

**CITY OF VASSAR
CITY MANAGER EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made and entered into this 27th day of August, 2015, by and between the City of Vassar, a Home Rule City, whose address is 287 East Huron Avenue, Vassar, Michigan 48768, hereinafter referred to as "City" and Brian Chapman, whose address is 120 Broad Street, Menasha, Wisconsin 54952, hereinafter referred to as "Employee" or "Chapman," both of whom understand as follows:

WITNESSETH:

WHEREAS, the City desires to appoint Chapman as the City Manager, and employ his services as set forth in Section 3.8 of the City of Vassar City Charter; and

WHEREAS, the City Council, hereinafter referred to as the "Council," as the City's governing body, desires to provide certain benefits, to establish certain conditions of employment and to set working conditions of Chapman; and

WHEREAS, the City desires to secure and retain the services of Chapman; and

WHEREAS, Chapman desires to accept appointment and employment as the City Manager.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and Chapman agree as follows:

1. **Duties.** The Council agrees to employ Chapman as its full-time City Manager to perform all of the functions and duties specified in the City Charter and to perform whatever legally permissible and proper functions and duties as the Council from time to time may assign. Chapman shall, at all times faithfully, industriously and to the best of his ability, experience, and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this Agreement and the direction of the Council, shall maintain regular office hours during the City's regular hours of operation and shall attend all regular and special Council meetings and other City meetings as needed or as directed by the Council.

a. **Relationship to Council.** Chapman specifically understands that the City Council shall have the final authority and the power to direct, control or supervise the manner of Chapman's duties through the City Council and as is consistent with the laws of the State of Michigan, the City Charter and this Agreement.

b. **Working Hours.** The City Manager position is a full time position, consisting of 40 hours per week, in addition to any and all additional work time reasonably required to discharge the duties and responsibilities of the office of the City Manager, including, but not limited to, any official meetings that are generally attended by the City Manager.

2. **Salary.** The Council agrees to compensate Chapman at an annual salary of Fifty-Nine Thousand and No/100 Dollars (\$59,000.00), payable as set forth in the City's Employee Handbook. The City agrees to pay Chapman an additional \$1,000.00 on August 30, 2016. The

City agrees to pay Chapman an additional \$3,500.00 on June 30, 2019, if Chapman agrees to an additional 3 year term of this Agreement, beginning in 2019. As stated in paragraph 8 of this Agreement, the term of this Agreement governs only the terms and conditions of Chapman's employment set forth herein during Chapman's employment with the City. Chapman shall remain at all times an at-will employee of the City.

3. **Performance Review.** The Council shall annually, during the month of June, conduct an evaluation of Chapman's job performance. The process, form, criteria, and format for the evaluation shall be mutually agreed upon by the Council and Chapman.

The annual evaluation process shall include the opportunity for the Council and Chapman to: (1) conduct an initial formulary session in which the Council and Chapman will meet to discuss the goals and objectives applicable to Chapman's City Manager position for the prior twelve (12) month performance period and the upcoming twelve (12) month performance period; (2) following the formulary meeting, the Council shall prepare a written evaluation of Chapman's goals and objectives for the past and upcoming year, the report of which shall be presented to Chapman by the Mayor as the Council's liaison; (3) Council and Chapman shall then meet and discuss the written evaluation of these goals and objectives; and (4) Council shall then present a written summary of the evaluation results to Chapman within 30 days of the initial formulary evaluation meeting.

Unless Chapman expressly requests otherwise in writing, the annual performance evaluation shall at all times be conducted in a closed session of the Council, pursuant to Section 8(a) of Michigan's Open Meetings Act (MCL 15.268) and the evaluation report shall be maintained as part of the minutes of the closed session and shall not be publically disseminated, except as permitted by the Open Meetings Act. In the event that Chapman requests that the evaluation be conducted in an open session of the City Council, the evaluation report shall be subject to production pursuant to Michigan's Freedom of Information Act and as otherwise required by law. Nothing herein shall prohibit the Council or Chapman from sharing the content of Chapman's evaluation with their respective legal counsel.

In the event the Council determines that Chapman's performance evaluation format and/or procedure should be modified and such modifications require new or different performance expectations, then the Council shall have a reasonable period of time to share the revised expected performance goals with Chapman before evaluating Chapman as to the revised goals.

4. **Mileage.** The City shall reimburse Chapman for necessary and reasonable business travel outside of the City limits at the standard IRS mileage reimbursement rate.

5. **Cellular Telephone.** The Council agrees to provide Chapman with a monthly cellular telephone stipend in an amount equal to that provided to other appointed City officials. Chapman shall maintain his own cellular phone service for City related business and will be responsible for all equipment purchases, replacement fees and monthly service charges. As the City is providing the above-referenced stipend, Chapman's cellular telephone invoices may be subject to public dissemination pursuant to Michigan's Freedom of Information Act ("FOIA"). Therefore, Chapman shall maintain all cellular telephone invoices in compliance with the applicable retention period for production in the event that they are requested pursuant to FOIA.

6. **Professional Development.**

- a. Professional development is understood to be a benefit to the City as well as Chapman. The City agrees that Chapman shall be given reasonable opportunity to develop his skills and abilities. The City hereby agrees to bear reasonable expenses for the registration, travel and expenses of Chapman for professional meetings, official travel and attendance at institutes and seminars and such other national, regional, state and local governmental groups and committees thereof on which Chapman serves or of which Chapman is a member. Any such expenses must be submitted to the Council for approval prior to incurring the expense. Any such expenses not provided to the City Council for approval prior to incurring the expense will be denied and Chapman shall be solely responsible for the expense.
- b. The City agrees to pay the reasonable dues and subscriptions of Chapman for his continuation and full participation in national, state and local associations and organizations, including, but not limited to the International City/County Management Association and the Michigan Local Government Management Association, necessary and desirable for his continued professional participation, growth, advancement and for the good of the City, including membership in one (1) local community service organization. Chapman must submit any such fees or dues required for participation in the above-referenced associations and organizations to the Council for approval prior to incurring any expense. Any such expenses not provided to the City Council for approval prior to incurring the expense will be denied and Chapman shall be solely responsible for the expense.
- c. Expenditures on the professional development benefits referenced in subsections a. and b. above cannot exceed the annual budgeted appropriation(s) for such activities. The Council shall have final discretion in determining the reasonableness of any professional development activity and for making budget appropriations and approving expenditures.

7. **Employee Benefits.**

- a. Chapman shall be entitled to the same life, medical, dental and vision insurance provided to full time City employees for himself and his dependents, as set forth in the City's Employee Handbook
- b. From Chapman's date of hire through June 30, 2016, Chapman shall receive (10) vacation days and four (4) personal days to be used by June 30, 2016. On each July 1st thereafter, Chapman shall receive fifteen (15) vacation days and six (6) personal days to be used by the following June 30th.
- c. On the date of the commencement of Chapman's employment with the

City, Chapman shall be credited with 10 sick days. Chapman shall forego the accrual of sick days set forth in the Employee Handbook until the first day of the eleventh month of his employment with the City, at which time, he shall begin to accrue sick time as set forth in the Employee Handbook.

- d. The Council agrees to provide Chapman with all other employee benefits available to other full-time City employees, as provided in the City's Employee Handbook. These benefits include holidays, MERS contribution, the option to participate in the ICMA, RC Deferred Compensation Plan, and insurance waiver. Chapman is exempt from receiving overtime pursuant to the Fair Labor Standards Act and shall not be entitled to overtime or compensatory time.

8. **Duration of Agreement.** Chapman's employment with the City shall commence on or before October 5, 2015. The terms and conditions contained in this Agreement will terminate on June 30, 2019, unless an addendum establishing a new duration of the terms and conditions contained in this Agreement has been negotiated and executed in writing by the City Council and Chapman. The duration of this Agreement shall apply only to the terms and conditions set forth in this Agreement and Chapman shall at all times be an at-will employee of the City. Accordingly, this employment relationship may be terminated by the City Council at any time and for any reason, as set forth herein. In the event that the City Council determines that it is not in the City's best interest to continue Chapman's employment, it shall notify Chapman of this intention with thirty (30) days written notice. Should the Council exercise this termination provision, the Council shall have the right and ability to place Chapman on paid administrative leave for the remaining period of his employment with the City. If the City elects not to renew this Agreement for an additional term at the time of its expiration, the City Council shall notify Chapman of this intention not less than ninety (90) days prior to the expiration of the Agreement or by April 1 of each year.

- a. **Resignation.** Chapman may voluntarily resign from his employment at any time and for any reason. If Chapman provides thirty (30) days notice, he shall be entitled to payment for accrued unused vacation, personal and sick leave days unless the parties otherwise agree in writing. If Chapman fails to provide thirty (30) days written notice, Chapman shall not be entitled to payment for accrued unused vacation, personal and sick leave days. If Chapman resigns, he shall not be entitled to any severance pay as provided in subsection 8(b) of this Agreement. A written resignation by Chapman must be filed with the City Clerk, during regular business hours, pursuant to Chapter 4 of the City Charter.
- b. **Severance Pay.** In the event that this Agreement or Chapman's employment is terminated by the City Council before the expiration of the aforesaid term of this Agreement and during such time that Chapman is willing and able to perform the duties of City Manager, and the termination is not for "misconduct" as defined below, then in that event, the City agrees to pay Chapman an amount equal to the lesser of three (3) months' salary or the time it takes Chapman to secure new employment. Chapman shall also be compensated for accrued unused vacation, personal and sick leave days pursuant to the City's Employee Handbook and shall

be entitled to health care benefits for himself and his family for the duration of the severance period. The receipt of any form of severance pay in the event of the City's termination of Chapman's employment or this Agreement shall be conditioned upon Chapman's execution of a full release at the time of his termination which waives any and all claims of any nature that he may have against the City and its agents, employees and the Council in relation to his employment or separation or termination from employment with the City. Severance pay shall commence on the expiration of any revocation period following Chapman's signature date of said full release. Should the City elect not to renew this Agreement following its expiration as set forth in paragraph 8, Chapman shall be entitled to a severance payment in the amount of the lesser of the equivalent of three (3) months' salary or the time it takes for Chapman to secure new employment, as set forth in this section. If Chapman's employment is terminated for any reason prior to the expiration of 90 days from his date of hire, Chapman shall not be entitled to the severance payment set forth herein. Effective July 1, 2018, the severance period shall be the lesser of five (5) months or the time it takes Chapman to obtain new employment. This severance payment shall still be conditioned upon Chapman's execution of the release agreement described herein.

- c. **Misconduct Defined.** Chapman shall not be entitled to severance pay if the Council terminates his employment because of Chapman's conviction for embezzlement of City funds; violation of the City Charter, City ordinances including the Ethics Ordinance, relative to Chapman's duties and responsibilities as City Manager, or other law regarding public officers; a violation of this Agreement; conviction of a felony, misdemeanor resulting in a term of incarceration or any crime involving moral turpitude; intentional insubordination regarding a directive legally approved by Council; or other behavior that demonstrates a deliberate violation or disregard of Chapman's duties and obligations to the Council and/or the City's interests or otherwise deviates from a standard of behavior which a city can reasonably expect of a public officer.

9. **Employee Handbook.** Chapman shall be subject to all terms and conditions of employment provided in the City of Vassar Employee Handbook as to all matters not specifically addressed in this Agreement.

10. **Conflict of Interest Prohibition.** Because of the duties and responsibilities required of Chapman pursuant to this Agreement and the City Charter, Chapman, as a condition of his continued appointment and employment, shall not individually, or as a partner, joint venture, officer, owner, employee, independent contractor or shareholder invest or participate in any business venture conducting business in the City, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior approval of the City Council. By execution of this Agreement, the City consents to Chapman's family members operating a business within the City in which Chapman may have a financial interest, so long as Chapman devotes his full time efforts to the City Manager position and shall not be employed elsewhere, including a family business, without prior approval of the Council. Nor will Chapman invest in any real estate or real property improvements within the City, with the

exception of his primary residence, unless approved in advance by the City Council. Chapman shall not serve as a member of a governing body, commission or committee of any other local unit of government within the State of Michigan during the term of this Agreement.

11. **Residence.** Pursuant to MCL 15.602(b), Chapman shall reside within 20 miles of the City's nearest boundary within 60 days of the execution of this Agreement.

12. **Severability of Invalid Provision.** The provisions of this Agreement shall be deemed severable; the invalidity or unenforceability of anyone or more of the provisions of this Agreement shall not affect the validity and enforceability of other provisions. This contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

13. **Entire Agreement.** This Agreement constitutes the full and complete Agreement between the parties on the subject matters contained herein, and no amendment of this Agreement, including the at-will employment provision contained in paragraph 8, will be effective unless agreed to in writing by the parties hereto. Any and all prior agreements or understandings between the parties are null and void as of the date of execution of this Agreement.

14. **Interpretation.** For purposes of interpretation of this Agreement, neither the City nor Chapman shall be deemed to have been the drafter of this Agreement.

15. **Construction.** This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties hereto. This Agreement therefore shall not be construed against any party to this Agreement.

16. **Modification.** This Agreement shall not be modified, altered, or amended except through a written amendment signed by the City Council and Chapman.

17. **No Third Party Beneficiaries.** This Agreement is not intended to confer upon any person or entity, other than the parties hereto, any rights or remedies of any kind or nature whatsoever.

18. **Counterparts.** This Agreement may be executed in several counterparts each of which shall be deemed one and the same Agreement. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

19. **Indemnification.** The City will defend, save harmless, and indemnify Chapman against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his duties as City Manager. Indemnification shall extend beyond his employment and the termination or expiration of this Agreement, to provide full and complete protection of Chapman by the City, as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following his employment or this termination or expiration of this Agreement.

20. **Captions and Bylines.** The captions and bylines used in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope of intent of

any provision of this Agreement.

21. **Notice.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram or overnight courier (i.e., Federal Express or UPS) when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to City:

City Clerk
City of Vassar
287 E. Huron Avenue
Vassar, Michigan 48768

If to Chapman:

Brian Chapman

_____, Michigan ____


22. **Certification of Authority to Sign Agreement.** The persons signing on behalf of the City of Vassar certify by their signatures that they are authorized to sign this Agreement on behalf of the City of Vassar and that this Agreement has been authorized by the City Council.

IN WITNESS WHEREOF, the City Council has caused this Agreement to be signed and executed on its behalf by the City Mayor and duly attested by the City Clerk, and Chapman has signed and executed this Agreement, both in duplicate, this ___ day of August, 2015.

CITY OF VASSAR CITY COUNCIL

By: 

Roger Bacon, Mayor of the City of Vassar

ATTEST:
By: 

Merri Clemens, Clerk of the City of Vassar
Interim

BRIAN CHAPMAN

By: 

Brian Chapman, Employee

8-27-15

ATTEST:



8-27-15