

**EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF AUBURN AND JOHN W. DONLEVY, JR.**

RECITAL

1. On June 22, 2020, the City Council selected John W. Donlevy, Jr. (hereafter "Donlevy") to serve as City Manager of the City of Auburn ("City") effective August 10, 2020, and Donlevy accepts such employment, subject to approval of this employment agreement, background check, and physical examination. Accordingly, the parties agree as follows:

AGREEMENT

2. **Effective Date**

This agreement shall become effective on August 10, 2020 (the "Effective Date"), after it has been executed by Donlevy and duly approved by the City Council.

3. **Term of Employment**

A. The term of this Agreement shall be from the Effective Date through December 31, 2022, unless terminated earlier by either party in accordance with the provisions set forth in Sections 18 and 19. The term of this Agreement shall automatically renew and extend for an additional two (2) year term beginning on January 1, 2023 through December 31, 2025, unless written notice not to renew and extend is given by the City Council to Donlevy no later than twelve (12) months prior to the end of the current term (i.e. not later than December 31, 2021). If timely notice of non-renewal is given by the City Council, this Agreement shall remain in effect for the remaining months of the current term and Donlevy shall continue his duties for the remainder of such term, unless this Agreement is terminated earlier by either party in accordance with the provisions set forth in Sections 18 and 19. The parties expressly agree that allowing this Agreement to expire at the end of the term or any renewal term shall not be deemed a termination for any purpose and shall not trigger any severance payment whatsoever. Donlevy agrees to provide notice to the City Council of this provision at least sixty (60) days prior to December 31, 2021.

B. Pursuant to the provisions of the Auburn Municipal Code Section 31.016, Donlevy serves at the pleasure of the City Council and on an "at will" basis and has no vested right to his employment during the term of this Agreement, subject to the terms

and provision of this Agreement as set forth below. This Agreement will remain in full force and effect until one of the parties terminates it as provided in this Agreement.

4. Duties; Hours of Work

A. Donlevy shall perform those functions and duties specified by State law, the Auburn Municipal Code and by formal direction of the City Council. Donlevy shall perform such duties in accordance with the highest professional and ethical standards of the city manager profession. Donlevy shall not engage in any activity, which is, or which may become, incompatible with the office of City Manager, as provided for by State law. During the term of this agreement, Donlevy shall be exclusively employed by City, unless prior authorization otherwise is received from the City Council, which authorization will not be unreasonably withheld.

B. Donlevy 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 position. Donlevy does not have set hours of work as he is expected to be available at all times. It is recognized that Donlevy must devote a great deal of time to City's business outside of City's customary office hours, and to that end Donlevy'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.

5. Compensation

A. Donlevy shall receive the gross base salary of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250.00) 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. Donlevy's gross base salary may be subsequently amended by Resolution of the City Council.

B. 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 at other times by Resolution of the City Council. Further, it is understood that it is the intent of the City Council to increase salary, or other benefits referred to in this Agreement, during the term of this Agreement, dependent on the quality of job performance by Donlevy and City's fiscal condition.

C. In the event City implements cost-saving measures, such as work furloughs, salary reductions, changes to health or welfare benefits and allowances, or any other changes to the compensation or benefits paid to 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 City's Department Heads, Donlevy will receive the same restoration of salary or benefits as City's Department Heads.

D. Notwithstanding any other provision of this Agreement, and subject to an amendment extending its term, if Donlevy is employed as City Manager for a period of five (5) years or longer, he shall receive an increase in gross base salary of Four Thousand Dollars (\$4,000) per year, payable on a pro-rata basis in the same manner as all full time City employees.

6. Health Insurance

A. City shall pay up to the following amounts per month for health insurance coverage for Donlevy:

- (i) Employee only \$777.57
- (ii) Employee + spouse \$1,555.17
- (iii) Employee + family \$2,021.11

B. During the term of this Agreement, the following participation formula shall apply: City shall pay eighty percent (80%) and Donlevy shall pay twenty percent (20%) of the average increase in premiums occurring in those CalPERS plans offered to City employees in the 95603 zip code area (excluding highest and lowest cost plans).

C. Donlevy may elect not to receive health coverage from City. In such case, Donlevy shall sign a release form and receive monthly payments equal to "employee only" coverage amount in effect at the time the release is signed.

7. Life Insurance

City shall provide term life insurance in the amount equal to twice the annual salary of Donlevy. Such life insurance shall be provided through the same insurance company providing life insurance to other City employees, or by another insurer acceptable to City.

8. Management Administrative Leave

Donlevy shall be entitled to 80 hours' management administrative leave per year. Management administrative leave shall accrue at the rate of 3 and 1/3 hours per bi-monthly pay period. In the event such leave is not used, Donlevy may receive equivalent cash compensation therefore, in full or part, for accrued but unused leave. Management administrative leave time may not be accumulated and carried over past the end of any fiscal year (June 30).

9. Annual Vacation Leave

Donlevy shall accrue eighteen (18) vacation days per year accruing at a rate of twelve (12) hours per month. Donlevy may receive equivalent cash compensation, in full or in part, at any time during the year for accrued but unused leave. For vacation leave of more than one week at a time, Donlevy must provide sufficient notice of his intended vacation absence so that the City Council may approve such absence in order to avoid an extended absence of Donlevy during critical time periods. Donlevy shall accrue no more than twice the number of hours of vacation leave he is entitled to annually.

10. Other Leaves and Benefits

A. All other personal leave, family leave, funeral leave, or sick leave shall be as provided to other management employees of City. City shall afford Donlevy such other benefits as are provided to other management employees of the City on the same terms as provided to those employees except as otherwise expressly provided herein.

B. Notwithstanding Section 10.A., Donlevy shall be afforded 80 hours of banked sick leave as of the Effective Date. Donlevy shall not accrue additional sick leave pursuant to Section 10.A. until Donlevy accrues those advanced 80 hours' sick leave as provided in Section 10.A.

11. Automobile Allowance

In recognition of the fact that Donlevy's normal duties require frequent use of his automobile, Donlevy shall be entitled to Six Hundred Dollars (\$600.00) per month as an automobile allowance. This allowance is in lieu of mileage reimbursement or other expenses that may be incurred by Donlevy in connection with his use of his own automobile for City purposes. In consideration for said allowance, Donlevy shall be responsible for all costs of maintenance and operation of his vehicle. Donlevy shall at all

times maintain automobile liability insurance on any vehicle used by him in the course of City employment. Such insurance shall have coverage limits acceptable in form and amounts to City. Donlevy shall provide a certificate or other evidence of such insurance to City. Donlevy acknowledges that this allowance will be subject to payroll taxes unless he maintains the records required by law to permit other treatment of this allowance.

12. Residency

Donlevy and City mutually agree that it is desirable for Donlevy to live within close proximity to the City of Auburn to fully and effectively execute Donlevy's duties under this Agreement, the Auburn Municipal Code, and other applicable federal, state, and local laws. Donlevy hereby agrees to and shall, for the duration of this Agreement, establish and maintain his primary residence within a 30-minute travel time to and from Auburn City Hall located at 1225 Lincoln Way, Auburn, CA 95603.

13. Relocation Reimbursement

City shall reimburse Donlevy for reasonable costs and housing expenses, including, but not limited to, necessary travel and accommodation costs and rent, which are actually incurred and paid in relocating as required by Section 11., in an amount not to exceed Twenty five Thousand Dollars (\$25,000.00). Donlevy shall submit a claim to the City's Finance Department, accompanied by written documentation including receipts, for such reimbursement no later than 30 days after incurring such costs. Notwithstanding the foregoing, Donlevy shall only be entitled to reimbursement under this Section 12 for a period of nine (9) months after the Effective Date.

14. Professional Memberships & Meetings; Other Expenses

A. City shall pay for Donlevy's professional membership in the League of California Cities and International City / County Management Association. City shall pay for Donlevy to attend the annual League of California Cities conference. City will pay for such other professional memberships and conference attendance as may be approved and budgeted by the City Council.

B. City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Donlevy. City agrees to reimburse Donlevy for reasonable expenses which are authorized by City's adopted budget; submitted to the City Council for approval; and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against City.

15. Retirement Program and Deferred Compensation

City shall provide the same PERS retirement benefits to Donlevy as are received by other management employees of the City. City shall contribute one percent (1%) of Donlevy's current base salary annually into a deferred compensation plan of Donlevy's choice.

16. Annual Performance Evaluation

The City Council shall evaluate Donlevy's performance at least once annually. The City Council and Donlevy shall annually develop mutually agreed performance goals and criteria which the City Council shall use in reviewing Donlevy's performance in the following year. It shall be Donlevy's responsibility to initiate this review each year. Donlevy will be afforded an adequate opportunity to discuss each evaluation with the City Council.

17. Indemnification

City shall defend, hold harmless and indemnify Donlevy against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Donlevy's employment to the extent required by Government Code Sections 825 and 995.

18. Other Terms and Conditions of Employment

A. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Donlevy, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Auburn Municipal Code, or other applicable law.

B. The provisions of City's Personnel Rules and Regulations ("Rules") shall apply to Donlevy to the extent they explicitly apply to the position of City Manager, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Donlevy a property right in his employment or a right to be discharged only upon cause. Donlevy is an at-will employee serving at the pleasure of the City Council and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

C. Donlevy shall be exempt from paid overtime compensation and from Social Security taxes other than the mandatory Medicare portion of such taxes.

19. Termination

A. Donlevy understands and agrees that he has no constitutionally-protected property or other interest in his employment with City. Donlevy understands and agrees that he works at the will and pleasure of the City Council, and that he may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of the City Council. Notice of termination shall be provided to Donlevy in writing. "Termination" and its conjugations, as used in this Agreement, shall include: (i) termination with or without cause, (ii) a request to resign with actual resignation, or (iii) the elimination of the City Manager position.

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

C. Except as provided in Section 19.E., Donlevy shall not be terminated during the 90-day period immediately preceding or following an 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. Except as provided in Section 19.E., if Donlevy is terminated, he shall receive (i) a cash payment equivalent to the sum of his then-current gross base salary per month multiplied by nine (9) or multiplied by the remaining number of months in the current term, whichever is less, and (ii) the cash value, as determined by City, of his monthly non-salary COBRA eligible benefits multiplied by nine (9) or multiplied by the remaining number of months in the current term, whichever is less. Any such cash payment will be made on a pro-rated, monthly basis over the number of months used to multiply. Donlevy shall also be paid for any accrued, but unused, vacation leave. Eligibility for such severance payment is expressly conditioned upon Donlevy's execution of (i) a waiver and release of any and all of his claims against City and all City employees/officials, approved as to form by the City Attorney, and (ii) a covenant not to sue City or any City employees/officials, approved as to form by the City Attorney. 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.

E. City may terminate Donlevy at any time and shall have no obligation to pay him as required by Section 18.E. if any of the following occur: (i) conviction of any illegal activity involving personal gain to himself, (ii) fraud, (iii) moral turpitude, (iv) gross mismanagement of City affairs, (v) use of alcohol or drugs that impedes performance of duties, (vi) a proven claim of either sexual harassment or abuse of employees in violation of law or adopted City policy, (vii) willful and repeated failure to carry out the lawful directives or policy decisions of the City Council, (viii) willful abandonment of the position or continued and unexcused absence from duty, or (ix) willful breach of this agreement.

20. Voluntary Termination; Death

A. Donlevy may voluntarily terminate his employment, by resignation or retirement, at any time during the term of this Agreement, subject to at least thirty days' written notice by Donlevy to City, unless the City Council and Donlevy agree otherwise. In such case, City shall have no further obligation to provide payments and benefits, including severance benefits, upon the effective date of termination of employment, other than payment of accrued vacation leave or other payments required by law.

B. In the event Donlevy dies while employed by City, his beneficiaries or those entitled to his estate shall be paid any earned salary and accrued vacation leave at Donlevy's pay rate on the date of death.

21. Compliance With Law

A. This Agreement is subject to all applicable provisions of State and Federal law, the provisions of the Auburn Municipal Code, and to any other ordinances, rules, regulations, and policies of City applicable to Donlevy and the City Manager position.

B. Donlevy shall not engage in any business or transaction nor 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 Auburn (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 City without the prior consent of the City Council.

22. General Provisions

A. This Agreement constitutes the entire agreement between the parties. City and Donlevy hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

Mayor and City Council
City of Auburn
125 Lincoln Way, Room 8
Auburn, CA 95603-5004.

With a courtesy copy to the City Attorney at the following address or the address then shown in the records of the City for the City Attorney:

Gary B. Bell, Esq.
Auburn City Attorney
420 Sierra College Drive, Ste. 140
Grass Valley, CA 95945-5091.

Any notice to Donlevy shall be given in a like manner, and, if mailed, shall be addressed to Donlevy at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally, or (b) on the second calendar day after mailing, if mailed.

D. Venue for any disputes arising from or relating to this Agreement shall lie in the Superior Court for the County of Placer, California. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable and actual attorneys' fees and costs with respect to the action.

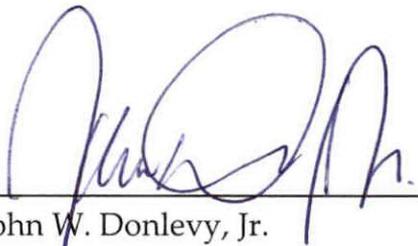
E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

23. Amendments

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Council and Donlevy and shall be in writing.

CITY MANAGER

Dated: 6-19-2020



John W. Donlevy, Jr.

CITY

Dated: _____

Daniel Berlant, Mayor

Approved as to form:

Gary B. Bell, City Attorney

Dated: _____

Attest:

Amy Lind, City Clerk

Dated: _____