



MEMO

TO: All Interested Parties
DATE: January 22, 2014
FROM: John W. Donlevy, Jr., City Manager 
SUBJECT: City Manager Compensation

As a matter of public disclosure and transparency, I have routinely made it a practice to post a copy of my employment agreement and compensation information for public review and scrutiny on the City's website. In December, 2013, the City Council approved a revision to my previous agreement and amendments and this is the most current version of the contract.

The following are the details of my contract and compensation:

- **Salary:** Per my contract my monthly salary is \$10,398 which amounts to \$124,776 per year. I receive no other salary compensation.
- **Benefits:** I am provided a cafeteria benefit plan (same as for other employees) which provides a monthly allowance of \$735 which goes towards the purchase of benefits. I am provided all the same benefits as other executive management employees with the City.
- **Retirement:** The City participates in the Public Employees Retirement System under the 2% @55 formula. The City pays my 7% contribution as it does for all City employees.
- **Leave Benefits:** I receive 18 days vacation per year, 1 sick day per month and 96 hours per year of administrative leave which must be used by June 30 of each year.
- **Vehicle:** I am provided a City vehicle for business and personal use.
- **Longevity Bonus:** After 6 years of employment, I became eligible to receive ½ month pay each year.

The term of my employment agreement is until December 31, 2016. The agreement provides for a two year extension unless the City Council notifies me that they will not be extending the agreement.

If you have any questions regarding this summary or the attached information, please do not hesitate to contact me at (530) 795-4910 Extension 110.

RESOLUTION No. 2013-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS
APPROVING A CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY
AND JOHN W. DONLEVY, JR. AND AUTHORIZING MAYOR TO EXECUTE SAME

WHEREAS, the City Council appointed John W. Donlevy, Jr. as City Manager and his employment began on September 10, 2001; and

WHEREAS, modifications in the Government Code regarding executive employment agreements has changed in recent years requiring a revision to the previous agreement between the City and Donlevy; and

WHEREAS, the parties have made the appropriate revision to reflect the mandates of the Government Code and reached agreement on matters relating to the employment conditions of the City Manager, as reflected by the written contract attached hereto and made a part hereof; and

WHEREAS, this Council finds that the provisions and agreements contained in said Employment Agreement are fair and proper and in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF WINTERS DOES HEREBY RESOLVE AS FOLLOWS:

- Section 1. The City Council hereby affirms the appointment and employment of John W. Donlevy, Jr., as City Manager on September 10, 2001.
- Section 2. The Employment Agreement between the City and John W. Donlevy, Jr. is attached hereto and incorporated herein, is hereby approved.
- Section 3. The Mayor is hereby authorized and directed to execute said agreement on behalf of the City of Winters.

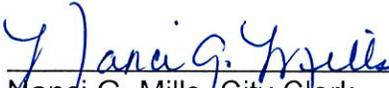
PASSED AND ADOPTED by the City Council of the City of Winters this 17th day of December, 2013, by the following vote:

AYES: Council Members Anderson, Cowan, Fridae, Guelden and Mayor Aguiar-Curry
NOES: None
ABSENT: None
ABSTAIN: None



Cecilia Aguiar-Curry, MAYOR

ATTEST:



Mandi G. Mills, City Clerk

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Winters, a municipal corporation (the “City”) and John W. Donlevy, Jr. (“Donlevy”). It is effective on the latest date next to the signatures on the last page (the “Effective Date”). This Agreement is entered into on the basis of the following facts, among others:

A. The City Council of the City desires to employ Donlevy as the City Manager of the City, and Donlevy desires to accept this employment.

B. The City and Donlevy desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

**BASED UPON THE FOREGOING, THE CITY AND DONLEVY HEREBY
AGREE AS FOLLOWS:**

1. Employment. The City employs Donlevy as City Manager, and Donlevy accepts the employment, as of the effective date below. The City Manager shall also serve as the executive head of any other City-related entities (including but not limited to a successor agency, housing agency, financing authority, etc.) when designated to do so by the City Council.

2. Duties of Donlevy. Donlevy shall perform the duties established for the City Manager by state law, Section 2.08 of the City’s Municipal Code, the City Manager job description, the directions of the City Council, and as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Donlevy shall faithfully, diligently, and to the best of Donlevy’s abilities, perform all duties that may be required under this Agreement. Donlevy agrees that he has a duty of loyalty and a general fiduciary duty to the City. Donlevy shall devote the whole of Donlevy’s working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the City’s business and affairs.

(b) No Conflict. Donlevy shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. Donlevy shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Donlevy's City employment. Donlevy is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position. Donlevy shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, or which interferes with the performance of Donlevy's duties. Further, Donlevy shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Winters (except for stock ownership in any company whose capital stock is publicly held and regularly traded) without prior approval of the City Council. For and during the term of this Agreement, Donlevy further agrees, except for a personal residence or residential property acquired or held for future use as Donlevy's personal residence, not to invest in any other real estate property improvements within the corporate limits of the City without the prior consent of the City Council.

(c) Hours of Work. The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is

expected to be available at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule and location of work each day and week will vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

3. Term. The term of this Agreement shall be for a period of three (3) years from the Effective Date through December 31, 2016, unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee. The Term of this Agreement shall automatically renew and extend for an additional two (2) year term beginning on January 1, 2017 unless written notice not to renew and extend is given by City to Donlevy no later than twelve (12) months prior to the end of the current term (i.e. not later than December 31, 2015). If notice of non-renewal is given by City, the Agreement shall remain in effect for the remaining months of the current term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that allowing the Agreement to expire at the end of this Term or any renewal term shall not be deemed a termination triggering any severance payment whatsoever. Donlevy agrees to provide notice to the City Council of this provision at least sixty (60) days prior to automatic renewal date.

4. Annual Evaluation. Each year on or about the anniversary of the Effective Date, or at a time mutually agreed upon by the City Council and Donlevy, the City Council shall conduct an evaluation of Donlevy's performance and provide guidance and direction regarding the City Council's goals and objectives which Donlevy shall be tasked with implementing.

5. Compensation.

(a) Salary. Donlevy shall receive the gross base salary of ten thousand three hundred ninety-eight dollars (\$10,398) per month, payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings. The salary may be subsequently amended by Resolution of the City Council.

(b) Annual Salary Adjustments. At the City Council's sole discretion, salary adjustments may be given to Donlevy at or around the time of the annual review and evaluation by the City Council or by a Salary Resolution of the City Council.

(c) Reduction in Salary or Benefits. In the event the City implements cost-saving measures, such as work furloughs, salary reductions changes to health or welfare benefits and allowances (as defined in Section 6), or any other changes to the monetary terms applicable to the City's department heads, Donlevy will receive the same downward adjustment or adhere to the same change in terms. In the event that such cost-saving measures are subsequently eliminated (i.e. former salary or benefit levels are restored) for the department heads, Donlevy will receive the same restoration of salary or benefits as the department heads.

6. Regular Benefits and Allowances. Except as otherwise provided in this Agreement, Donlevy will be eligible for all regular health and welfare benefits, and at the same levels, as are provided to the City's Department Head employees. Such benefits include health insurance, long term disability insurance, life insurance, longevity benefits, CalPERS miscellaneous employee retirement benefits, a deferred compensation (457) plan, workers compensation coverage, and unemployment benefits.

(a) For the CalPERS retirement benefit, the City shall pay both the employer contribution and Employee's contribution.

(b) City will contribute an amount equal to seven percent (7%) of Donlevy's salary to the 457 Plan provided by the City. However, for the period between July 1, 2013 and June 30, 2014, Donlevy agrees that such contribution shall be donated back to the City's General Fund to support City services.

(c) Donlevy shall be eligible for the City's cafeteria plan benefits contribution in the same amount provided to Department Head employees of the City. If Donlevy can provide proof of coverage from other sources, then the cafeteria contribution paid to him in cash or contributed to the 457 plan (subject to contribution limits established by law.)

7. Additional Benefits and Allowances. Donlevy shall receive the following additional benefits and allowances.

(a) Vacation; Administrative Leave; Sick Leave and Holidays.

(i) Vacation. Donlevy shall accrue eighteen (18) vacation days per year at a rate of twelve (12) hours per month. An accrual cap of five hundred (500) hours shall apply for hours which can be converted to cash value at the time of Donlevy's separation from City service (at the then-applicable salary rate) or at any other time approved by the City Council. Any vacation accrual in excess of five hundred (500) hours shall be deposited into either the City's deferred compensation plan or medical savings account.

(ii) Administrative Leave. Donlevy shall receive the same Administrative Leave benefit applicable to the City's Department Heads.

Sick Leave, Bereavement, and Holidays. Donlevy shall be entitled to observe the same City holidays, and to receive and use sick leave and bereavement leave on the same basis as other City employees. Accrued sick leave is not eligible for a cash-out at any

time by Donlevy and any remaining accrued sick leave at time of Donlevy's retirement will be governed by the rules and restrictions as detailed in the then-existing CalPERS contract.

(b) Automobile. Donlevy is on call twenty-four hours per day and shall be given use of a City automobile for City business, community based projects (ex Rotary, soccer, creek projects, etc) and for incidental personal use . The City shall be responsible for all insurance, operation, maintenance, and repair of the automobile and shall replace it on an as needed basis .

8. Termination of Employment.

(a) No Property Interest. Donlevy understands and agrees that Donlevy has no constitutionally-protected property or other interest in Donlevy's employment as City Manager. Donlevy understands and agrees that Donlevy works at the will and pleasure of the City Council, and that Donlevy may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. "Termination" by City, as used in this Agreement, shall also include 1) a request that the City Manager resign; 2) a reduction in salary or other financial benefits of the City Manager in a significant amount which is inconsistent with a reduction in salary or financial benefits for the City's Department Head employees; 3) a material reduction in the powers and authority of the City Manager (excluding placement on paid administrative leave); or 4) the elimination of the City Manager's position.

(b) In the event the City terminates Donlevy for any reason or no reason, the City and the Donlevy agree to work and issue a mutually acceptable announcement regarding the termination.

(c) Termination Immediately Before or Following City Council Election. Donlevy shall not be removed during the 90-day period immediately preceding or following a City election for membership on the City Council, nor during the 90-day period immediately following any change in membership of the City Council. Nothing in this paragraph alters the “at will” status of Donlevy’s employment with City.

(d) Notice Required Of Donlevy. Donlevy may voluntarily terminate employment at any time by giving not less than thirty (30) days’ notice.

(e) Severance Pay. If Donlevy is asked to resign or is terminated as City Manager, then Donlevy shall be eligible to receive (i) a cash payment equivalent to the sum of Donlevy’s then-current monthly salary multiplied by twelve (12) or [pursuant to Government Code section 53260] by the remaining number of months in the Agreement, whichever is less; and (ii) the cash value, as determined by the City, of Donlevy’s monthly non-salary COBRA-eligible benefits multiplied by twelve (12) or by the remaining number of months in the Agreement, whichever is less. Any such cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Donlevy shall also be paid for any accrued, but unused, vacation leave and/or administrative leave. Eligibility for such severance payment is expressly conditioned upon Donlevy’s execution of (i) a waiver and release of any and all of Donlevy’s claims against City and all City employees/officials, and (ii) a covenant not to sue the City or any City employees/officials. No severance pay shall be paid until the foregoing conditions are met and any applicable revocation rights have expired. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section.

(f) Ineligibility for Severance Under Certain Conditions. If Donlevy is terminated because of conviction of any illegal activity involving personal gain to himself, fraud, moral turpitude, gross mismanagement of City affairs, or willful breach of this agreement, the City shall have no obligation to pay the aggregate severance sum designated.

(g) Termination Due to Death or Disability. This Agreement shall terminate automatically, without triggering any severance payment obligations, upon the death of Donlevy or upon separation of Donlevy from employment due to permanent disability which prevents him from performing the essential functions of the City Manager position even with reasonable accommodations. As used here, “disability” shall have the same meaning applicable under CalPERS retirement programs. Neither Donlevy nor his heirs, administrators, or assigns shall have any right under this Agreement to salary for periods after such death or disability, but they shall have such rights and benefits as are otherwise provided by law (including the right to receive the cash value of Donlevy’s accrued vacation and administrative leave).

9. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) The cost to defend and indemnify Donlevy to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Donlevy and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, reasonable dues for Donlevy’s membership in professional organizations associated with the office of City Manager. The City

will allow Donlevy reasonable time away from the City to participate in the annual conferences of these organizations.

(d) Subject to budget approval, the cost of attending conferences or other events (i.e dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Donlevy's duties.

10. Indemnification. City shall defend, hold harmless and indemnify Donlevy 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 of Donlevy's duties in accordance with the provisions of the California Government Code Section 825. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered there from.

11. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

(i) served personally; or

(ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

(iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or

(iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the

addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City Clerk
318 First Street
Winters, CA 95694
Fax: (530) _____

DONLEVY:

John W. Donlevy, Jr.
1107 Roosevelt Avenue
Winters, CA 95694

(b) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(c) Compliance with Government Code §§53243, 53243.1, & 53243.2.

If Donlevy is convicted of a crime involving an abuse of his office or position, all of the following shall apply:

(i) if Donlevy is provided with administrative leave pay pending an investigation, Donlevy shall be required to fully reimburse the City for such amounts paid;

(ii) if the City pays for the criminal legal defense of Donlevy (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Donlevy shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Donlevy may receive from the City shall be fully reimbursed to the City or void if not yet paid to Donlevy.

For this subsection, “abuse of office or position” means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(d) Attorney’s Fees. Except as provided elsewhere in this Agreement, if any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney’s fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney’s fees and costs by the presiding officer.

(e) Severability. In the event any portion of this Agreement is declared illegal, unenforceable or void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of

such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Donlevy and City agree that venue for any dispute shall be in Yolo County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Donlevy may not assign this Agreement in whole or in part.

Dated: 12/19/13

CITY OF WINTERS

By: Cecilia Aguilar Luna
Mayor

Dated: 12-13-2013

DONLEVY

John W. Donlevy, Jr.
Donlevy

Attest:



City Clerk

Approved as to Form:



City Attorney