td>
</tr>
<tr>
<td>DeBary</td>
<td>22,901</td>
<td><strong>$106,204.80</strong></td>
<td>$83,636.80</td>
<td><strong>$88,732.80</strong></td>
<td><strong>$77,459.20</strong></td>
</tr>
<tr>
<td>Deland</td>
<td>39,237</td>
<td>$119,000.00</td>
<td>$122,000.00</td>
<td>$100,000.00</td>
<td>$117,000.00</td>
</tr>
<tr>
<td>Deltona</td>
<td>95,874</td>
<td>$94,993.60</td>
<td>$119,163.20</td>
<td>$105,622.40 (vacant - min.) **</td>
<td>$94,993.60 (vacant - min.) **</td>
</tr>
<tr>
<td>Edgewater</td>
<td>24,464</td>
<td>$106,288.00</td>
<td>$82,224 (manager) *</td>
<td>$79,966.80 (manager) *</td>
<td>$112,174.40</td>
</tr>
<tr>
<td>Holly Hill</td>
<td>12,663</td>
<td>$104,998.00</td>
<td>$82,224 (manager) *</td>
<td>$112,132.80</td>
<td>$83,137 (manager) *</td>
</tr>
<tr>
<td>Lake Helen</td>
<td>2,837</td>
<td>N/A</td>
<td>N/A</td>
<td>$71,279.00</td>
<td>N/A</td>
</tr>
<tr>
<td>New Smyrna</td>
<td>29,904</td>
<td>$120,225.00</td>
<td>$115,281.00</td>
<td>$135,000.00</td>
<td>$98,271.00</td>
</tr>
<tr>
<td>Oak Hill</td>
<td>2,355</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Orange City</td>
<td>12,860</td>
<td><strong>$104,686.40</strong></td>
<td>$73,528 (manager) *</td>
<td>$119,454.40</td>
<td>$75,899.20</td>
</tr>
<tr>
<td>Ormond Beach</td>
<td>45,007</td>
<td>$147,099.00</td>
<td>$100,405.00</td>
<td>$148,708.00</td>
<td>$146,540 (ACM) ***</td>
</tr>
<tr>
<td>Pionson</td>
<td>1,518</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Ponce Inlet</td>
<td>3,272</td>
<td>$95,530.00</td>
<td>$87,601.00</td>
<td>N/A</td>
<td>$87,449.00</td>
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<td>Port Orange</td>
<td>67,203</td>
<td>$127,000.00</td>
<td>N/A</td>
<td>$133,162.45</td>
<td>$115,000.00</td>
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<tr>
<td>South Daytona</td>
<td>13,263</td>
<td>$110,014.00</td>
<td>$76,480.00</td>
<td>$109,814.00</td>
<td>$97,499.00</td>
</tr>
<tr>
<td>AVERAGE</td>
<td></td>
<td><strong>$120,380.87</strong></td>
<td><strong>$104,820.42</strong></td>
<td><strong>$121,002.07</strong></td>
<td><strong>$106,385.11</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Organization</th>
<th>Parks &amp; Recreation Director</th>
<th>Engineer</th>
<th>Growth Management Director</th>
<th>Economic Development Dir.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daytona Beach</td>
<td>$146,778.12</td>
<td>$124,505.88</td>
<td>$153,459.24</td>
<td>$135,000.00</td>
</tr>
<tr>
<td>Daytona Beach Shores</td>
<td>$99,091.00</td>
<td>N/A</td>
<td>N/A</td>
<td>Parks &amp; Recreation handles</td>
</tr>
<tr>
<td>DeBary</td>
<td><strong>$78,000.00</strong></td>
<td>$99,216.00</td>
<td>**$71,427.81 (vacant - min.) **</td>
<td><strong>$78,312.00</strong></td>
</tr>
<tr>
<td>Deland</td>
<td>$116,000.00</td>
<td>$122,000.00</td>
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* Position is not Director level -- Manager, Administrator, or similar
** Position is currently vacant, posted minimum salary
*** Position is Assistant City Manager, not Director
## Director Current Salaries - 8 Medium Sized Municipalities

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<th>Organization</th>
<th>Population</th>
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<th>Human Resource Director</th>
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## 2022 Pay Plan
### Financial Impact

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<th>Current Annual</th>
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<th>New Hrly Rate</th>
<th>Annual Change</th>
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<p>| 104 | $19.42 | $29.13 | $40,387.22 |</p>
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<th>New Rate</th>
<th>Hrly Change</th>
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Attachment #5
## 2022 Pay Plan
### Financial Impact

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<th>New Rate</th>
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- **Wages:** $245,119.69
- **Taxes:** $18,751.66
- **401(a):** $24,511.97
- **Total Annual:** $288,383.32
- **Prorated June - Oct.:** $96,127.77

Attachment #5
### City Council Meeting
City of DeBary
AGENDA ITEM

<table>
<thead>
<tr>
<th>Subject:</th>
<th>Discussion regarding Traffic and Pedestrian Safety Ordinance</th>
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<tr>
<td>From:</td>
<td>Carmen Rosamonda, City Manager</td>
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<td>Meeting Hearing Date</td>
<td>5/18/2022</td>
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#### Attachments:
- ( ) Ordinance
- ( ) Resolution
- (x) Supporting Documents/Contracts
- ( ) Other

### REQUEST

City Manager is requesting City Council discuss and provide guidance on a proposed traffic and pedestrian safety ordinance.

### PURPOSE

The purpose is to discuss and seek guidance from City Council on a proposed traffic and pedestrian safety ordinance.

### CONSIDERATIONS

- Many Volusia Municipalities have ordinances which restrict panhandling and other unwanted behavior and dangerous activities within public streets and rights of way.

- DeBary is experiencing an increase in unwanted behavior and dangerous activities within public streets and rights of way. Business owners and residents feel nervous and or threatened by these behaviors and activities.

- Being proactive is the best solution of keeping our streets safe.

### COST/FUNDING

N/A

### RECOMMENDATION

It is recommended that the City Council to discuss and provide guidance from City Council on a proposed traffic and pedestrian safety ordinance.

### IMPLEMENTATION

Staff will act upon Council guidance.
ATTACHMENTS

Draft Traffic and Pedestrian Safety Ordinance
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA CREATING NEW ARTICLE IV OF CHAPTER 42 OF THE CITY CODE TO PROVIDE FOR PEDESTRIAN AND TRAFFIC SAFETY; REGULATING CERTAIN ACTIVITIES ASSOCIATED WITH THE IMPEDIMENT OR OBSTRUCTION OF THE SAFE AND FREE FLOW OF VEHICULAR AND PEDESTRIAN TRAFFIC AND PROHIBITING HARASSMENT OF PERSONS UTILIZING PUBLIC STREETS, SIDEWALKS, AND OTHER PUBLIC AREAS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, neither the City Code nor the Florida Statutes currently regulate certain behaviors causing disruption and distress to pedestrian and vehicular traffic within the City of DeBary; and

WHEREAS, the City finds that under certain circumstances, such activities can have a detrimental effect on the public welfare by unduly interfering with the free and safe flow of pedestrians and vehicular traffic with the City and causing citizens using the City’s streets and pedestrian pathways to unnecessarily suffer unsafe conditions;

WHEREAS, the City finds that the restrictions imposed by this Ordinance are the least intrusive means of ensuring the free and safe flow of pedestrian and vehicular traffic and protecting the public welfare, safety, and health.

IT IS HEREBY ORDAINED BY THE CITY OF DEBARY AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. City Code Amendment. Article IV of Chapter 42 of the City Code is hereby amended to include the following new code sections (words that are stricken out are deletions; words that are underlined are additions; provisions not referenced are not being modified):

ARTICLE IV. – TRAFFIC AND PEDESTRIAN SAFETY

Sec. 42-80. – Obstruction or Impediment of Public Streets and Rights-of-Way.

(a) It shall be unlawful for any pedestrian or person to:

(1) For any period of time, sit, or stand in or on:

i. Any unpaved median, or any median of less than three feet, or

ii. Any median less than five feet where the adjacent roadway has three or more vehicular travel lanes in any one direction at the point of intersection (including turning lanes), except that pedestrians may use median strips only in the course of lawfully crossing from one side of the street to the other.
(2) Occupy a paved travel lane or other portion of a roadway while the traffic is flowing.

(3) Alter or impede the flow of vehicular traffic by any means.

(4) Remain in the portion of the paved road or highway designated for vehicular use upon the commencement of traffic flow from a stopped position.

(b) Each of the following behaviors is prohibited as to pedestrians or other persons on foot along or within public streets, roads, and highways and constitute a violation of this section:

(1) Crossing a roadway at a point within 200 feet of a marked crosswalk.

(2) Crossing at a controlled intersection contrary to the signal lights or the direction of a traffic officer.

(3) Crossing a roadway intersection diagonally, unless authorized by official traffic control devices or a traffic officer.

(4) Crossing a roadway with four or more total travel lanes (counting both directions), except in a marked crosswalk or any other place than by a route at right angles to the curb or by the shortest route to the opposite curb.

(5) Crossing a roadway intersection in any manner prohibited by official traffic control devices or signage directing or pertaining to such crossing movements.

(6) Where sidewalks are provided on a roadway with four or more total travel lanes (counting both directions), walking along and upon the paved portion of a roadway intended for vehicular traffic.

(7) Between adjacent intersections at which traffic control signals are in operation, crossing at any place except in a marked crosswalk.

(8) Intentionally blocking the path of travel of a vehicle or acting in such a manner so as to cause a vehicle operator to take evasive action to avoid contact or collision with such person. For purposes of this section, evasive action means causing a vehicle operator to cause his or her vehicle to depart from the lane of traffic in which it is traveling to change lanes, to straddle lanes, or to enter onto a swale to obtain passage; it also means causing a pedestrian to leave the sidewalk on which he or she is traveling, or to cause the vehicle to make contact with a wall or fence bordering the sidewalk.

(9) Physically reaching into a vehicle, touching a vehicle occupant, or touching any portion of a vehicle without the consent of a vehicle occupant or owner, or throwing any object at or into any vehicle unless specifically requested by an occupant or owner of such vehicle.

(c) Exemptions. The prohibitions contained in this section will not apply to the following individuals under the following circumstances:
(1) Persons who are involved in vehicular accidents, whose vehicle is disabled, or who are otherwise incapacitated;

(2) Law enforcement personnel, firefighters, paramedics, or any other persons rendering aid to people or animals in need located in the streets and roadways; and

(3) Code Enforcement personnel, municipal Public Works and Utilities personnel, as well as other authorized persons from other governmental entities, who are engaged in the conduct of their official duties on behalf of their respective agencies, and any person permitted or directed by any such personnel to be present in such location.

Sec. 42-81. – Street Harassment.

(a) Street Harassment is hereby prohibited within the jurisdictional boundaries of the city.

(b) Street Harassment means and is defined as the conduct of any of the following behaviors along, in, or upon public spaces or pedestrian walkways, pathways, and throughways within the city:

(1) Approaching or communicating with a person in such a manner that would:
   i. Cause a reasonable person to believe that the person is being threatened with either imminent bodily injury or the commission of a criminal act upon the person; or
   ii. Cause a reasonable person to be seriously alarmed, annoyed or harassed, and the conduct in fact seriously alarms, annoys or harasses the person.

(2) Willfully blocking, either individually or as part of a group of persons, the free movement of an individual against such individual’s will;

(3) Following another person for no legitimate purpose after being asked by such person to desist;

(4) Willfully touching a person without explicit permission; or

(5) Engaging in aggressive conduct that a reasonable person would construe as being intended to intimidate, compel, or force an individual to accede to the offending person’s demands or requests.

Sec. 40-82. – Penalty.

Any person who commits any act declared unlawful in this Article shall be punished by a fine not exceeding $500.00 or imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment in the discretion of the court. If committed in the
presence of a law enforcement officer, any act declared unlawful in this Article shall be considered to be an arrestable offense.

SECTION 3. Codification. This Ordinance will be incorporated into the DeBary City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 6. Effective date. This ordinance shall become effective immediately upon adoption by the City Council of the City of DeBary, Florida.

FIRST READING: __________, 2022

SECOND READING: ____________ , 2022

ADOPTED this ____ day of _________ , 2022, by the City Council of the City of DeBary, Florida.

CITY COUNCIL
CITY OF DEBARY

______________________________
Karen Chazez, Mayor/Commissioner

ATTEST:

______________________________
Annette Hatch, City Clerk