

RESOLUTION NO. 4311

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO APPROVING THE AMENDED EMPLOYMENT AGREEMENT WITH TOWN MANAGER DAVE DONERY

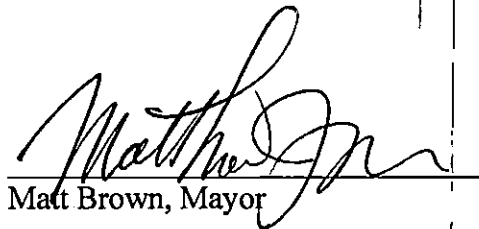
WHEREAS, Dave Donery began serving as San Anselmo Town Manager on March 1, 2017; and


WHEREAS, based on the Town Manager's excellent performance of his duties during his 2 ½ years in the role and the desire to retain such talented Town employees, the Town Council wishes to increase the Town Manager's base salary, contribute to a deferred compensation plan on his behalf and to contribute to his California Public Employee Retirement System account.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of San Anselmo approves the amended employment agreement with Town Manager Dave Donery attached hereto as Exhibit "A". The Mayor is hereby authorized to execute the agreement on behalf of the Town.

The foregoing Resolution was adopted by the Town Council of the Town of San Anselmo on November 12, 2019, by the following vote:

AYES: Brown, Colbert, Fineman, Wright
NOES: None
ABSENT: Greene


Matt Brown, Mayor

ATTEST: 
Carla Kacmar, Town Clerk

TOWN OF SAN ANSELMO

TOWN MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") was originally entered into by and between the Town of San Anselmo ("Town") and David P. Donery ("Employee") (collectively, the "Parties") on December 13, 2016, and is hereby amended on November 13, 2019.

The Parties enter into this Agreement with the intent that Employee shall be employed by the Town in the position of Town Manager. This Agreement is subject to approval at a regular meeting of the Town Council in open session pursuant to Assembly Bill 1344 ("AB 1344") requirements.

1. **EFFECTIVE DATE.** The Employee's employment commenced on March 1, 2017, and Employee's first day of employment was on March 1, 2017, and shall continue until this Agreement is terminated.

2. **PERIOD OF EMPLOYMENT.** Employee shall serve as an at-will employee of the Town. Nothing in this Agreement, or in the Town personnel rules, policies, procedures, ordinances, or resolutions, shall limit the rights of the Town to treat Employee as an at-will employee.

3. **DUTIES.** Employee shall perform the functions and duties of Town Manager for the Town, as specified in the Town of San Anselmo Municipal Code, and shall perform such other duties and functions as the Town Council may assign.

4. **SALARY.** Employee shall receive a monthly base salary of \$16,984.70, which shall be paid on the same pay warrant schedule other salaried employees of the Town are paid and shall be reflected in the Town's Management Resolution. Employee shall be entitled to participate in all Town benefit programs consistent with other management level employees. The Employee's salary and other benefits shall be reviewed by the Town Council in conjunction with an annual performance evaluation and may be adjusted to such extent as the Town Council may determine desirable and appropriate, and subject to the requirements of AB 1344 regarding contracts for public employees.

5. **HOURS OF WORK.** Employee shall work a minimum of forty (40) hours per week, based on a standard work week designated as Monday through Friday, and shall not be eligible for overtime compensation or compensatory time off. Employee shall be entitled to Administrative Leave pursuant to Section 6 of this Agreement.

6. **ADMINISTRATIVE LEAVE.** In recognition of the additional time required to perform the duties of the Town Manager for the Town of San Anselmo, above and beyond normal working hours, Employee shall be entitled to paid Administrative Leave each fiscal year, in accordance with section 3 of the Management Resolution.

7. VACATION. Employee shall be entitled to accrue vacation time in accordance with the rate set forth in section 6 of the Management Resolution.

8. PROFESSIONAL AND CIVIC MEMBERSHIP DUES, SUBSCRIPTIONS, AND RELATED MEETINGS. In recognition of the need for Employee to remain current in his/her profession, particularly in those areas directly related to the Town and its business, and to encourage the Employee's active involvement in local community affairs so as to better understand the current needs and desires of the San Anselmo community, the Town shall include in its annual budget a reasonable amount for membership dues, subscriptions, conferences, and related meetings of professional and community organizations, inclusive of reasonable travel related expenses, taking into due consideration Employee's requests as well as the financial condition of the Town.

9. VEHICLE ALLOWANCE. Employee shall provide his/her own vehicle. The Town shall provide Employee a monthly transportation allowance of \$400.00 to reimburse him/her for the use of his/her vehicle or other transportation for Town business. The Town shall reimburse Employee at the Town's mileage reimbursement rate, for use of his/her vehicle outside of San Anselmo when he/she is on Town business.

10. RETIREMENT. Employee shall be enrolled in the State of California Public Employees' Retirement System (PERS). Employee shall pay 2% of the Employer's and 100% of Employee's portions of the PERS contribution. The PERS contribution is subject to revision by PERS. In addition, The Town shall make a monthly contribution of \$1,500 to Employee's deferred compensation account.

11. PERFORMANCE EVALUATION. Not less than once per year, the Town Council shall review and evaluate the performance of Employee. During the first year of Employee's employment, the Town Council shall conduct an interim review at six months, on or about August 15, 2016. Such review and evaluation shall be in accordance with specific written criteria to be developed jointly by and between the Town Council and Employee. Failure of Town to provide a performance evaluation shall not limit the Town's ability to terminate this Agreement or the employment of the Employee.

12. SEVERANCE. Employee acknowledges that his/her employment with the Town is at-will.

a. The Town may terminate, without cause, the employment of Employee by providing written notice of such termination to Employee in a manner set forth in section 15 of this Agreement.

b. If the Town terminates Employee's employment with the Town without cause, Employee shall be entitled to severance pay amounting to a gross amount equal to six (6) month's pay at the salary set forth in section 4 of this Agreement, subject to taxes, withholding and/or applicable contributions. Employee shall also be entitled to continuation of health benefits for up to six (6) months, if Employee is not otherwise eligible for health benefits during the six (6) months after separation. In no case shall the severance payment exceed the amount permitted under California Government Code section 3511.2(b). The Town agrees that it will not terminate Employee's employment without cause during the first 90 days following any Town Council election.

c. This provision shall not apply if termination is for cause. For the purpose of this Agreement, "termination for cause" shall mean that Employee is terminated for any of the following reasons:

- i. willful misconduct;
- ii. abuse of drugs or alcohol which materially affects the performance of his/her duties;
- iii. repeated and protracted unexcused absences from work;
- iv. conviction of a felony;
- v. conviction of a misdemeanor involving moral turpitude;
- vi. acceptance of employment from another source inconsistent with this agreement;
or
- vii. material breach of this Agreement.

13. REIMBURSEMENT BY EMPLOYEE TO TOWN – AB 1344 REQUIREMENTS.

a. Pursuant to California Government Code section 53243.2, if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the Town shall be fully reimbursed to the Town if Employee is convicted of a crime involving an abuse of his/her office or position as defined by Government Code section 53243.4.

b. Pursuant to California Government Code section 53243, if any express or implied provision of this Agreement or any policy or practice of the Town provide paid leave salary to Employee pending an investigation, said paid leave salary shall be fully reimbursed by the Employee to the Town if Employee is convicted of a crime involving an abuse of his/her office or position as defined by Government Code section 53243.4.

c. Pursuant to California Government Code section 53243.1, if any express or implied provision of this Agreement or any policy or practice of the Town provide for payment of funds for the legal criminal defense of Employee, said funds paid for his legal criminal defense shall be fully reimbursed by Employee to the Town if Employee is convicted of a crime involving an abuse of his/her office or position as defined by Government Code section 53243.4.

14. PROPRIETARY INFORMATION. "Proprietary Information" is all information and any idea pertaining in any manner to the business of Town (or any Town affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of Town in the course of his or her employment or otherwise produced or acquired by or on behalf of Town. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and

customer lists. All Proprietary Information not generally known outside of Town's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his/her employment by Town, Employee shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of Town and as is or may be necessary to perform his/her job responsibilities under this Agreement. Following termination, Employee shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of Town. Employee's obligations under this Section shall survive the termination of his/her employment and the expiration of this Agreement.

15. NOTICES. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to Town at the address below, and or at the last known address maintained in Employee's personnel file. Employee agrees to notify Town in writing of any change in his/her address during his/her employment with Town. Notice of change of address shall be effective only when accomplished in accordance with this Section.

Town's Notice Address:

Town of San Anselmo
525 San Anselmo Avenue
San Anselmo, CA 94960

Employee's Notice:

(hand-delivered or to current residence as noted in personnel file)

16. ACTION BY TOWN. All actions required or permitted to be taken under this Agreement by Town including, without limitation, exercise of discretion, consent, waiver and amendment to this Agreement, shall be made and authorized only by the Town Council or its authorized designee.

17. INTEGRATION. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by Town. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to his/her employment with the Town, and it may not be contradicted by evidence of any prior to contemporaneous statements or agreement(s).

18. AMENDMENTS. This Agreement may not be amended except in a written document signed by each of the parties hereto. Failure to exercise any right under this Agreement shall not constitute a waiver of any such or other rights of the parties hereto.

TOWN OF SAN ANSELMO

Dated: 12/10/19



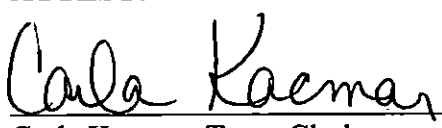
Mayor

EMPLOYEE

Dated: 12/10/19

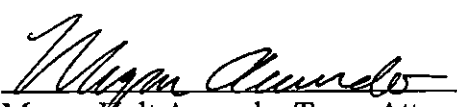


ATTEST:



Carla Kacmar, Town Clerk

APPROVED AS TO FORM:



Megan Holt Acevedo, Town Attorney