

EMPLOYMENT AGREEMENT

Between

City of Billings & Chris A. Kukulski

Effective October 22, 2018

Introduction

This Agreement made and entered into effective October 22, 2018, by and between the City of Billings, Montana, a municipal corporation, (hereinafter called "Employer") and Chris A. Kukulski, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1 - Term

The term of this agreement shall be for an initial period from Employee's first date of employment, which will be no later than December 31, 2018, until December 31, 2020. This Agreement shall be renewed for a two-year term automatically on January 1, 2021, and every two years thereafter unless notice of termination is given by the Employer at least six (6) months before the next renewal date.

Section 2 - Duties and Authority

Employer agrees to employ employee as City Administrator to perform the functions and duties specified in Section 4.03 of the City of Billings, Montana Charter and to perform other legally permissible and proper duties and functions without unreasonable interference. Section 4.03 provides:

The Administrator shall:

- A. Carry out policies established by the City Council;
- B. Perform the duties required by law, ordinance, resolution, or this Charter;
- C. Enforce laws, ordinances, and resolutions;
- D. Administer the affairs of the City;
- E. Direct, organize, establish, supervise, and administer all departments, agencies, and offices of the City;
- F. Appoint, suspend, and remove all employees of the local government;
- G. Prepare and present the City budget to the Council for its approval and administer the budget adopted by the Council;
- H. Report publicly to the Council at least quarterly on the financial conditions of the City;
- I. Recommend measures to the Council;
- J. Report to the Council as the Council may require;
- K. Attend Council meetings and take part in the discussion, but shall have no vote;
- L. Appoint with the approval of the City Council a qualified acting administrator to exercise

the powers and perform the duties of the Administrator during temporary absences.

Section 3 – Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of one hundred seventy nine thousand dollars (\$179,000) payable in installments at the same time that the other management employees of the Employer are paid.
- B. Not later than May 16, 2019, the Employer will evaluate the Employee's performance against the Employer's identified six month goals. The Employer agrees to consider increasing the compensation of the Employee dependent upon the results of the performance evaluation not to exceed five percent (5%) of annual base salary.
- C. Consideration shall be given on an annual basis to an increase in compensation. The Employer agrees to consider increasing the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation can be in the form of a base salary increase and/or performance incentive and/or an increase in benefits.
- D. This agreement shall be automatically amended to reflect any salary adjustments that are provided.

Section 4 - Health, Disability and Life Insurance Benefits

- A. The Employer agrees to provide and to pay the premiums for health, dental and vision insurance equal to that which is provided to all other employees of the City. The Employee will be responsible for the City employee contribution for the health, dental and vision coverage for himself, his spouse and his children at the same rate as all other employees of the City.
- B. Employer shall pay the premium due for \$300,000 term life insurance and long term disability insurance. The Employee shall name the beneficiary of the life insurance policy.

Section 5 - Leave

- A. Upon commencing employment, the Employee shall be credited with 192 hours of vacation leave. Employee shall then accrue sick and vacation leave on an annual basis at the highest rate provided to any other employees. Upon termination of employment for any reason, Employee shall be compensated for accrued vacation and sick leave according to

Employer's policy and Montana law.

- B. All other leave accruals and usages will be administered and used in a manner consistent with the City's Employee Handbook with the exception that there will be no waiting period for use of any leave.

Section 6 - Vehicle Allowance

- A. The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided the sum of six thousand dollars (\$6,000) per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.
- B. The Employer shall reimburse the Employee for documented fuel costs for any business use of the vehicle where the destination is greater than 50 miles from Billings or follow the current City travel policy.

Section 7 – Retirement and Health Savings Account

- A. Employer agrees to contribute the statutorily required percentage of Employee's salary into the Montana Public Employees' Retirement System (MPERS). Employee will contribute the statutorily required percentage of Employee's annual salary to MPERS.
- B. Additionally, Employer agrees to contribute on behalf of Employee, a total of twelve percent (12%) of the annual base salary as defined in Section 3 to a City approved IRS Code Section 457 deferred compensation plan and/or 401(a) and/or Health Savings Account. The Employee may elect to distribute the 12% in any combination to any available plan(s). Annually, employer's contribution to each plan shall not be more than the maximum contributions permitted under IRS rules as they exist or may change during the term of the agreement.

Section 8 - General Business Expenses

Subject to annual budgetary approval by the Council:

- A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/ County Management Association, and subscriptions of the

Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

- B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
- E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/ or dues to enable the Employee to become an active member in local civic clubs or organizations.
- F. While the Employee is free to pursue reasonable off duty, non-job related activities, Council approval is necessary prior to the Employee's agreeing to hold office in any of the above referenced professional, business or civic organizations.
- G. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer,

software, mobile phone/personal digital assistant and/or tablet computer for business and personal use, required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall become the property of the Employee after any city documents and business related items have been removed and at the discretion of the Employee any mobile phone number shall be transferred to the Employee.

Section 9 - Termination

- A. This Agreement will terminate if Employee becomes incapable of performing the duties defined in Section 2.

- B. This Agreement will be terminated involuntarily and without cause if:
 - a. A majority of the governing body votes to terminate Employee, without cause, in accordance with the City of Billings, Montana Charter, Section 4.02, at a properly posted and duly authorized public meeting.

 - b. Employer, citizens or legislature amends any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, and the Employee declares that such amendments constitute termination.

 - c. Employer reduces the base salary, compensation or any other financial benefit of Employee, unless it is applied in no greater percentage than the average reduction of all department heads.

 - d. A representative of the majority of the governing body offers to accept Employee's resignation and Employee declares a termination as of the date of the suggestion.

 - e. Employee notifies Employer, in writing, of a material breach of this Agreement, and Employer fails to cure the breach within 30 days.

- C. The City may terminate this Agreement for cause for Employee's failure to satisfactorily perform job duties, disruption of City operations, conduct which is prejudicial to the City or City Council, or other legitimate business reasons including:
 - a. Violation of any then existing residency requirement if applicable;

 - b. Conviction of or plea of guilty or no contest to a felony;

- c. Conviction of or plea of guilty or no contest to a misdemeanor which:
 - i. involves an act or failure to act that occurs in the course and scope of Employee's duties;
 - ii. negatively affects the credibility of Employee to sufficiently discharge his duties.
- d. Adjudication by a forum of competent jurisdiction that Employee violated the City or State codes of ethics;
- e. Repeated and protracted unexcused absences from Employee's office or duties;
- f. Knowingly falsifying records or documents or knowingly making false statements related to the City's activities or businesses;
- g. Violation of any City policy regarding drugs or alcohol; or
- h. Any willful, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed owned by or entrusted to the City, any agency or corporation thereof, or the Employee in Employee's official capacity.

Section 10 - Severance

Employee will be paid severance in the amounts provided by this Section only when Employee is terminated involuntarily and without cause as defined in Section 9 (B).

- A. If the Employee is terminated as defined in Section 9 (B), the Employer shall provide a minimum severance payment equal to six (6) months salary at the then current base rate of pay. An additional month of severance payment will be paid for each 12 month period of continued employment with the City of Billings, but the severance payment will not exceed twelve (12) months salary. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Employee's option. Vacation and sick leave accruals will cease upon termination.
- B. Employee shall also be compensated for accrued vacation and sick leave according to Employer's policy and Montana law.

- C. Employer will contribute to the Employee's Section 457 deferred compensation account using Employee's annual salary at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.
- D. For a period consistent with earned severance months, following termination, the Employer shall pay the cost to continue the following benefits:
 - 1. Health insurance for the Employee and all dependents as provided in Section 4A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
 - 2. Life insurance and long-term disability as provided in Section 4B.

Section 11 - Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 60 days notice unless Employer and Employee agree otherwise.

Section 12 - Performance Evaluation

- A. Employer shall annually review the performance of the Employee in November subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) Conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period; (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year; (3) next meet and discuss the written evaluation of these goals and objectives; and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

- B. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years.

Section 13 - Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

Section 14 - Ethical Commitments

Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

Section 15 - Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 16: Moving and Relocation Expenses

Employee agrees to establish residence within the corporate boundaries of the local government within eight (8) months of employment, and thereafter to maintain residence within the corporate boundaries of the local government.

- A. Employer shall pay directly for the expenses of moving Employee and his family and personal property from their current residence in Bozeman, MT to Employee's permanent

residence in Billings, MT. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. The Employee shall provide evidence of actual moving expenses by securing quotations from three (3) companies. The Employee shall submit these quotes to the Employer who, in consultation with the Employee, shall select the moving company.

- B. Employer shall pay Employee an interim housing supplement of \$750 per month and shall continue for a maximum of eight (8) months, or until a home is purchased and closed on, within the corporate limits of the City of Billings, whichever event occurs first.

Section 17 - Residency

Employee agrees to maintain residence within the corporate boundaries of the City of Billings.

Section 18 - Indemnification

- A. Pursuant to Section 2-9-305, M.C.A., the City will indemnify, immunize and provide a defense to Employee if he is civilly sued for action taken within the scope of his employment.
- B. Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or not perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrate or investigative, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Administrator or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct.

The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs

and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and settle any claim or suit, unless said compromise or settlement is of a claim brought against Employee in his individual capacity in which case Employee may elect to continue to defend and settle said personal claim at Employee's own expense. Except as provided in the previous sentence, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation, beyond Employee's term of service to Employer.

Section 19 - Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 20 - Other Terms and Conditions of Employment

- A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Billings Charter, local ordinances or any other law.
- B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other appointed officials, appointed employees, department heads or general employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 21 - Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- A. EMPLOYER: Office of the Mayor, Billings City Council, 210 N. 27th Street, Billings, Montana 59101
- B. EMPLOYEE: Chris A. Kukulski, 1445 Cherry Drive, Bozeman, MT 59715, or at the residence of Employee in Billings, MT once established.

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 22 - General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee 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.
- B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on October 22, 2018.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.
- E. Precedence. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless

otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

- F. Public Document. This Agreement is a public document and shall be available for inspection by the public.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in duplicate, the ___ day of October, 2018.

THE CITY OF BILLINGS

By _____ Date: _____
Mayor William Cole

ATTEST:

Clerk of the Commission

EMPLOYEE

Chris A. Kukulski Date: _____

ICMA Code of Ethics

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2018