

EMPLOYMENT AGREEMENT

**Between
The City of Bozeman
And
Chris A. Kukulski**

February 1, 2016

**EMPLOYMENT AGREEMENT
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Employment Agreement

Introduction

This Agreement, made and entered into this 1st day of February, by and between the City of Bozeman, Montana, a municipal corporation with offices at 121 North Rouse Avenue, Bozeman, Montana, (hereinafter called City) and Chris A. Kukulski, (hereinafter called Employee) an individual who currently resides at 1445 Cherry Drive, Bozeman, Montana, both of whom agree as follows:

Section 1 Term

- A. This Agreement shall commence from the date of signature by both parties for an indefinite term until terminated by the City of Employee, as provided in this Agreement. The parties agree to review this Agreement within 30 days after December 1 of every year that ends in an even number to commence with December 1, 2010 (e.g. review shall occur during December of 2010, 2012, 2014, etc.).
- B. Should either party desire to modify this Agreement at any time other than the review period described in Section 1.A, above,, the party wishing to amend this Agreement shall serve written notice of proposed modifications in writing.
- C. Employee agrees to remain in the exclusive employ of City and agrees to accept no other employment during the term of this Agreement, except as provided in this Agreement.
- D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Commission to terminate the services of Employee at any time for any reason or for no reason, subject to the provisions set forth in Section 9 or 10 of this Agreement and the Bozeman City Charter.
- E. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from this position with City, subject to the provisions set forth in Section 11 of this Agreement.

Section 2 Duties and Authority

City agrees to employ Chris A. Kukulski as City Manager to perform the functions and duties specified by Section 3.04 of the City Charter, the Bozeman Municipal Code, State law and the job description, and to perform other legally permissible and proper duties and functions.

Section 3 Compensation

- A. Base Salary: City agrees to pay Employee an annual base salary of One Hundred Thirty Four Thousand Five Hundred Dollars (\$134,500) payable in installments at the

same time that the other management employees of the City are paid effective December 31, 2015.

Effective December 31, 2016 the base salary will increase by an additional Ten Thousand Dollars (\$10,000).

- B. COLA: Commencing on January 1, 2016, the City agrees to annually increase said base salary of Employee by the December U.S. Consumer Price Index for All Urban Consumers for All Items.
- C. Merit Wage Adjustment: In addition, the City Commission may determine a merit based increase is appropriate for Employee, based on Employee's accomplishments of Commission set performance goals and objectives. This performance increment, if any, will be determined annual by vote of the City Commission and, if provided, will be effective December 31st.

Section 4
Health, Disability and Life Insurance Benefits

- A. The City 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 his spouse and children.
- B. The City will pay the Employee a lump sum payment equal to 5% of his base salary (Section 3, Paragraph A) in lieu of providing term life and disability insurance no later than July 15th of each year.

Section 5
Leave

- A. Upon commencing employment, the Employee shall earn:
 - 1. 12 days of sick leave each year; and
 - 2. 24 days of vacation leave each year.

These shall be subject to the qualifying periods and all policies other than accrual rates as described in the most current version of the City's Employee Handbook.

- B. From calendar year to calendar year, the Employee is entitled carry over up to three (3) times the annual vacation accrual. There will be no limit on the accrual of sick leave credits.
- C. All other leave accruals and usages will be administered and used in a manner consistent with the City's Employee Handbook.
- D. If the Employee travels outside of the United States in order to adopt a child, the Employee is entitled to utilize accrued sick and/or vacation hours for any time off related to the adoption.

Section 6 Vehicle Allowance

The City 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 Five Hundred Seventy Dollars and Two Cents (\$570.02) per month as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The monthly allowance shall be increased annually by 3%, each January 1st. 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. When traveling more than fifty miles (one way) from Bozeman on city business the Employee may utilize the City's fuel card.

Section 7 Retirement

The City shall adopt a qualified 401(a) defined contribution plan and Section 457 deferred compensation plan offered through ICMA Retirement Corporation. The City shall contribute eighteen percent (18%) of the employee's base annual cash compensation to either or both plans with the division between the 401(a) and Section 457 to be determined by the Employee. For purposes of this section, base annual cash compensation shall be calculated in the same manner as all other non-represented city employees. The Employee may elect to have a portion of the 18% deposited into a Health Savings Account. This contribution is in addition to the Montana Public Employee Retirement System (MPERS) retirement program offered to qualified City employees.

Section 8 General Business Expenses

- A. Subject to annual budgetary approval by the Commission:
1. The City agrees to budget for and to pay for professional dues 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 City.
 2. The City agrees to budget for and to 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 the City, 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. The City also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are deemed by the Commission as necessary for the Employee's professional development and for the good of the City.
 4. The City 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. The Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
 5. The City acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, City 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.
- B. While the Employee is free to pursue reasonable off duty, non-job related activities, Commission approval is necessary prior to the employee's agreeing to hold office in any of the above referenced professional, business or civic organizations.

Section 9 Termination

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body adopts a final resolution to remove the Employee at a duly authorized public meeting consistent with the provisions of Section 3.02 of the City Charter;
- B. If the City Commission requests the Employee to resign pursuant to Section 3.02 of the City Charter and the Employee resigns in writing the Employee shall be considered to have been terminated as of the date of the Employee's written resignation;
- C. If the City, citizens or legislature acts to amend any provisions of the Bozeman Municipal Code and/or City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination;
- D. If the City 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, such action shall constitute a breach of this agreement and will be regarded as a termination;
- E. Either Party can declare the other Party to be in breach of the agreement and provide the Party 30 days to cure the breach. Written notice of a breach of contract

shall be provided in accordance with the provisions of Section 19 and set forth the action or inaction constituting the breach; or

Section 10 Severance

- A. If the Employee is terminated as defined in Section 9, the severance package will be as follows:
1. **Severance Pay:** Severance is equal to twelve (12) months' pay. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Employee.
 2. **Retirement:** The City will make a contribution to the Employee's deferred compensation account on the Employee's salary as of the date of termination compensation calculated as defined in Section 7.
 3. **Leave Payouts:** The Employee shall be compensated for all accrued and unused leave as per City policy.
 4. **Health Insurance Continuation:** The Employee shall be allowed to pay for continued health insurance as permitted by federal law.
- B. If the Employee is terminated because of any of the following the Employee is not entitled to any severance under this section except required leave payouts:
1. Conviction of or plea of no contest to a felony;
 2. Adjudication by a forum of competent jurisdiction that the Employee has violated the City's Code of Ethics;
 3. Repeated and protracted unexcused absences from the Employee's office and duties;
 4. Knowingly falsifying records or documents or knowingly making false statements related to the City's activities or business;
 5. Violation of any City policy regarding drugs and alcohol; or
 6. Any willful, knowing, 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 therefore, or the Employee in the Employee's official capacity.

Section 11

Resignation

In the event that the Employee voluntarily resigns his position with the City, the Employee shall provide a minimum of 45 days notice unless the parties agree otherwise. In the case of Employee Resignation, the Employee is not entitled to severance pay or to the paid continuation of health insurance provided for in Section 10, paragraph D.

Section 12 Performance Evaluation

- A. City shall annually review the performance of the Employee no later than December 1 of each year subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the City and the Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, (3) present a written summary of the evaluation results, and (4) provide the Employee with goals and objectives for the upcoming year. The final written evaluation including goals and objectives should be completed and delivered to the Employee within 30 days prior to the evaluation meeting.
- B. Beginning January 1 of each year the City Manager shall work with the Commission to develop for City Commission approval prior to March 1 of each year a Work Plan identifying specific Commission goals, implementation strategies, and major city projects and work assignments. Among other factors established pursuant to subsection A, above, the City Manager shall be evaluated with regards to this Work Plan.

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 City, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14 Outside Activities

The employment provided for by this Agreement shall be the Employees 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 15 Residency

Employee agrees to maintain residence within the corporate boundaries of the City of Bozeman. Therefore, the City agrees to pay the Employee a housing supplement in the amount of One Thousand Dollars (\$1,000.00) per month.

**Section 16
Indemnification**

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. Further, Employer agrees that this clause 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.

**Section 17
Bonding**

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

**Section 18
Other Terms and Conditions of Employment**

- A. The City, 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 or any 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 department heads of the City.

**Section 19
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. The CITY: Office of the Mayor, Bozeman City Commission, P.O. Box 1230, Bozeman, Montana 59771
- B. EMPLOYEE: Chris A. Kukulski, 1445 Cherry Drive, Bozeman, MT 59715.

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 20
General Provisions**

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. Subject to Section 1.B, the parties by mutual written agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. **Binding Effect.** This Agreement shall be binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. **Effective Date.** This Agreement shall become effective commencing upon signatures of the parties. .
- 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 parties subsequent to the expungement or judicial modification of the invalid provision.
- E. **Public Document.** This Agreement is a public document and shall be available for inspection by the public.

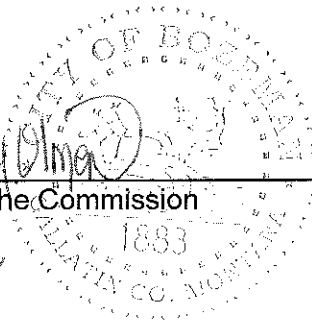
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in duplicate, the 1st day of February, 2016.

THE CITY OF BOZEMAN

By Carson Taylor Date: 2/1/2016
 Mayor Carson Taylor

ATTEST:

Stacy Olmer
 Clerk of the Commission



EMPLOYEE

Chris A. Kukulski Date: 2-1-16
 Chris A. Kukulski