

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF CARNATION, WASHINGTON
AND ANA CORTEZ**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made between the City of Carnation, Washington, hereinafter referred to as "City" and Ana Cortez, hereinafter referred to as "Manager."

WHEREAS, the City is a non-charter, optional municipal code city organized under the council-manager form of government, and

WHEREAS, the City desires to contract with Ana Cortez to serve as City Manager, and Ana Cortez desires to accept the position as the City Manager for the City of Carnation;

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the parties hereby agree as follows:

1. Term. The provisions of this Agreement shall commence November 1, 2021, and shall continue indefinitely until terminated by law or pursuant to this Agreement.

2. Duties. Manager shall perform all duties and obligations of the position of City Manager as required by law, and such other duties as are assigned from time to time by the City Council. Manager shall attend all special and regular meetings of the City Council, unless excused, and such other meetings as may be required by the City Council.

3. Salary. Manager shall be paid an initial salary of \$150,000 per year which shall be paid in accordance with the payroll procedures for other City employees.

4. Benefits.

A. Provided Benefits.

(1) Holidays and Vacation. Manager shall accrue vacation at the rate of three weeks (15 days) per year, with an additional beginning vacation leave bank balance of five days. Manager shall be entitled to holidays in the same manner as other City management employees.

(2) Sick Leave. Manager shall accrue sick leave at the rate of eight hours per month.

(3) Hours of Work/Flexible Work Schedule. It is the parties' mutual expectation that Manager will devote approximately forty (40) hours of professional service to the City per week, operating from City Hall and during such hours that are most appropriate to work with the public, the elected officials of the City, and City staff. The parties acknowledge, however, that Manager must devote a meaningful amount of professional time toward City business outside of normal office hours, including without limitation attendance at City Council meetings, Planning Board meetings and community meetings and events.

To that end Manager shall be allowed to maintain a reasonably flexible work schedule, subject to any limitations established by the City Council in its sole discretion. Under such flexible work schedule, Manager may take occasional time off during normal office hours, provided that such time off (i) is not unreasonably disruptive to the needs of the City, and (ii) is approximately equal in amount to the work performed by Manager outside of normal office hours.

(4) Medical.

a. The City will provide and pay the cost of the medical, vision and dental benefits under City's health plan for Manager and Manager's dependents in the same manner as other City management employees.

b. Separate from and additional to the City's obligations under subsection (a) above, the City shall reimburse Manager for 50 percent of Manager's documented costs, up to a maximum of \$550 per month, to continue coverage for Manager and/or Manager's dependent child under Manager's existing health plan or an alternative health plan of Manager's choice. The City's obligations under this subsection (b) shall continue until: (i) Manager's dependent child obtains separate health coverage, or February 2023, whichever occurs first. As a prerequisite to receiving payment under this subsection (b), Manager shall submit a signed, written reimbursement request to the City Treasurer each month documenting Manager's reimbursable health coverage costs and attesting that Manager's dependent child has not obtained separate health coverage.

(5) Retirement. The City shall contribute into the PERS retirement system for the benefit of Manager in the same manner as other City employees and in accordance with applicable state regulations. Provided, that if Manager declines membership in PERS and instead opts to participate in an ICMA 457 Deferred Compensation Plan, or any other available IRS-qualified plan, the City will contribute to such plan at the same rate as if Manager had elected participation in PERS II.

(6) Employee Life Insurance Benefits. The City shall provide employee life insurance benefits for Manager in the same manner as other City management employees.

(7) Mileage Reimbursement. Use of Manager's personal vehicle for official City purposes will be reimbursed by the City at current IRS mileage rates if round trip travel exceeds 500 miles and a rental vehicle could not reasonably be secured. Provided, that said reimbursement shall not apply with respect to Manager's daily commute to and from Carnation City Hall. At all times during her employment with the City, Manager shall at her sole expense maintain automobile liability insurance coverage with a combined single limit for bodily injury and property damage of \$500,000 per accident. Manager shall provide proof of such coverage to the City no later than the commencement date of her employment.

(8) Housing Allowance. Separate from and additional to Manager's salary under Section 3, the City shall pay Manager a monthly housing allowance of \$700 per month for the first five (5) years of Manager's employment. As a prerequisite to receiving payment under this subsection (9), Manager shall submit a signed, written reimbursement request to the City Treasurer each month documenting Manager's housing expenses and attesting to Manager's continued compliance with the residency requirements set forth in Section 8, as applicable.

B. Other Benefits. Except as specifically provided in this Agreement, including any amendments hereof, Manager shall not be entitled to any benefits, including without limitation, any COLA, provided in the City's Personnel Manual or otherwise granted to other City employees.

5. Professional Development and General Business Expenses.

A. Professional Development Membership and Training. The City hereby agrees to pay for the expenses of Manager for membership to the Washington City/County Managers Association and paid attendance to its conferences. The City further agrees to pay for the expenses of Manager for membership in the Local Government Hispanic Network, Government Finance Officers Association, International City/County Managers Association and attendance at the ICMA conference, if funds are available in the annual budget for the City Manager's office. Reimbursement for expenses incurred under this section shall be made in accordance with applicable City policy.

B. General Business Expenses. City recognizes that certain expenses of a non-personal but job-related nature are incurred by Manager, and agrees to reimburse Manager for said general expenses. As a prerequisite to reimbursement under this subsection (B), Manager shall provide receipts documenting each expense to the City Treasurer.

6. Performance Review.

A. Within the first three (3) months of employment, Manager and the City Council shall meet to establish the performance goals for Manager's first six to twelve months of employment and the criteria for evaluation thereof.

B. The City Council shall meet with Manager and review her performance after Manager's first six (6) months of employment, and at least once annually thereafter.

C. Annually, the City Council, in consultation with and with input from Manager as deemed appropriate in the Council's sole discretion, shall define such goals and performance objectives which the Council determines are necessary for the proper operation of the City and attainment of the City's policy objectives, and shall further establish a relative priority among those various goals and objectives. Said goals and objectives shall be reduced to writing and provided to Manager. Such goals and objectives may be revised by the City Council, in consultation with and with input from Manager as deemed appropriate in the Council's sole discretion.

D. Compensation Adjustments. Following any review or evaluation, the City Council may in its sole discretion consider and authorize any salary and/or benefit adjustment for Manager, including without limitation any cost of living adjustment, based upon on market and/or performance considerations. Without prejudice to the foregoing, unless otherwise specified by the City Council in its sole discretion, Manager shall annually receive a salary increase of 2.5 percent effective upon the anniversary date of Manager's employment.

7. Termination.

A. By the City. The parties recognize and acknowledge that Manager is an "at will" employee and agree that the City Council may terminate her with or without cause at any time and for any reason pursuant to the provisions of RCW 35A.13.130-.150.

B. Termination Benefits. If Manager is terminated without cause by the City Council, Manager shall receive the following (collectively "Termination Benefits") from the City:

(1) A lump sum payment equivalent to: (a) three (3) months salary if such termination occurs at any point during the first two years of Manager's employment, or (b) six (6) months salary if such termination occurs at any point after the first two years of Manager's employment;

(2) A lump sum payment equivalent to and converted from Manager's unused vacation leave, up to a maximum of 240 hours; and

(3) Two (2) months continuation of the health coverage benefits specified in subsection 4(A)(4); provided, that such health coverage benefits shall terminate sooner if and when Manager secures similar coverage through another employer.

In consideration and as a precondition of receiving the Termination Benefits, Manager shall execute a release, in a form approved by the City Attorney, of any and all claims against the City, its elected or appointed officers, employees or agents, arising out of or otherwise related to Manager's employment and/or Manager's termination of employment with the City. Provided, that Manager shall not be entitled to any Termination Benefits if Manager is terminated in whole or in part for cause. For purposes of this Agreement, the term "cause" shall mean misfeasance or neglect of office, violation of applicable statutes, including without limitation the Washington Law Against Discrimination, the Americans with Disabilities Act, and the Public Records Act.

C. Termination by Manager. In the event Manager elects to terminate employment with the City for any reason, Manager agrees to attempt to provide the City with not less than sixty (60) days notice prior to the effective date of said termination. Notwithstanding the foregoing notice requirement, nothing shall prevent the City Council, upon receiving Manager's notice of intent, to allow Manager to leave prior to this sixty-day period. Manager shall not be entitled to any Termination Benefits if Manager terminates her employment with the City.

8. Residency and Relocation.

A. Residency. The City hereby releases Manager from any obligation to reside within the city limits of Carnation as otherwise required pursuant to RCW 35A.13.050. Provided, that Manager shall reside within a five (5) mile radius of the city boundary as required pursuant to CMC 2.08.040 at all times following the fourteenth (14th) month after the commencement of Manager's employment.

B. Relocation. The City shall provide Manager with a lump sum \$5,000 relocation stipend to defray Manager's expenses in relocating to commence City employment. Manager may expend the relocation stipend in her sole discretion. Provided, that any termination by Manager within her first year of employment shall require Manager's repayment to the City of the entire relocation stipend, and any termination by Manager during her second year of employment

shall require repayment to the City of 50 percent (\$2,500) of the relocation stipend. Any such repayment of the relocation stipend by Manager shall be due no later ten (10) days following the effective date of Manager's termination, and shall thereafter accrue interest at the rate of 12 percent per annum.

9. Integration. This Agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this Agreement.

10. Modification. The parties agree that this Agreement can be amended or modified only with the written concurrence of both parties. Without limitation of the foregoing, no reduction of the Manager's working hours, salary and/or benefits as defined hereunder shall occur without a mutually executed amendment to this Agreement. Provided, that nothing herein shall be construed as preventing the City Council from unilaterally reducing Manager's working hours pursuant to (i) any across-the-board reduction in working hours that is applicable to all City employees, and/or (ii) any Council-approved modification of the Carnation City Hall operating hours.

11. Notices. Any notice required to be given under this Agreement shall be delivered or mailed to the following parties at the following addresses:

CITY OF CARNATION
ATTN: Mayor
4621 Tolt Avenue
P.O. Box 1238
Carnation, WA 98014-1238

CITY MANAGER
(Addressed as shown on
the most current City
roster at the time of
mailing.)

Notices may be delivered either personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

12. Authorization of Facsimile Copies. Both parties agree that upon the Manager signing a facsimile copy of this contract, transmitting the same to the City, and upon the current Mayor signing said facsimile copy, that both parties shall be bound by the terms and provisions of this Agreement. Both parties shall subsequently execute original, non-facsimile copies of this Agreement that shall be substituted for the signed facsimile copy.

13. Governing Law; Venue; Attorneys' Fees. This Agreement shall be governed by the laws of the State of Washington, specifically including without limitation the applicable provisions of Chapter 35A.13 RCW. The exclusive venue for any litigation arising out of this Agreement shall be the superior court for King County, Washington. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees.

DATED this 30th day of September, 2021.

CITY OF CARNATION

By: Kimberly Lisk
Kimberly Lisk (Sep 30, 2021 14:24 PDT)

Kim Lisk, Mayor

ATTEST/AUTHENTICATED:

Mary Madole

Mary Madole, City Clerk

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY:

By: Zach Lell
Zach Lell (Sep 30, 2021 15:07 PDT)

J. Zachary Lell

Ana Cortez represents and acknowledges that she has read this Agreement in its entirety and has had an opportunity to review the Agreement. She further represents and acknowledges that it is her understanding that this Agreement has been reviewed and approved by Ogden Murphy Wallace PLLC, attorneys for the City of Carnation. By virtue of this passage, she further acknowledges that she has been advised that she has the right to consult independent counsel concerning this Agreement, and that by signing this Agreement she acknowledges that she has afforded herself the opportunity to do so, or hereby expressly waives her right to have the Agreement reviewed by independent counsel, and agrees to the terms hereof by signing the same.

MANAGER

ANA CORTEZ
ANA CORTEZ (Oct 1, 2021 14:46 PDT)
Ana Cortez

To be signed only unless Manager has waived her right to have this Agreement reviewed by independent counsel.

APPROVED AS TO FORM
ATTORNEY FOR MANAGER











City Manager Employment Agreement with Ana Cortez

Final Audit Report

2021-10-01

Created:	2021-09-30
By:	Mary Madole (mary.madole@carnationwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAEU93euZT9XIVTWFJ4nReZu_oYbscYcK

"City Manager Employment Agreement with Ana Cortez" History

-  Document created by Mary Madole (mary.madole@carnationwa.gov)
2021-09-30 - 8:47:38 PM GMT- IP address: 98.247.69.183
-  Document emailed to Mary Madole (mary.madole@carnationwa.gov) for signature
2021-09-30 - 8:55:30 PM GMT
-  Document emailed to ANA CORTEZ (anacortezmpa@gmail.com) for signature
2021-09-30 - 8:55:30 PM GMT
-  Document emailed to Kimberly Lisk (kim.lisk@carnationwa.gov) for signature
2021-09-30 - 8:55:31 PM GMT
-  Document emailed to Zach Lell (zlell@omwlaw.com) for signature
2021-09-30 - 8:55:31 PM GMT
-  Document e-signed by Mary Madole (mary.madole@carnationwa.gov)
Signature Date: 2021-09-30 - 8:55:39 PM GMT - Time Source: server- IP address: 98.247.69.183
-  Email viewed by Kimberly Lisk (kim.lisk@carnationwa.gov)
2021-09-30 - 9:23:04 PM GMT- IP address: 24.19.161.204
-  Document e-signed by Kimberly Lisk (kim.lisk@carnationwa.gov)
Signature Date: 2021-09-30 - 9:24:17 PM GMT - Time Source: server- IP address: 24.19.161.204
-  Email viewed by Zach Lell (zlell@omwlaw.com)
2021-09-30 - 9:42:23 PM GMT- IP address: 138.91.193.55
-  Document e-signed by Zach Lell (zlell@omwlaw.com)
Signature Date: 2021-09-30 - 10:07:19 PM GMT - Time Source: server- IP address: 138.91.193.55

 Email viewed by ANA CORTEZ (anacortezmpa@gmail.com)

2021-10-01 - 9:43:43 PM GMT- IP address: 71.8.178.169

 Document e-signed by ANA CORTEZ (anacortezmpa@gmail.com)

Signature Date: 2021-10-01 - 9:46:10 PM GMT - Time Source: server- IP address: 71.8.178.169

 Agreement completed.

2021-10-01 - 9:46:10 PM GMT