

**CITY OF HELENA**  
**CITY MANAGER EMPLOYMENT AGREEMENT**

This Agreement is made and entered into by and between the **CITY OF HELENA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 316 North Park Avenue, Helena, Montana 59623, hereinafter referred to as "City," and **ANA CORTEZ** ("Employee").

**RECITALS**

1. The City desires to employ the services of Employee as the City Manager of the City of Helena, as provided by the City Charter and the City Code.
2. The City, through its governing body, the Helena City Commission, desires to provide certain benefits, establish certain conditions of employment, and set working conditions for Employee.
3. Employee desires to accept employment as City Manager of said City.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Section 1. Duties:** The City agrees to employ Employee as City Manager of the City of Helena to perform the functions and duties specified in the City Charter, the Helena City Code, and other City ordinances, resolutions and approved motions. Employee shall also perform such other legally permissible and proper duties and functions as the City, through the City Commission, shall assign from time to time.

**Section 2. Term:**

(A) The term of this Agreement is for **two (2) years**, commencing on **January 23, 2019**, and terminating on **December 31, 2020**. The Agreement may be renewed for **two (2)** additional years by mutual agreement of the Parties in writing.

(B) The City will provide written notice of its intention to offer or not offer the **two (2) year** renewal to Employee by no later than **June 30, 2020**. In the event the City does not provide such written notice, this Agreement will expire and terminate on the date set forth above, but Employee will be entitled to a lump sum post-termination severance payment in an amount equal to the number of months' salary and benefits (pro-rata) remaining in the Agreement term as of the point in time that the written notice called for above is delivered, with the term "benefits" defined below.

**Section 3. Exclusive Employment:** Employee agrees to remain in the exclusive employ of the City subject to annual review, and to accept no other employment or become employed by any other employer unless termination is affected as hereinafter provided. Other employment does not include occasional teaching,

writing, or consulting performed on Employee's time off.

**Section 4. Suspension:** The City may suspend Employee with full pay and benefits at any time during the term of this Agreement upon approval of a majority of the City Commission. Any suspension may not exceed sixty (60) days.

Within two days of suspension, the City shall provide Employee with the detailed description of reasons leading to suspension in writing.

Within two days of returning to employment, Employee will receive from the City specific steps to rectify, reconcile, and acknowledge the conditions that led to the suspension and opportunity to discuss the suspension in an Executive Session.

**Section 5. Termination and Severance Pay:** This Agreement may be terminated prior to the expiration of its specified term pursuant to Section 2 above as follows:

(A) **Mutual Agreement:** This Agreement may be terminated by the mutual agreement of the Employee and the City in writing upon such terms and conditions as they may agree upon.

(B) **Incapacity:** This Agreement shall be terminated upon the death of the Employee or if the Employee becomes unable to perform the essential functions of the position with or without reasonable accommodation.

(C) **For Cause:** This Agreement may be terminated and Employee dismissed for cause. Termination and dismissal for cause shall mean reasonable job-related grounds for dismissal based on:

- (1) failure to satisfactorily perform job duties;
- (2) disruption of the City's operations;
- (3) other legitimate business reasons; or
- (4) any other conduct which is prejudicial to the City or City Commission.

Employee cannot be terminated for cause unless the City Commission has presented written charges to the Employee and the Employee was provided an opportunity for a fair hearing before the City Commission after at least a twenty (20) day notice in writing. If the City Commission terminates this Agreement for cause following such hearing, all rights and duties hereunder shall cease as of the date of the termination decision, and no further compensation or benefits shall be paid to Employee except to the extent otherwise dictated by §§ 2-18-601 et seq., MCA. If Employee's termination pursuant to this section of the Agreement is subsequently found by a court to be wrongful, Employee is entitled to damages limited solely to any compensation and benefit amounts that would have otherwise been provided for under the remaining specified term of this Agreement as set forth in Section 2 above.

**(D) Without Cause:** In light of the City Commission's status as the elected governing body of the City of Helena, Employee's status as their chief administrative officer with significant and extensive duties and responsibilities under the City's Charter, and the need of the citizenry for a positive working relationship between the Parties at all times, the City Commission reserves the right, in its sole discretion, to unilaterally terminate this Agreement at any time without cause. In the event the City Commission elects to exercise its right to unilaterally terminate this Agreement under this Section, the Employee shall be entitled to payment of liquidated damages in an amount equal to twelve (12) months of the Employee's salary and benefits. The liquidated damages will be paid in lieu of any and all other legal remedies for Employee and will be paid as a lump sum. For purposes of this Section, "benefits" shall mean the monetary value as of the date of the unilateral termination of Employee's (1) annual vacation leave and sick leave, both of which shall be paid out pursuant to Montana law; (2) any group health, dental, vision, and life insurance premiums paid by the City on behalf its employees; and (3) any PERS and non-PERS retirement contributions identified below. If the City terminates Employee pursuant to this section of the Agreement, the City agrees to provide Employee with a factual reference letter and to comply with Montana's blacklisting laws.

**(E) By Employee upon Written Notice.** This Agreement may be unilaterally terminated by Employee by providing ninety (90) days written notice of Employee's resignation. In the event Employee terminates this Agreement under this Section, the City shall be required to pay to Employee only that amount of salary and benefits earned and accrued through the effective date of termination, in addition to any payout of sick and vacation leave required by Montana law.

#### **Section 6. Salary:**

**(A)** The City agrees to pay Employee an annual salary for the services rendered pursuant hereto and payable in installments at the same time as other employees of the City. The amount of the annual salary is determined as follows:

- (i)** a base salary of \$150,000;
- (ii)** increases in said base salary equal to the City Commission adopted cost of living increase given to other City employees effective at the beginning of each fiscal year covered by this Agreement.

**(B)** The City may not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of Employee, except to the degree that any such reduction is across-the-board for all employees of the City.

**Section 7. Hours of Work:** The Parties recognize that Employee must devote a great deal of time outside normal office hours to business of the City, and to that end Employee will be allowed to take compensatory time off as Employee shall deem appropriate during said normal office hours.

**Section 8. Vacation, Sick Leave and Holidays:**

(A) Employee shall accrue vacation, compensatory time, and sick leave at the statutory rate for exempt public employees. Employee is entitled to be compensated for any accrued sick leave, vacation, holidays, compensatory time, and other accrued benefits at the statutory rate.

(B) In recognition of Employee's four (4) previous family commitments scheduled to take place in 2019, if the Employee does not accrue sufficient vacation and compensatory time to provide sufficient time off for these commitments, the City agrees to provide additional paid administrative leave to Employee for a total of up to four (4) weeks of leave during the first year of this Agreement.

**Section 9. Medical and Other Insurance:** The City agrees to provide the same medical, dental and other insurances for Employee and Employee's dependents and to pay the employer contributions on the premiums in the same amount as paid for other employees. The City agrees to provide life insurance equal in amount to three (3) times the annual gross salary.

**Section 10. Retirement:** The City agrees to provide the same retirement program through MTPERS as is provided to other employees of the City. Specifically, the City will contribute the statutory amount required of public employers and the Employee will contribute by withholding the statutory amount required of public employees. Additionally, the City will contribute an amount equal to 8% of salary into the Employee's State of Montana 457(b) Deferred Compensation Account.

**Section 11. Moving Expenses and Housing:**

(A) The City will cover the actual cost of Employee's moving expenses up to \$7,500.

(B) City will provide a housing stipend of \$850/month to Employee for a period not to exceed seven (7) months or until Employee's home in Yakima is sold, whichever comes first.

**Section 12. Performance Evaluation:**

(A) The Commission shall set annual performance goals for Employee within one month of this Agreement's commencement date. These goals shall be reviewed during the six-month evaluation period.

(B) The Helena City Commission shall review and evaluate the performance of Employee at six (6) months and one (1) year following the date of initial employment and then at least once annually. The review and evaluation shall be in accordance with criteria developed by the City after consultation with Employee. The criteria may be amended by the Commission, from time to time, after consultation with Employee. Employee shall be provided an adequate opportunity to

discuss Employee's review and evaluation with the Helena City Commission.

(C) The City and Employee shall define goals and performance objectives annually which they determine necessary for the proper operation of the City. In the attainment of the City's policy objectives, the City shall also establish in writing a relative priority among various goals and objectives.

**Section 13. Professional Development, Dues, Subscriptions, Memberships and Travel Expenses:**

(A) The City agrees to budget and pay for the professional dues and subscriptions of Employee necessary for Employee's continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for Employee's continued professional participation, growth and advancement, and for the good of the City. Employee currently participates in the Northwest Women's Leadership Academy ("Academy") in Washington. City agrees to pay airfare for Employee to attend three Academy meetings in 2019. Employee agrees to complete the Academy in August 2019.

(B) The City hereby agrees to pay the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for the City, including but not limited to the Annual Conference of the International City Management Association, the MT League of Cities and Towns, and such other national, regional, state and local government groups and committees wherein Employee serves as a member.

(C) The City also agrees to budget and pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for Employee's professional development and for the good of the City.

(D) The City recognizes the desirability of representation in and before local civic and other organizations, and Employee is authorized to become a member of one service club of Employee's choice, for which City shall pay all expenses. Any additional memberships at City's expense shall be reviewed and approved by the City Commission.

**Section 14. City Provided Equipment:** The City will provide the equipment necessary to perform Employee's duties pursuant to this agreement, including:

- (A) New desktop computer in Employee's City office;
- (B) New laptop; and
- (C) New phone.

**Section 15. Automobile Allowance:**

(A) The City agrees to pay Employee reasonable general expenses for maintenance, repair and fuel for Employee's personal vehicle on behalf of the City, in the form of an automobile allowance in the amount of \$450.00 per month/\$5,400 per year. The Parties contemplate that Employee will use Employee's own personal vehicle for the pursuit of City business. This allowance is to compensate Employee for the use of Employee's vehicle, including, but not limited to, costs associated with regular maintenance, mileage, insurance, taxes, licensing, depreciation, oil and gas expenses, and all other sundry and miscellaneous expenses associated with the operation of a motor vehicle. The parties intend that Employee will use Employee's personal vehicle for all in-state travel required of Employee in pursuit of Employee's duties as City Manager. Employee is responsible for all costs and expenses of any kind arising out of the use of Employee's personal vehicle for City business. When the vehicle is used for travel outside the Helena vicinity, the City will reimburse Employee for the cost of gas.

(B) In this regard Employee is not entitled to any other allowance for the use of Employee's personal vehicle.

(C) Employee agrees to maintain adequate liability insurance on the vehicle as required by law.

**Section 16. Residency:** Employee agrees to maintain Employee's permanent residence within the corporate limits of the City of Helena.

**Section 17. Indemnification:** The City shall defend, save harmless, and indemnify Employee as provided in Title 2, Chapter 9, MCA, and the Helena City Code. The Parties agree that Employee is an "employee" under these provisions and entitled to the immunization, defense, and indemnification provided therein and subject to the requirements of those provisions.

**Section 18. Full Integration:** This Agreement, together with its exhibits, if any, embodies the entire understanding between the parties relating to the subject matter contained herein and supersedes any prior statements, understandings, promises, or representations made by either party or their agents. No agent or representative of either party has authority to make any representations, statements, warranties, or agreements not herein expressed.

**Section 19. Amendments in Writing:** All amendments to this Agreement must be in writing and executed by all parties to this Agreement.

**Section 20. Governing Law and Venue:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana. If a dispute arises, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark.

**Section 21. Headings:** The section headings contained in this Agreement are for reference

purposes only and do not affect the meaning or interpretation of the Agreement.

**Section 22. Severability:** If any term or provision of this Agreement is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term, condition, or provision held to be invalid.

**Section 23. Binding upon Heirs:** This Agreement shall be binding upon and inure to the benefit of the heirs and personal representatives of Employee.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be signed and executed the day and year first above written.

**FOR THE CITY OF HELENA MONTANA**

Signed: \_\_\_\_\_  
By: **Wilmot J. Collins, Mayor**

Dated: \_\_\_\_\_

**FOR THE EMPLOYEE**

Signed: \_\_\_\_\_  
By: **Ana Cortez**

Dated: \_\_\_\_\_

**ATTEST:**

By \_\_\_\_\_  
**Debbie Havens, City Clerk**