

- (e) The cost of any fidelity or other bonds required by law for the City Manager.
- (f) The cost to defend and indemnify City Manager to the full extent of the law as provided by the California Torts Claims Act.

B. Basic Benefits

1. Holidays

City Manager will receive 12 paid holidays each calendar year but no less than all official City holidays.

2. Leave Allowance

The City may provide several leave benefits to its employees, including sick, vacation, administrative, compensatory time, personal, military, family, bereavement and funeral leave. In lieu of those leave programs, the City Manager shall receive only Universal Leave, which must be used for vacation, administrative leave, sickness, disability, or for the critical illness or death of an immediate family member.

The City Manager was granted 96 hours of leave credit effective October 6, 2003. On the effective date hereof, he shall begin accruing Universal Leave at a rate of 12.3 hours for each of the City's 26 bi-weekly pay periods. The maximum accrual of his Universal Leave time shall be 640 hours.

3. Automobile

The City Manager shall not be provided a monthly auto allowance and chooses to use his own vehicle for city-related business and/or functions during, before and after normal work hours. By City Manager making his personal automobile available for use, he is not precluded from using city vehicles for city business during, before, and after the normal workday on occasion, when appropriate.

4. Benefits that Accrue to Other Employees

Unless otherwise specified herein, all benefit provisions adopted by the City as they apply to City employees shall apply to the City Manager as well.

IV. INCOME SECURITY

A. Pensions

1. **Retirement Plans.** The City shall participate in PERS. The contribution rate for all employees in the local miscellaneous category is set by the Rancho Cordova City contract with PERS.

City shall pay the employer's share and agrees to pay the employee's share for participation in PERS. Pursuant to Government Code Section 20636 that payment, commonly known as employer paid member contribution (EPMC), shall be included in the base salary reported to PERS along with any incentive compensation.

2. **Survivors Continuance**

City shall provide a Section 21548 (Pre-Retirement Optional Settlement 2 Death Benefit), an optional benefit provision with PERS, which protects spouses if an employee dies prior to retirement.

3. **Deferred Compensation**

- (a) 457 Plan

The City will make at least one qualified 457 Plan available to its employees, including the City Manager. The Cafeteria Plan funds not utilized by the City Manager for medical benefits may be applied toward the 457 Plan subject to IRS limits. Amounts contributed under this section shall be to the benefit of the City Manager in accordance with the Deferred Compensation Plan participation agreement.

- (b) 401(a) Plan

The City has established a Section 401(a) Plan with ICMA Retirement Corporation for the benefit of the City employees. Any incentive pay awarded under the terms hereof may be put into an Internal Revenue Code Section 401 (a) defined contribution plan established for the City employees, or taken as pay, at the City Manager's option.

At any time during the term of this Agreement, the City Council, at its sole discretion, may direct by motion, that an amount not to

exceed the annual limits established by the IRS, be contributed to the Section 401(a) Plan.

B. Insurances

1. Cafeteria Plan

The City Manager shall receive a Cafeteria Plan contribution in the same amount as other employees (currently \$820 per month) for medical, dental and vision insurances. If the City Manager can provide proof of health coverage from other sources, then the cafeteria contribution shall be put toward the 457 Plan or other tax deferred plan.

2. Disability Insurance

SDI (State Disability Insurance) (.9% up to \$46,327 base wage limit paid by City Manager). This pays for injuries incurred off the job, up to a maximum of \$2,123/month.

The City agrees to pay the premiums for City Manager to be covered by the City's long-term disability insurance plan.

3. Life Insurance

Term Life insurance in the amount of \$500,000 will be provided by the City.

The City Manager shall be the owner of the life insurance policy, shall have full and complete discretion in selecting the policy and may substitute other policies if he so chooses, shall have sole authority to designate the beneficiary for the death benefits under the policy.

V. SEPARATION

A. Resignation/Retirement

City Manager may resign at any time and agrees to give the City at least 45 days advance written notice of the effective date of his resignation, unless the parties otherwise agree in writing. If the City Manager retires from full time public service with Rancho Cordova, he may provide six months advance notice. His actual retirement date will be mutually established.

B. Termination & Removal

The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to City Manager in writing. Any such notice of termination shall be given at a regular meeting of the City Council.

The City Manager shall not be removed during the first 180 days following any change in membership of the City Council, except upon four-fifths vote of the City Council.

Given the at-will nature of the position of City Manager, an important element of the employment agreement pertains to termination. It is in both the City's interest and that of the City Manager that separation of the City Manager be done in a businesslike manner.

1. Severance Pay

In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform his duties under this agreement, then in that event City agrees to pay City Manager a lump sum cash payment equal to nine months base salary then in effect (see Section III.A.1.), or City Manager shall be entitled to receive continuation of salary and all benefits including deferred compensation payments for not less than nine (9) months or his accumulated months of severance, at the option of the City Manager. No additional accrual of leave time shall occur during this time period.

On December 31, 2004 and on the same date for the next succeeding two years, the City Manager shall accrue and be provided one additional month of severance pay for each calendar year served, up to a maximum of twelve months of total severance pay. By this formula, on January 1, 2007 and from then on, the City Manager shall receive a total of 12 months severance pay.

In the event the City refuses, following written notice of non-compliance, to comply with any provision in this Employment Agreement benefiting City Manager, or the City Manager resigns following a suggestion, whether formal or informal, by the City Council that he resign, then, in that event, City Manager may, at his option, be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and this severance pay provision shall be applicable.

Notwithstanding the foregoing, no severance payment shall be made if the City Manager is terminated due to conviction of a felony, conviction of a misdemeanor involving moral turpitude or the entry of a plea of nolo contendere or a plea bargain to either such crime or crimes.

C. Payment for Unused Leave Balance

On separation from City employment, the City Manager shall be paid for all unused accumulated Universal Leave Program (ULP), and/or he may apply the leave time to PERS service credit for retirement purposes. Accumulated ULP leave shall be paid at the City Manager's average monthly base salary rate for the three months immediately preceding the effective date of separation.

In the event the City Manager dies while employed by the City under this agreement, the City Manager's beneficiaries or those entitled to his estate, shall be entitled to his earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave.

VI. MISCELLANEOUS PROVISIONS

A. Term of Agreement

This agreement shall commence December 6, 2004 and continue in full force and effect for an indefinite term until such time as either party terminates the Agreement under the provisions set forth in the section entitled "SEPARATION."

Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of City Manager at any time, subject only to the terms of this agreement.

B. Provisions that Survive Separation

The provisions of this Agreement which pertain to Longevity, Separation and Indemnification shall survive the termination hereof.

C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, in writing, and adopted by the City Council.

D. Conflict of Interest

Because of the duties and role of the City Manager on behalf of the City of Rancho Cordova and its citizenry, the City Manager shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of Rancho Cordova, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior approval of the City Council. For and during the term of this Agreement, City Manager further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or real property improvements within the corporate limits of Rancho Cordova, without prior consent of the City Council.

City Manager 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. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.

City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to his city employment.

The City Manager 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.

E. Base Pay Calculations

For the purposes of the Public Employees Retirement System (PERS), the City shall incorporate into the reported "base pay" for all compensation earnable for the City Manager the following: city-paid employee portion of

PERS, as well as Section III.A base salary and incentive pay, as being paid as a regular part of the City Manager's salary in accordance with California Government Code Sections 20630 and 20636. If the City's eventual contract with PERS allows, then the cafeteria plan contribution and deferred compensation, shall also be included as reported base pay for compensation earnable.

F. Indemnification

In accordance with and subject to California's Tort Claims Act, City shall defend and indemnify City Manager against and for all losses sustained by City Manager in direct consequences of the discharge of his duties on the City's behalf for the period of his employment.

City shall defend, save harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act of omission occurring in the performance of his duties as City Manager. City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Whenever the City Manager shall be sued for damages arising out of the performance of his duties, the City shall provide defense counsel for the City Manager in such suit and indemnify him from any judgment rendered against him; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. Said indemnification shall extend beyond termination of employment and the otherwise expiration of this agreement to provide protection for any such acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City.

G. Severability

If any clause, sentence, part, section, or portion of this agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the parties hereto.

H. Arbitration

Any controversy or claim arising out of or relating to employment with the City, including without limitation claims related to discrimination or harassment based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party

served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be made only by certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal or state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.

The arbitrator shall have no authority to alter, amend, modify or change any of the terms of employment unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving terms and conditions of employment. The decision of the arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.

The arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. In the event that any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorney's fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.

The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between employees and the City, its employees, directors, officers or managers arising out of or relating to City employment, and/or the termination of that relationship including, but not limited to any controversies or claims pertaining to wrongful or constructive discharge, wage and hour law, public policies or anti-discrimination statutes. **THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.**

I. Attorney's Fees

If either of the parties hereto brings any action or proceeding against the other, including but not limited to, an action to enforce or to declare the termination, cancellation or revision of the Agreement, the prevailing party in such action or proceedings shall be entitled to receive from the other party all reasonable attorney's fees and costs, incurred in connection therewith.

In the event either party shall initiate any suit, action, or appeal on any matter related to this Agreement, then the court before whom such suit, action, or appeal is taken shall award to the prevailing party such attorney's fees as the court shall deem reasonable, and such award and all allowable costs of the event may be either added to or deducted from the balance due under this contract or be a separate obligation as appropriate.

J. Laws Affecting Title

In addition to those laws affecting a City Manager, City Manager shall have the same powers, rights and responsibilities as a City Administrative Officer, Administrator, CAO, and/or City Administrator as those terms are used in local, state or federal laws unless clearly inconsistent herewith.

K. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Sacramento, California.

L. Entire Agreement

This Agreement represents the entire Agreement of the parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by written, fully executed agreement of the parties.

M. Notice

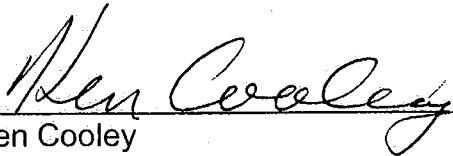
Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which City Manager or City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective parties as follows:

Mayor, City Council
City of Rancho Cordova
3121 Gold Canal Drive
Rancho Cordova, CA 95670

Ted A. Gaebler
City Manager, City of Rancho Cordova
3121 Gold Canal Drive
Rancho Cordova, CA 95670

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND
SEALS THIS 20th DAY OF DECEMBER, 2004.

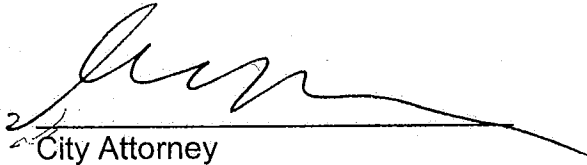
Mayor
City of Rancho Cordova


Ken Cooley

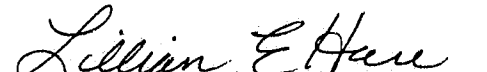
City Manager
City of Rancho Cordova


Ted A. Gaebler

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk