

Employment Agreement

Introduction

This Agreement, made and entered into effective October 1, ~~2012~~2016, by and between the City of Billings, Montana, a municipal corporation, (hereinafter called "Employer") and Christina F. Volek (hereinafter called "Employee"), an individual who has the education, training and experience in local government management and who, as a member of 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 of two years, from October 1, 2012 to September 30, 2014. This Agreement shall automatically be renewed on its anniversary date for an additional 2-year term unless notice is given by the Employer at least twelve (12) months before the expiration date that the Agreement shall be terminated. The term of this agreement shall be for a period of one (1) year, from October 1, 2016 through September 30, 2017.~~

Section 2: Duties and Authority

Employer agrees to employ Christina F. Volek as City Administrator to perform the functions and duties specified in Section 4.03 of the City Charter of the City of Billings, Montana. Section 4.03 provides:

Section 4.03. City Administrator: Powers and Duties.

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 in the first year of this Agreement an annual base salary of \$130,560.00, payable in biweekly installments at the same time that the other management employees of the Employer are paid. Before each anniversary date of this contract, Employer will evaluate Employee's base salary and make adjustments it deems appropriate. Employer will continue to pay Employee at her current salary. On or before December 31, 2016, Employer and Employee will evaluate and increase Employee's salary as they deem appropriate. The salary increase will be retroactive to October 1, 2016.~~

Section 4: Health, Disability and Life Insurance Benefits

A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and her dependents equal to that which is provided to other employees of the City of Billings, Montana.

B. Employer shall pay the amount of premium due for term life insurance in the amount of the Employee's two-year annual base salary if employee elects to apply for such insurance. The Employee shall name the beneficiary of the life insurance policy.

C. Should Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and transporting the Employee's remains back to the custody of the Employee's family.

Section 5: Vacation and Sick Leave

On the effective date of this agreement, Employee shall be credited with her existing sick and vacation leave earned to date. The 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 Montana law.

Section 6: Automobile

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 \$4,800 per year, payable monthly, as a vehicle allowance to be used to purchase, lease or own, and operate and maintain a vehicle. The amount of the vehicle allowance may be increased in the future by mutual consent of the parties. 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. The Employer shall reimburse the Employee on the basis of gasoline receipts for any business use of

the vehicle beyond the greater Billings area. For purposes of this Section, use of the car within the greater Billings area is defined as travel to locations within a 50-mile radius of Billings.

Section 7: Retirement

A. Employer agrees to contribute the statutorily required percentage of the Employee's annual salary into the Montana Public Employees' Retirement System (MPERS) or its successor. Employee will contribute the statutorily required percentage of her annual salary to MPERS.

B. In addition to Employer's payment to MPERS as referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer ~~agrees will continue~~ to pay ICMA-RC ~~an the~~ amount ~~of 10.8% from October 1, 2012, through September 30, 2014~~ currently contributed, or any greater amount that the parties may agree on when negotiating Employee's salary. Any increase in contributions will be retroactive to October 1, 2016. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

Section 8: General Business Expenses

A. Employer agrees to budget for and to pay for:

1. Professional dues and subscriptions of the Employee 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.
2. Reasonable 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 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.
3. Reasonable travel and subsistence expenses of Employee for short courses, institutes, and seminars for the Employee's professional development and for the good of the Employer.

B. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations reasonably related to Employee's duties. 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.

Section 9: Termination

- A. This agreement may be terminated: By resignation or retirement on terms mutually agreed by the Employee and City Council, including a release of all obligations and claims;
- B. Immediately upon Employee becoming unable to perform Employee's duties and obligations under this Agreement by reason of death or permanent disability;
- C. "For Cause" determined by the City Council after Employee has an opportunity for a fair hearing with the right to legal counsel at Employee's expense and at least twenty (20) days advance written notice of the cause, which must constitute reasonable job-related grounds for dismissal, meaning: (1) failure to satisfactorily perform job duties, (2) disruption of employer's operation; or (3) other conduct that is prejudicial to the City Council or the City, including without limitation: insubordination, neglect of duty, breach of contract, immorality, unfitness, failure to comply with City Council directives, or any violation of law other than minor traffic violations;
- D. "Without Cause" if: (1) the City Council in its sole discretion as the elected governing body of the City of Billings decides by a simple majority vote of its members to terminate this Agreement; or (2) the role, powers, duties, authority, or responsibilities of the Employee's position, or the form of Billings city government are changed substantially, and the Employee declares that such change constitutes termination without cause.

Section 10: Liquidated Damages.

A. If the Employee is terminated "without cause," the Employer shall pay as liquidated damages in one lump sum an amount equal to one year salary at the current rate of pay, make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation, and for one year following termination, pay for the following benefits:

- 1. Health insurance for the employee and all dependents as provided in Section 4A;
- 2. Life insurance as provided in Section 4B; and
- 3. Out-placement services should the employee desire them in an amount to be negotiated at time of separation.

However, in the event Employee obtains other employment and thereby becomes eligible for comparable health and life insurance benefits before the end of one year, then Employer's obligation to provide health and life insurance coverage will terminate on the date Employee becomes eligible for the other insurance.

B. If the Employee is terminated "for cause," the Employee is not entitled to liquidated damages under this section.

Section 11: Resignation

If the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall meet with Employee semi-annually to review the performance of the Employee using the attached Exhibits A ~~and B~~ as the performance evaluation criteria for the reviews or using another process for the evaluation which shall be mutually agreed upon by the Employer and Employee.

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.

Section 14: Residency

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

Section 15: Indemnification

Employer shall defend, save harmless and indemnify Employee as provided in the current version of Montana Code Annotated Section 2-9-305 (2011) which is set forth in its entirety below. This obligation shall survive and extend beyond the Employee's separation from Employer and Employee shall be indemnified and held harmless for any post-separation costs or expenses incurred in connection with the investigation or defense of any claim related to her employment.

1. It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.
2. In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to *42 U.S.C. 1983*, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.
3. Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor,

the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

4. In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection 6.
5. Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).
6. In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:
 - (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
 - (b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
 - (c) the employee compromised or settled the claim without the consent of the government entity employer; or
 - (d) the employee failed or refused to cooperate reasonably in the defense of the case.
7. If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of

subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

Section 16: Bonding

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

Section 17: Other Terms and Conditions of Employment

A. 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 City Charter or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other exempt employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 18: Notices

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 19: 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 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.

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 be effective as of October 1, ~~2012~~2016.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect 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 parties subsequent to the expungement or judicial modification of the invalid provision.

Approved as to Form:

T. Thomas Singer, Axilon Law Group, PLLC
Attorney for Billings City Council

Approved this ____ day of _____, ~~2012~~2016

The City of Billings

By:

Thomas W. Hanel, Mayor

Attest:

~~Cari Martin~~Denise R. Bohlman, City Clerk

Christina F. Volek, Employee

Exhibit A

CITY OF BILLINGS CITY ADMINISTRATOR PERFORMANCE EVALUATION

This form shall be completed by each member of the Council to evaluate the City Administrator's performance in each of the areas noted below. Performance levels can be noted, based on the following scale:

- 1 = Poor (rarely meets expectations).
- 2 = Below average (usually does not meet expectations).
- 3 = Satisfactory (meets performance expectations).
- 4 = Above average (generally exceeds performance expectations).
- 5 = Excellent (almost always exceeds expectations and performs at very high standard).

Each member of the Board should sign the form and forward it to the Mayor, who will be responsible for compiling the comments.

EVALUATION PERIOD: _____ **TO:** _____

1. **PERSONAL**

- _____ Invests sufficient effort toward being diligent and thorough in the discharge of duties.
- _____ Composure, appearance, and attitude fitting for an individual in his executive position.

2. **PROFESSIONAL SKILLS AND STATUS**

- _____ Knowledgeable of current developments affecting the management field and affecting city governments.
- _____ Respected in management profession.
- _____ Has a capacity for and encourages innovation.
- _____ Anticipates problems and develops effective approaches for solving them.
- _____ Willing to try new ideas proposed by Council Members or staff.

3. **RELATIONS WITH MAYOR/CITY COUNCIL**

- _____ Carries out directives of the Council as a whole rather than those of any one Council member.
- _____ Assists the Council in resolving problems at the administrative level to avoid unnecessary Board action.
- _____ Assists the Council in establishing policy, while acknowledging the ultimate authority of the Council.
- _____ Responds to requests for information or assistance by the Council.
- _____ Informs the Council of administrative developments.
- _____ Receptive to constructive criticism and advice.

4. **POLICY EXECUTION**

- _____ Implements Council action in accordance with the intent of the Board.

- _____ Supports the actions of the Council after a decision has been reached.
- _____ Enforces City policies.
- _____ Understands City's laws and ordinances.
- _____ Reviews enforcement procedures periodically to improve effectiveness.
- _____ Offers workable alternatives to the Council for changes in the law when an ordinance or policy proves impractical in actual administration.

5. **REPORTING**

- _____ Provides the Council with reports concerning matters of importance to the City.
- _____ Reports are accurate and comprehensive.
- _____ Reports are generally produced through own initiative rather than when requested by the Council.
- _____ Prepares a sound agenda which prevents trivial administrative matters from being reviewed by the Council.

6. **CITIZEN RELATIONS**

- _____ Responsive to complaints from citizens.
- _____ Dedicated to the community and its citizens.
- _____ Skillful with the news media, avoiding political positions and partisanship.
- _____ Has the capacity to listen to others and to recognize their interests--works well with others.
- _____ Willing to meet with members of the community to discuss their real concerns.
- _____ Cooperates with neighboring communities.
- _____ Cooperates with the County, State, and Federal governments.
- _____ Cooperates with other organizations within the City, such as Chamber, School Districts, and BSEDA.

7. **STAFFING**

- _____ Recruits and retains competent personnel for City positions.
- _____ Aware of staff weaknesses and works to improve their performance.
- _____ Accurately informed and concerned about employee relations.
- _____ Professionally administers the merit system.

8. **SUPERVISION**

- _____ Encourages Department Heads to make decisions within their own jurisdictions without City Administrator approval, yet maintains general control of administrative operations.
- _____ Instills confidence and initiative in subordinates and emphasizes support rather than restrictive controls for their programs.
- _____ Has developed a friendly and informal relationship with the work force as a whole, yet maintains the prestige and dignity of the City Administrator's office.
- _____ Evaluates personnel periodically, and points out management weaknesses and strengths.

9. **FISCAL MANAGEMENT**

- _____ Prepares a balanced budget to provide services at a level directed by the Council.
- _____ Makes the best possible use of available funds, conscious of the need to operate the City efficiently and effectively.
- _____ Prepared budget is in an intelligent but readable format.
- _____ Possesses awareness of the importance of financial planning and control.

10. What would you identify as the results achieved during the evaluation period as representative of the strengths of the City Administrator?

11. What performance areas would you identify as needing improvement? Why? What constructive, positive ideas can you offer the City Administrator to improve these areas?

12. Other comments?

Signature: _____

Date: _____