

EMPLOYMENT AGREEMENT

This Agreement, made and entered into this 26th day of February, 2018, by and between the City Council of the City of Billings, Montana a municipal corporation, (hereinafter called "Employer") and Bruce McCandless (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 and Probationary Period

The term of this agreement shall begin on the Effective Date and will continue for an indefinite period until terminated pursuant to this Agreement. The parties agree to review this Agreement on or before December 31 every two years commencing in December 2018. Should either party desire to modify this Agreement at any time, the party wishing to amend this Agreement shall serve written notice of proposed modifications in writing by September 31 preceding a review.

Section 2: Duties and Authority

Employer agrees to employ Bruce McCandless 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 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

Base Salary: Employer agrees to pay Employee an annual base salary of \$160,000, payable in installments at the same time that the other management employees of Employer are paid.

Section 4: Health and Life Insurance Benefits

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

B. The Employer shall pay the amount of premium due for term life insurance in an amount equaling or exceeding the Employee's annual base salary. The Employee shall name the beneficiary of the life insurance policy.

Section 5: Vacation and Sick Leave

On the effective date of this Agreement, Employee shall be credited with his 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 Employer's policy and Montana law.

Section 6: Automobile

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 \$3,600 per year, payable monthly, as a vehicle allowance to be used to lease or to own, operate and maintain a vehicle. 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.

Section 7: Retirement

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

The Employer agrees to contribute on behalf of the Employee, 0% of the annual salary to a City approved IRS Code Section 457 retirement account.¹

Section 8: Moving and Relocation Expenses

The Employer shall pay a lump sum payment of \$0 to the Employee to cover relocation costs.

Section 9: Home Sale and Purchase Expenses

A. Employee shall be reimbursed for the direct costs associated with the sale of Employee's existing personal residence, said reimbursement being limited to real estate agents' fees, and other closing costs that are directly associated with the sale of the

¹ All text shown in ITALICS is shown solely as an example of pay, employee benefits or other expenses that a prospective replacement City Administrator/City Manager may propose to the City of Billings for inclusion in his/her employment agreement. The City of Billings has no obligation to provide these elements to the Employee named in this agreement.

house. Said reimbursement will not exceed the sum of \$0.

B. Employee shall be reimbursed for the costs incidental to buying or building a primary residence within the City of Billings, including real estate fees, title insurance, and other costs directly associated with the purchase or construction of the house, said reimbursement will not exceed the sum of \$0.

Section 10: Performance Evaluation and Salary Adjustments

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

B. The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement in addition to providing a fixed annual increase in the Employee's salary based on an agreed upon economic indicator, such as the Consumer Price Index.

Section 11: General Business Expenses

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.

Section 12: Termination

A. Employee may terminate this Agreement voluntarily by giving written notice 90 days in advance of Employee's planned day of retirement or resignation. Employee shall remain employed during the 90-day period unless the parties agree to shorten the period. The Employer acknowledges that Employee has provided notice of intention to resign on December 31, 2018, or earlier if the City recruits and employs a replacement City Administrator earlier.

B. This Agreement will terminate if Employee dies or becomes incapable of performing the duties defined above.

C. This Agreement will be terminated involuntarily and without cause if:

- a. A majority of the governing body votes to terminate the Employee, with or without cause, in accordance with the City of Billings, Montana Charter, Section 4.02, at a properly posted and duly authorized public meeting.
- b. The 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. The Employer reduces the base salary, compensation or any other financial benefit of the 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 the Employee's resignation and the Employee declares a termination as of the date of the suggestion.
- e. The employee notifies the Employer, in writing, of a breach of this Agreement, and Employer fails to cure the breach within 30 days.

D. 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 the Employee's duties;
 - (ii) negatively affects the credibility of the Employee to sufficiently discharge his/her duties.
- (d) Adjudication by a forum of competent jurisdiction that the Employee violated the City or State codes of ethics;

- (e) Repeated and protracted unexcused absences from the 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 wilful, 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 the Employee's official capacity.

Section 13: Severance

A. If the Employee, dies, becomes incapable of perform duties, resigns without providing notice 90 days in advance, or is terminated for cause, Employee will not be eligible for severance, but will be paid, on the next regular payday, only through the date of termination.

B. If Employee is terminated involuntarily and without cause, Employer will pay severance in a lump sum equal to the lesser of: (i) one month's base salary for each 12 month period (with partial periods being pro-rated) that Employee has worked for Employer in any position, up to a maximum of six month's salary, or (2) the unpaid base salary that would have been paid to Employee between the date of termination and the date of Employee's planned retirement or resignation under Section 12.A., above.

Section 14: 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 15: Indemnification

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, arbitative or investigation, 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 independent legal representation at Employer's expense and Employer may not unreasonably withhold approval if such

representation is reasonably necessary to protect Employee's unique legal interests separate from the common interests of Employer and Employee. 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 or her 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.

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. The Employer, only upon agreement with Employee, or in accordance with Employer personnel policies applicable to a class of employees, 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, Montana 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 any department heads of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 18: Notices

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

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|---------------|---|
| (a) EMPLOYER: | City of Billings
P.O. Box 1178
Billings, Montana 59103 |
| (b) EMPLOYEE: | Bruce McCandless
1132 Toole Ct.
Billings, Montana 59105 |

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 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 February 12, 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.

Employer

By: _____ Executed this 26th day of February, 2018.
William A. Cole, Mayor

Employee

By: _____ Executed this 26th day of February, 2018.
Bruce McCandless