

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), is by and between the City of Deltona, Florida, a Florida municipal corporation (hereinafter referred to as "City"), and JOHN A. PETERS, III (hereinafter referred to by name or as "Acting City Manager").

### **W I T N E S S E T H:**

WHEREAS, the City desires to employ John A. Peters as Acting City Manager of the City of Deltona, Florida, as provided for in Section 7; and

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

WHEREAS, John A. Peters, III desires to continue his employment with the City of Deltona as Acting City Manager of the City of Deltona under the terms and conditions set forth herein.

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

#### **Section 1. Employment.**

A. The City of Deltona hereby hires and appoints John A. Peters, III as its Acting City Manager, under the terms established herein, to perform the duties of the City Manager and functions specified in the City Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City's employment of John A. Peters, III as Acting City Manager shall be effective, XXXXXXXX, XX, 202X. This Agreement shall remain in effect until terminated by the City or by the Acting City Manager as provided herein.

#### **Section 2. Salary and Evaluation.**

A. For the performance of services pursuant to this Agreement, the City agrees to pay the Acting City Manager an annual base salary of \$165,000 (\$6,346.15 bi-weekly), payable in installments at the same time as the City's Department Heads are paid.

B. After the first year of the contract, should the City's Department Heads receive a cost of living and / or merit increase, the Acting City Manager will receive an increase commiserate to the City's Department Heads.

C. The City may also increase said base salary and/or other benefits of the Acting City Manager in such amounts and to such an extent as the City Commission may determine desirable on the basis of an Annual Performance Evaluations of the Acting City Manager.

D. Written evaluations shall be in such form as the Commission deems appropriate and shall be typically performed every three months with the Annual Performance Evaluation occurring between October 1<sup>st</sup> and October 31<sup>st</sup> of each year in which this Agreement is effective.

E. Nothing in this Section shall require the City to increase the base salary or other benefits of the Acting City Manager. Furthermore, the City's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with a material provision of this Agreement.

### **Section 3. Duties and Obligations.**

A. The Acting City Manager shall have the duties, responsibilities and powers of City Manager under the Charter and Ordinances of the City of Deltona, and such other legally permissible and proper duties and functions as the City Commission shall from time to time assign. The Acting City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner.

B. The Acting City Manager shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skills necessary to faithfully perform his duties under this Agreement. The Acting City Manager may, however, engage in educational and professional activities and other employment activities upon receipt of approval by the City Commission provided that such activities shall not interfere with his primary obligation to the City as its Acting City Manager. The Acting City Manager shall be generally required to be on duty during the City's normal business hours and shall dedicate no less than an average of forty (40) hours per work week in the performance of his duties hereunder. The Acting City Manager understands that he will devote the time necessary to perform his duties and functions even if it requires an excess of forty (40) hours per work week.

C. In the event the Acting City Manager serves, with the approval of the City Commission, on any appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, and any monies are paid, or gifts received, by the Acting City Manager related to such service, such money or property shall be paid over to or delivered to the City, unless otherwise provided by the City Commission.

#### **Section 4. Automobile Allowance and Communications Equipment**

The Acting City Manager is required to be on call for twenty-four hour service. In recognition thereof:

The City shall grant to the Acting City Manager an automobile allowance of \$400 per month (\$184.62 bi-weekly). The City shall reimburse the Acting City Manager at its standard mileage rate for any business use of the vehicle beyond the greater Deltona City area (that being defined as a radius of 50 miles of the city).

#### **Section 5. Dues and Subscriptions**

The City agrees to pay the Acting City Manager's professional dues for membership in the International City/County Management Association, the Florida City and County Management Association, and the Florida Board of Professional Engineers. The City shall pay other dues and subscriptions on behalf of the Acting City Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Commission.

#### **Section 6. Professional Development**

The City agrees to pay reasonable and customary travel and subsistence expenses for the Acting City Manager's travel to and attendance at the Florida City and County Management Association's annual conference and the Florida League of Cities' annual conference. The City may choose to pay for the Acting City Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate and approved by Commission action.

#### **Section 7. Community Involvement**

The City recognizes the desirability of representation in and before local civic and other organizations, and encourages the Acting City Manager to participate in these organizations to foster a continuing awareness of the City's activities as well as the community's attitudes and ideas. The City Commission may require the Acting City Manager to participate in organizations for the good of the City, and may restrict the Acting City Manager from participating in organizations where such participation would be detrimental to the City. If the City does require any such membership, it shall budget for reasonable membership fees and/or dues to enable the Acting City Manager to become an active member.

#### **Section 8. Vacation and Sick Leave**

Upon the commencement of this Agreement, the Acting City Manager shall maintain his current bank of accrued annual leave (vacation) and sick leave. Thereafter, the Acting City

Manager shall accrue vacation and sick leave annually in the same manner as the City's Department Heads at the same level of accrued years of experience recognizing his years of service and experience as an Acting City Manager or equivalent.

**Section 9. Holidays**

The Acting City Manager is entitled to the same paid holidays as the City's Department Heads.

**Section 10. Health, Dental, Life and Disability Insurance**

The City agrees to provide health, dental, life insurance and disability insurance in the same manner as the City's Department Heads. Such coverage will be effective upon execution of this Agreement.

**Section 11. Retirement.**

The City agrees continuing to pay, on an annual basis, an amount equal to six percent (6%) of the Acting City Manager's salary to one of the City's approved deferred retirement programs,. The City's six percent (6%) contribution to an approved deferred retirement program shall not exceed the limit established by state and federal statute and/or regulation. Such payments shall be payable in installments at the same time as other retirement benefits are paid for the City's Department Heads..

**Section 12. Termination by the City and Severance Pay**

A. The Acting City Manager shall serve at the pleasure of the City Commission, and the City Commission may terminate Mr. Peters position as Acting City Manager by majority vote in accordance with City Charter Section 7.

B. If the City Commission and Acting City Manager mutually agree, the Acting City Manager will be allowed to return to his previous position of Public Works Director at any time in this Agreement. In that event, the Acting City Manager will return to his original salary along with any pay adjustments, annual increases, etc. that he would have accrued while serving as Acting City Manager.

C. Should the City Commission vote to terminate the services of the Acting City Manager "without cause", then the Acting City Manager will be entitled to a severance package consisting of twenty (20) weeks at the current rate of pay. This severance shall be paid in bi-weekly installments, including accrued benefits. A lump sum payment may be authorized if agreed to by both the Acting City Manager and the City. The City shall continue paying benefits in force at the time of termination for twenty (20) weeks.

D. In the event the Acting City Manager is terminated for “just cause” as outlined in Florida Statutes, Section 443.036 (29), the City shall not pay severance under this contract.

E. In the event the City Commission, at any time during the employment term, reduces the salary or other benefits of the Acting City Manager, as identified herein, in a greater percentage than an equivalent across-the-board reduction for City Department Heads, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefitting the Acting City Manager, the Acting City Manager shall notify the City Commission in writing of the alleged violation. The Commission shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the Acting City Manager may at his option, consider such violation as termination “without cause” as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal.

F. Except as otherwise expressly provided in this Agreement, the Acting City Manager shall not be entitled to, and expressly waives, any notice, substantive or procedural requirement, hearing, or right regarding his continued employment as may be provided for in the City Charter, Code, Personnel Rules and Regulations or by practice.

### Section 13. Resignation by the Acting City Manager

The Acting City Manager may ~~resign under terminate~~ this Agreement at any time by delivering to the City

Commission a written ~~statement of resignationnotice of termination~~ not later than thirty (30) days prior to the effective date of ~~same~~the termination. If the Acting City Manager resigns his position as Acting City Manager, he may either return to his original position as Public Works Director or voluntarily resign his employment with the City. In the case of voluntarily resigning his employment, the City shall pay the Acting City Manager any and all salary accrued and unpaid as of the date of his termination, and any accrued and unused benefits as of the date of his termination in the same manner as such would be paid out for the City’s Department Heads. These payouts shall exclude allowances, such as the Acting City Manager’s health insurance, deferred compensation, automobile allowance and cell phone allowance. The City shall have no further financial obligation to the Acting City Manager pursuant to this Agreement. This subsection shall not prevent the Acting City Manager from collecting any money earned as a result of participation in any deferred retirement program.

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### Section 14. Disability

If the Acting City Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health, the City shall have the option to terminate Acting City Manager, except as prohibited by applicable law, subject to the severance pay provision outlined in Section 12, Paragraph C of this Agreement.

**Section 15. Indemnification.**

A. Except as prohibited by applicable law, the City shall defend, save harmless, and indemnify the Acting City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance the Acting City Manager's duties or resulting from the exercise of judgment or discretion in connection with the performance of his assigned duties or responsibilities. The City shall maintain the right to compromise and settle any such claim or legal action and pay the amount of any settlement. However, the City's obligation shall not apply if the act or omission occurred while the Acting City Manager was acting outside the course and scope of his employment, or was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the Acting City Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

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

**Section 16. Bonding**

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

**Section 17. Code of Ethics**

The Acting City Manager agrees to comply with the "Code of Ethics" promulgated by the International City Manager's Association (ICMA) and is incorporated herein, and made a part hereof. Said "Code of Ethics" shall furnish principles to govern the Acting City Manager's conduct and actions as Acting City Manager of the City.

**Section 18. Attorney's Fees**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

## **Section 19. General Terms and Conditions**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of Acting City Manager.

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

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Volusia County, Florida. The parties agree that any such enforcement action shall be non-jury.

F. Upon Acting City Manager's death, the City's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization, medical and dental bills in accordance with City's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the City's insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and have had access to an attorney accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No

term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

Executed by the CITY this \_\_\_\_ day of XXXXXXXXXXXX, 202X.

CITY OF Deltona

By: \_\_\_\_\_  
Heidi Hertzberg, Mayor

ATTEST:

\_\_\_\_\_  
Joyce Raftery, City Clerk

Executed by the ACTING CITY MANAGER this \_\_\_\_ day of XXXXXXXXX, 202X

Witnesses:

\_\_\_\_\_

\_\_\_\_\_  
John A. Peters, III

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name



## **ICMA Code of Ethics with Guidelines**

*The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2020. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2020.*

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

**Tenet 1.** We believe professional management is essential to efficient and democratic local government by elected officials.

**Tenet 2.** Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.

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

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

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

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

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

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

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

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

**Relationships in the Workplace.** Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization. This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

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

**Conflicting Roles.** Members who serve multiple roles – either within the local government organization or externally – should avoid participating in matters that create either a conflict of interest or the perception of one. They should disclose any potential conflict to the governing body so that it can be managed appropriately.

**Conduct Unbecoming.** Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

**Tenet 4. Serve the best interests of the people.**

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

**Tenet 5. Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.**

**Tenet 6. Recognize that elected representatives are accountable to their community for the decisions they make; members are responsible for implementing those decisions.**

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

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

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

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

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

**Presentation of Issues.** Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity. **Personal Advocacy of Issues.** Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

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

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

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

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

**Tenet 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline. It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.**

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

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

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

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

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

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

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

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

**Confidential Information.** Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties. Information that may be in the public domain or accessible by means of an open records request, is not confidential.

**Private Employment.** Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties. Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

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

**Endorsements.** Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry. Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other

publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest. Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

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