

Agreement No. 2004-007

City Council Approved: 02/23/2004

CITY MANAGER EMPLOYMENT AGREEMENT
(City of San Buenaventura / Rick Cole)

This Employment Agreement is made and executed by and between the City of San Buenaventura, a municipal corporation of the state of California, acting by and through its City Council (hereinafter called "City") and Rick Cole, an individual, (hereinafter called "Employee").

By These Presents, City agrees to hire Employee to serve in the capacity of the City Manager of City, and Employee agrees to accept such employment and serve in such capacity for the term, in consideration of the compensation and benefits, and subject to all other conditions hereinafter set forth in this Agreement.

Sec 1. Agreement Term

The initial term of this Agreement shall be for the three-year period commencing on April 26, 2004 and ending on April 25, 2007. Thereafter, the term of this Agreement shall be automatically extended for successive one-year periods unless and until either party to this Agreement provides the other party with written notice of such party's intent to terminate this Agreement and Employee's continued service as the City Manager prior to the end of the initial or any such extended term.

Notwithstanding the above, City or Employee may terminate this Agreement and Employee's continued service as the City Manager at any time prior to the end of the initial or any extended term hereof in the manner provided for in Sections 12 and 13 of this Agreement.

Sec 2. Duties and Authority

(a) **Duties and Authority Generally:** In his capacity as City Manager, Employee will perform all of the functions and duties, and have all of the rights and authority specified in the City Charter, and the ordinances, resolutions, policies and directives now or hereafter adopted by the City Council of City. Such functions and duties shall be performed in compliance with the constitution and all laws and regulations of the state or federal government to the extent they are applicable to a charter city.

(b) Special Assignments: In addition, following commencement of Employee's services as City Manager, Employee will also undertake and complete the following special assignments within the time set forth herein:

- Within 120 days of commencing his service as City Manager, Employee will provide the City Council with (i) a proposed city reorganization plan, and (ii) a proposed performance measurement plan based on the performance objectives set forth in the City Manager Evaluation Process Document, a copy which has been provided to Employee; and,
- Within 180 days of commencing his services as City Manager, Employee will provide the City Council with an initial measurement of any performance objectives approved by the City Council as part of the performance measurement plan. Thereafter, commencing with April 1, 2005, and at the beginning of each quarter year thereafter during the initial or any extended term of this Agreement, Employee will provide the City Council with a quarterly update of such performance objective measurements or any Council approved modifications thereto.

Sec 3. Base Compensation

(a) Initial Base Compensation: As compensation for Employee's services as City Manager, City agrees to initially pay Employee an annual base salary of \$155,000. Such salary, together with any adjustment thereto made in the manner provided by this Section, shall be paid to Employee in bi-weekly increments at the same time and in the same manner as wages and salaries are paid to other employees of City.

(b) Adjustments to Initial Base Compensation: Following the commencement of Employee's services as the City Manager, City will consider increasing Employee's initial base compensation as follows:

- City will increase Employee's initial base compensation of \$155,000 per year by three percent if Employee presents the City Council with a city reorganization plan and performance measurement plan acceptable to and approved by the Council in the manner required by Section 2 of this Agreement within 120 days of commencing his services as City Manager.
- City will also increase Employee's initial base compensation of \$155,000 per year up to but not exceeding an additional three percent if Employee successfully implements the approved reorganization and performance measurement plan required by Section 2 of this agreement to the satisfaction of the City Council within 180 days of commencing his services as City Manager.

Any increase in Employee's salary made pursuant to this Section shall be at the sole discretion of the City Council, and will be implemented as of the first city pay period following the time the City Council certifies successful completion of the forgoing tasks at a noticed public meeting.

Sec. 4. Bonuses

Following the commencement of Employee's services as the City Manager, City will consider enhancing Employee's compensation with the following bonuses:

- At the end of Employee's first year of service as the City Manager, the City Council will consider paying Employee a one-time bonus in an amount up to but not exceeding \$7,500 if the City Council determines, as a result of the annual performance assessment conducted in the manner provided for in Section 11 of this Agreement, that Employee's performance during the prior year has exceeded the satisfactory performance standards provided for by that Section.
- At the end of each year following Employee's first year of service as City Manager, the City Council will also consider providing Employee with an annual bonus of up to ten percent of his then existing base salary if the City Council determines, as a result of the annual performance assessment conducted in the manner provided for in Section 11 of this Agreement, that Employee's performance during the prior year was exceptionally meritorious.

Any such bonuses will be provided at the sole discretion of the City Council, and will be paid at the end of the first city pay period following the time the City Council approves the bonus at a noticed public meeting.

Sec. 5. Additional Employment Benefits and Compensation

Except as otherwise provided in this Agreement, City will also provide Employee with all of the additional compensation and benefits provided to other city staff members appointed to a position in City's Executive ("E") Unit as set forth in the City Council's Benefit and Additional Compensation Resolution, including, but limited to:

- CALPERS retirement benefits
- Health insurance;
- Life insurance;
- Disability insurance;
- Vacation time; and
- Sick leave.

As used in this Agreement, the term "Benefit and Additional Compensation Resolution" means the resolution adopted by the City Council of City, generally on an annual basis, that establishes the benefits and additional compensation to be provided to city staff that are employed in an executive, management, supervisory or confidential position, together with any amendments or other modifications thereto. The term includes the most current Benefit and Additional Compensation Resolution adopted by the City Council as Resolution No. 2003-078, a copy of which has been provided to Employee.

Sec. 6. Housing Assistance

City will provide Employee with a housing benefit to assist Employee in acquiring housing for himself and his family within the incorporated limits of City. Such housing assistance shall be in the form of an equity interest loan made subject to the following terms and conditions, and upon such other terms and conditions not inconsistent with the following that are deemed necessary and reasonable by the City Council:

- City will contribute an amount not to exceed \$350,000 towards the down payment on a residence purchased by Employee in the incorporated territory of City that is similar in size and quality to Employee's current residence in Azusa, California (hereinafter the "Ventura Residence"). The actual amount of such contribution shall be equal to the difference between the cost of Employee's Ventura Residence and the market value of Employee's current residence in Azusa.
- The amount of City's participation in the initial down payment in relation to the amount of the employee's participation in the initial down payment shall determine the respective parties' share in the property's current and future equity.
- Employee shall be solely responsible for all other closing costs associated with the purchase of the Ventura Residence including but not limited to escrow fees and any points and other fees associated with any loan obtained by Employee to pay the balance of purchase price of the Ventura Residence in excess of the down payment.
- City's share of its equity interest in the Ventura Residence shall be due and payable in full (i) immediately upon the sale of or other transfer of title to the Ventura Residence by Employee; (b) within 120 days of the termination of Employee's service as the City Manager of City for any reason whatsoever; (iii) within 120 days the termination of Employee's use of the Ventura Residence as his principal residence, or, (iv) at the end 10 years following the date Employee purchased the Ventura Residence, whichever first occurs.

The housing assistance provided for herein will be evidenced by a separate recorded agreement between City and Employee that has been approved as to form by the City

Attorney of City and entered into at the time that the housing assistance is provided to Employee.

Sec. 7. Moving Expenses.

City will reimburse Employee for all reasonable expenses incurred by Employee in moving Employee, his family, and personal property from Azusa to the incorporated territory of City or environs. Such moving expenses shall include packing, moving, storage, unpacking and insurance charges.

Sec. 8. Automobile.

City will provide Employee with a Toyota Prius or equivalent hybrid automobile for his exclusive and unrestricted use at all times this Agreement remains in effect. Except as otherwise provided herein, such automobile will be in lieu of any auto allowances provided to employees in the City Executive Unit pursuant to the Benefit and ~~Additional~~ Compensation

Employee will be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such automobile, and shall further be responsible for all expenses attendant to the operation, maintenance, and repair of the automobile. However, City will reimburse the employee at the IRS standard mileage rate for any automobile mileage in excess of 100 miles that is traveled during a City business trip to a destination outside of the county of Ventura. Upon termination of this Agreement and Employee's services City Manager pursuant to this Agreement, Employee will return the automobile to City in good condition, normal wear and tear excepted.

Sec. 9. Administrative Leave

City will credit employee with fifteen hours of administrative leave for the City fiscal year commencing July 1, 2003 at the commencement of the term of this Agreement, and will grant Employee 80 hours of administrative leave at the commencement of each fiscal year thereafter that this Agreement remains in effect. As set forth in the Benefit and Additional Compensation Resolution, such administrative leave shall be in addition to any vacation leave provided for in the Resolution, but must be taken by Employee during the fiscal year in which it is granted. No payment for unused administrative leave will be made upon termination of this Agreement and Employee's continued service as City Manager pursuant to this Agreement.

Sec.10. Outside Employment

Employee understands and agrees that the City employment provided for by this Agreement is intended to be Employee's sole employment. By reason thereof, Employee agrees not to accept any outside employment while this Agreement remains in effect without the prior written consent of the City Council. However, Employee shall be entitled to accept outside speaking engagements provided that they do not interfere with the performance of his duties and responsibilities as the City Manager, and shall be entitled to receive reimbursement from others for the cost of travel, lodging and meals incurred incident to such engagements to the extent permitted by the conflict of interest laws of the state of California.

Sec. 11. Performance Evaluations and Assessments

(a) Annual Performance Evaluation: Commencing with the month of May, 2005, and during the month of May in each year thereafter that this Agreement remains in effect, the City Council will undertake a formal evaluation of Employee's performance as the City Manager during the prior year. Such evaluation will be conducted in the manner provided for by the City Manager Performance Evaluation Document that has been provided to Employee, together with any changes to such document hereafter made by the Council. An over-all satisfactory rating of Employee's performance as a result of each such evaluation is required, but not necessarily sufficient, for Employee's continued employment as the City Manager.

Within two weeks following the completion of such evaluation, the City Council will endeavor to prepare and deliver to City Manager a written performance assessment that is based on such evaluation. Such performance assessment shall then become a part of the personnel file maintained by City on Employee.

(b) Quarterly Performance Evaluation: During the months of June, October and January of the first year of Employee's of service as City Manager, the City Council will also conduct quarterly evaluations of Employee's performance. Such quarterly evaluations will be conducted and documented in a manner determined by the City Council, after consultation with Employee.

At the discretion of the City Council, such quarterly performance evaluations may be continued throughout the remaining portion of the initial or any extended term of this Agreement.

Sec. 12. Termination by City.

This Agreement and Employee's continued service in the position of City Manager may be terminated by City, with or without good cause, at the end of the initial or any extended term of this Agreement, or at the end of any month during the initial or any

extended term of this agreement if and when:

- A majority of all members of the City Council vote to terminate this Agreement and Employee's service as City Manager;
- If Employee resigns following a City Council request for Employee's resignation that is approved by a vote of a majority of all members of the City Council; or
- If the City Council reduces the base salary, compensation, or any other financial benefit of the Employee without Employee's express consent.

However, in accordance with Section 801 of the City Charter, Employee's service as the City Manager may not be terminated during the 90-day period following the seating of a new City Council without the unanimous vote of all seven members of the City Council.

Sec. 13. Termination by Employee.

Employee shall be entitled to terminate this Agreement and voluntarily resign from his position as City Manager at any time, provided that Employee gives the Mayor of City at least 30 days written notice of his resignation prior to the date of such resignation.

Sec. 14. Employee's Benefits upon Termination

(a) Termination by City Without Good Cause: In the event the City Council elects to terminate this Agreement and Employee's continued service as the City Manager without good cause prior to or at the end of the initial or any extended term of this Agreement, then City will provide Employee with the following severance benefits

- In the event City terminates Employee's continued service as City Manager without good cause at any time during the first two years of the initial term of this Agreement, City will pay Employee a monthly severance benefit equal to Employee's current monthly salary plus the monthly post-termination cost of continuing Employee's health and life insurance during the nine-month period following Employee's termination.
- In the event City terminates Employee's continued service as City Manager without good cause at any during the third year or at the end of the initial term of this Agreement, or at any time during or at the end of an extended term of this Agreement, City will pay Employee a monthly severance benefit equal to Employee's current monthly salary plus the monthly post-termination cost of continuing Employee's health and life insurance during the seven-month period following Employee's termination.
- However, if Employee commences employment with another employer prior to

the normal expiration of such severance benefits, then such benefits will terminate on the date Employee commences such new employment. Provided that, in the event Employee commences such new employment in the middle of a month, then the amount of the concluding month's severance benefit will be pro-rated to the date Employee commenced such new employment.

(b) Termination by City With Good Cause: In the event the City Council terminates this Agreement and Employee's continued service as the City Manager for good cause, then Employee will not be entitled to any severance benefits.

City and Employee agree that for purposes of this Agreement, termination for "good cause" shall mean a termination upon any one or more of the grounds listed in Rule XII, Section 1, of the City's current Personnel Rules and Regulations, entitled "Cause for Disciplinary Action"; or on grounds of illegal or improper conduct amounting to moral turpitude. However, in the event the City Council proposes to terminate this Agreement and Employee's continued service as City Manager on the grounds of incompetency, inefficiency or other acts that are incompatible with or inimical to the public service, except acts that constitute moral turpitude, the Council may terminate this Agreement for good cause only if (i) the Council gives employee written notice of the particular grounds for its proposed action at least 6 months prior to the date the termination would take effect, and (ii) Employee fails to correct the performance deficiency that gave rise to such notice within such 6 month period.

(c) Additional Termination Benefits. Notwithstanding anything in this Section to the contrary, upon termination of this Agreement and Employee's continued service as the City Manager of City, Employee shall be entitled to the amount of any accrued vacation or sick leave payout benefit provided for in the Benefit and Additional Compensation Resolution, together with any COBRA or other employment termination benefits required by state or federal law, regardless of whether such termination is by Employee or City, and, if termination is by City, regardless of whether the termination was with or without good cause.

Sec.15. General Provisions

This Agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

In Witness Whereof the parties have executed this Agreement in the state of California on the dates set forth below.

Rick Cole
Rick Cole

2/24/04
Date


Brian Brennan
Brian Brennan, Mayor
City of San Buenaventura

2/24/04
Date

ATTEST

APPROVED AS TO FORM

Barbara Kam
Barbara Kam
City Clerk



Robert G. Boehm
Robert G. Boehm
City Attorney