

MUTUAL AGREEMENT TO TERMINATE EMPLOYMENT AGREEMENT AND RELEASE

This Mutual Agreement to Terminate Employment Agreement and Release ("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, hereafter referred to as "City" and ANA CORTEZ, hereafter referred to as "Cortez". The City and Cortez are collectively referred to in this Agreement as the "Parties".

I. RECITALS

1. On or about December 4, 2018, the City and Cortez entered an employment agreement entitled "CITY OF HELENA CITY MANAGER EMPLOYMENT AGREEMENT" (hereafter "employment agreement").

2. The employment agreement called for Cortez to be employed as the City Manager of the City, commencing on January 23, 2019, and terminating on December 31, 2020, subject to renewal for two (2) additional years.

3. In the employment agreement, the parties agreed that the employment agreement could be terminated prior to the expiration specified therein for a number of reasons, including that it could be terminated by mutual agreement of Cortez and the City, in writing, and upon such terms and conditions as they may agree upon.

4. As part of the employment agreement and Section 5 addressing termination, the City and Cortez agreed severance pay may be considered to include payment of salary and benefits. "Benefits" were defined as the monetary value as of the date of the termination of Cortez'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 of Cortez; and (3) any PERS and non-PERS retirement contributions identified in Section 10 of the employment agreement. The total amount of time for payment of salary and benefits to be paid varied between the different termination options.

5. At this time, the Parties believe it is in the best interest for all involved to mutually agree to terminate the employment agreement and have Cortez separate from her employment with the City.

6. Cortez and the City enter this Agreement to fully clarify and resolve all matters arising from this termination of the employment agreement and their relationship, its conclusion, and any continuing obligations of the Parties to one another at the end of the employment relationship.

7. Based upon the consideration and mutual promises contained in this Agreement, the Parties hereby agree as follows:

II. TERMS

1. The Parties have mutually agreed to terminate the employment agreement effective February 6, 2020.

2. At the close of business on February 5, 2020, Cortez agrees to submit a letter confirming her resignation as City Manager effective as of February 6, 2020, and the City agrees to accept the resignation effective upon receipt.

3. For good and valuable consideration, the City agrees to pay the following subject to all standard deductions, taxes, and withholdings:

- a. One lump sum payment of nine (9) months of Cortez's salary inclusive of the monetary value of employer contributions to group health, dental and vision insurance, life insurance premium, PERS, and 457(b) Deferred Comp Account, constituting \$147,006.81; and
- b. Included in Cortez's final paycheck at Cortez's standard hourly rate for Cortez's final leave balances accrued through resignation (specifically, 120.34 hours of vacation and 93.20 hours of sick leave), will be payment constituting \$16,880.70.

From the payment referenced above in section 3.a., Cortez requests that \$22,667.00 be contributed directly to her 457 deferred compensation account. This contribution is to be considered as any other contribution to Cortez's deferred compensation account, as though she is an employee.

4. Pursuant to § 39-3-205, MCA, and Section 4-4 of the City of Helena Personnel Policies Handbook, the City agrees Cortez will be paid for all unpaid wages through February 5, 2020. This final pay shall be paid on the next regularly scheduled pay date following her separation or by February 20, 2020 (fifteen (15) calendar days from the date of her resignation), whichever occurs first, either through regular pay channels or by mail if requested by Cortez.

5. The City further agrees to provide Cortez with a mutually agreeable factual reference letter attached hereto as Exhibit A. Ms. Cortez should direct any employment inquiries to the City Attorney.

6. Cortez agrees to immediately return all property of the City in her possession, including but not limited to any keys, computers or electronic devices, electronic or paper files and documents of any sort, and business records and to cooperate with the City in any other reasonable manner in conducting the proper transition of Cortez's departure from the City.

7. It is understood and agreed by the Parties that all payments provided under this Agreement are in lieu of any other payments to which Cortez may be entitled and is inclusive of all wages or other amounts due and owing Cortez.

8. Cortez, in consideration for payment of the above sum of money, fully and forever releases and discharges the City, its predecessors, successors, and affiliates and its respective elected

officials, officers, directors, agents, employees, and attorney from any and all actions, claims, grievances, demands, causes of action, obligations, for damages, injuries or expenses, whether asserted or unasserted, known or unknown, relating in any way to and/or arising out of her employment relationship including, but not limited to, claims based on express or implied contract, tort, covenants of fair dealing and good faith, violation of any state or federal constitutional rights, infliction of emotional distress, defamation, invasion of privacy, the Montana Wrongful Discharge from Employment Act, blacklisting, the Montana Human Rights Act, Montana's Wage and Hour laws, Title VII of the Civil Rights Act, the Americans With Disabilities Act, the Rehabilitation Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the Fair Labor Standards Act, the National Labor Relations Act, the Savery Retirement Income Security Act, and any other applicable Federal, State or local law, ordinance, or regulation. Cortez understands that this waiver and release only apply to claims and acts occurring prior to and up to and including this Agreement's execution, and the City agrees that Cortez is not waiving or releasing any claims for any unlawful acts committed after the Agreement's execution.

9. Cortez understands and acknowledges that by signing and dating this Agreement, she is waiving forever any and all claims that the City, its predecessors, successors, and affiliates and its respective elected officials, officers, directors, agents, employees, and attorney, at any time prior to execution of this Agreement, discriminated against her on the basis of age. Cortez further acknowledges and agrees that she:

- a) Consulted with an attorney before signing this Agreement and any waiver contemplated under the Age Discrimination in Employment Act (ADEA) claims;
- b) Was advised of her right to consider this Agreement for 21 days before signing it and waives that right;
- c) Has carefully read and fully understand all provisions of this Agreement;
- d) Knowingly and voluntarily agrees to all of terms set forth in this Agreement;
- e) Knowingly and voluntarily intends to be legally bound by all of the terms set forth in this Agreement;
- f) Has received valuable consideration in exchange for her agreement to waive any existing or contemplated ADEA claims;
- g) Was advised of her right to have a full seven (7) days following the execution of this Agreement to revoke the Agreement and knowingly waives that right.

10. Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, Cortez agrees, as a further consideration of this agreement, that she agrees that this Agreement applies to any and all injuries, damages and losses resulting from the claims described herein, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

11. Cortez represents that no additional claims are contemplated against any other party potentially liable for the losses, damages, and claims for which this Agreement is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to the City for the losses, injuries, and damages for which this Agreement is given, Cortez covenants and agrees to indemnify and save the City harmless from all such claims and demands, including reasonable attorneys' fees and all other expenses necessarily incurred.

12. It is understood that the terms and conditions of this Agreement are accepted as the sole consideration for the full satisfaction and accord of any of Cortez's claims arising from the employment relationship, except as otherwise specified herein, that neither this Agreement, nor the terms and conditions thereof, shall be considered an admission of liability by either party.

13. Neither the City, nor the City's attorney make any representations about the taxability of any portion of the consideration made in exchange for this Agreement. Cortez shall bear the sole responsibility for any and all tax consequences related to the Agreement, and shall fully indemnify the City, the City's predecessors, successors, and affiliates and its respective elected officials, officers, directors, agents, employees, and the City's attorney for any tax liability that arises thereof, including any fees and costs related to enforcement of this clause.

14. Should any provision of this Agreement be determined to be unenforceable, all remaining terms and clauses shall remain in force and shall be fully severable.

15. In the event either party brings suit to enforce the terms of this Agreement, the prevailing party shall be entitled to recovery their reasonable attorney's fees, together with the cost of suit and any other consequential damages.

16. This Agreement shall be construed and interpreted in accordance with the laws of the State of Montana and any suit brought to enforce this Agreement shall be brought in the First Judicial District Court, Helena, Montana.

17. This written Agreement constitutes the final agreement between the Parties and shall supersede any oral agreements to the contrary.

18. This Agreement may be executed in counterpart and a facsimile or other electronic signature shall be as effective as an original.

19. This Agreement shall be binding upon the Parties' heirs, successors, personal representatives, attorneys, and assigns.

20. The Parties stipulate and agree that they have carefully read the foregoing, have had the opportunity to discuss its legal effect with their counsel, understand the contents hereof, and sign the same of their own free will and accord.

DATED this ____ day of February, 2020.

CAUTION: READ BEFORE SIGNING

Ana Cortez

STATE OF MONTANA)
 :ss.
County of Lewis & Clark)

On this _____ day of February, 2020, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Ana Cortez, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 2020.

Notary Public for the State of Montana

(NOTARIAL SEAL)

APPROVED BY:

MORRISON SHERWOOD WILSON DEOLA PLLP
401 North Last Chance Gulch
Helena, MT 59624
(406) 442-3261

By _____
Scott Peterson
Attorneys for Ana Cortez

DATED this ____ day of February, 2020.

CAUTION: READ BEFORE SIGNING

The City of Helena, Montana
Wilmot J. Collins, Mayor

ATTEST:

Dannai Clayborn, Clerk of the City Commission

APPROVED BY:

UGRIN ALEXANDER ZADICK, P.C.
#2 Railroad Square, Suite B
Great Falls, MT 59401
(406) 771-0007

By _____
Jordan Y. Crosby
Attorneys for the City of Helena



City Commission
316 North Park Avenue
Helena, MT 59623

: Phone: 406.447.8410
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helenamt.gov

RE: Reference Letter for Ana Cortez

To Whom It May Concern,

The following reference letter is offered on behalf of the City Commission for the City of Helena, Montana. Ana Cortez was employed by the City of Helena from January 2019 to January 2020 as the City Manager. When Ms. Cortez was hired, the City Commission set out to achieve a number of desired changes in the first year in an effort to alter the output and direction of city services, including increasing public input, improving outcomes, accountability and customer service and financial efficiency. These were aggressive goals that could not be met overnight, and were certainly not changes welcomed by all, however, overall, Ms. Cortez worked to bring about these changes. While change in an organization can be difficult, Ms. Cortez was responsive to the Commission's request to work on developing further her interpersonal skills to allow her to more effectively communicate internally and with outside agencies and the public.

In her tenure, Ms. Cortez completed her first budget process by succeeding in getting the biennial budget adopted and balancing the FY2020 general fund to include 21% reserves and fund balance. During this time, she put a tremendous amount of effort into improving the budget process to allow the Commission the ability to provide overarching policy decisions. She led an open budget development process that involved in-depth analysis of the budget and also provided several community outreach sessions.

Ms. Cortez worked with City departments to streamline many outdated processes and procedures including improved snowplowing, zoning reform, the creation of a new RFP process designed to increase community benefit, and development of a new, more user-friendly website. Ms. Cortez performed well in carrying out Commission policies and providing timely responses to Commission requests. She regularly informed the Commission regarding on-going or new situations, goals and priorities and was thoughtful in listening and responding to Commission comments and concerns.

Sincerely,

Wilmot J. Collins,
Mayor, City of Helena

EXHIBIT A