

**EMPLOYMENT AGREEMENT BETWEEN
CITY OF SAULT STE MARIE MICHIGAN
AND BRIAN J. CHAPMAN**

This Employment Agreement ("Agreement") is made between the **CITY OF SAULT STE MARIE MICHIGAN** ("CITY") and **Brian J. Chapman** ("MANAGER") (collectively "Parties").

1. Purpose

The Parties have entered into this Agreement because the CITY desires to employ MANAGER for the period provided and MANAGER desires to serve the entire term of this Agreement, a long-term commitment by the Parties being critical to MANAGER's decision to enter into this Agreement and the CITY's desire to run a stable municipal government.

2. Term

The term of this Agreement shall begin on October 14, 2019, and shall terminate on the same day five years thereafter (the Term), subject to the provisions below for termination. To extend or renew the Term of this Agreement, both Parties must sign a written agreement to do so. MANAGER agrees that oral agreements to renew or extend this Agreement are invalid and not binding. MANAGER is employed at will and continued employment during the term of this agreement is strictly at the pleasure of the CITY but is subject to the terms of this agreement.

3. Duties and Obligations of the MANAGER

The MANAGER shall perform the duties customarily performed by a CITY MANAGER and those that are required by law, including, but not limited to, direction, guidance, and oversight of: finance and budget; administration, fundraising; development; public relations; long and short range planning; municipal services; recruitment, appointment, promotion and dismissal of personnel; and control and supervision of all operations, buildings, grounds and equipment and any other duties that may be assigned by the CITY. The MANAGER is subject to supervision by the CITY, shall comply with the direction and policies and requests for information from the CITY.

4. Performance Evaluation

The MANAGER acknowledges and agrees that the CITY, in its discretion, may evaluate the MANAGER's performance and set performance goals for the MANAGER. The creation of the goals and expectations will be a mutually agreed upon process, and should be performed annually during the first 3 years of this contract.

The MANAGER shall not engage in any activities that interfere with duties as MANAGER and/or give the appearance of impropriety.

5. Termination

Upon termination of this Agreement by expiration of its Term, resignation, or termination by the CITY for any reason, the MANAGER shall immediately return any and all CITY keys, documents, passwords, computers, equipment or any other CITY property or information in the MANAGER's possession. MANAGER shall comply with post employment requirements of the City Code of Ethics and Conduct.

A. Suspension or Termination by the CITY for Cause. The CITY shall have the right and option to either suspend MANAGER for a period of time with or without pay or to terminate MANAGER's employment and this Agreement for cause prior to the termination date stated in SECTION 2 above. If this Agreement is terminated for cause, all obligations of the CITY to make further payment or provide any other consideration under this Agreement shall cease as of the date of termination. In no case shall the CITY be liable to MANAGER for the loss of any collateral business opportunities, or any benefits, perquisites, income or consequential damages suffered by MANAGER as a result of the CITY's termination of [his/her] employment. In addition to its normally understood meaning in employment contracts, the term cause shall include, but is not limited to, any of the following:

1. Failure or refusal, other than one made in good faith, by MANAGER to perform any of the obligations, duties or responsibilities outlined in this agreement or any refusal or unwillingness to perform any of such obligations, duties or responsibilities in good faith and to the best of MANAGER's abilities;
2. A serious or major violation or a pattern of violations, whether intentional or negligent, by MANAGER of any Governing Rules or CITY Rules, which violation may, in the sole judgment and discretion of the CITY, reflect adversely upon the CITY;
3. Any fraud or dishonesty by MANAGER while performing the duties required by this Agreement, including, but not limited to, falsifying, altering or otherwise fraudulently preparing any document or record, compliance reports, expense reports, or any other document pertaining or related to the City;
4. Any conduct, including acts or omissions (other than made in good faith), that misleads the CITY about any matters related to the CITY's programs, including matters related to any persons under MANAGER's direct control or authority;
5. Any prolonged absence from the performance of MANAGER's obligations, duties and responsibilities under this Agreement without prior consent of the City Commission;
6. Any substantiated conduct (a) that the CITY reasonably determines is unbecoming of the MANAGER, or which reasonably brings into question the

integrity of the MANAGER, or that would render MANAGER unfit to serve in the position of MANAGER and reflects poorly on the CITY; or (b) resulting in a criminal charge being brought against MANAGER involving a non petty misdemeanor or any felony, or any crime involving theft, dishonesty, or moral turpitude;

The CITY shall have no obligation to use progressive discipline regarding MANAGER's misconduct. Any CITY decision to use progressive discipline shall not create any future obligation for the CITY to use progressive discipline.

B. Termination by the CITY without Cause. The CITY shall have the right to terminate MANAGER's employment and this Agreement without any reason and without cause prior to the termination date stated in SECTION 2 above. If this Agreement is terminated without cause, (1) all obligations of the CITY to MANAGER pursuant to this Agreement shall cease as of the date of any such termination; (2) MANAGER shall be eligible for post termination benefits applicable to regular employees of the CITY (i.e., COBRA insurance eligibility, sick or vacation leave payouts, etc.); and (3) the CITY will pay to MANAGER, in lieu of any and all other legal remedies or equitable relief available to MANAGER, liquidated damages equal to **6 months** Base Salary that MANAGER is receiving at the date of such termination over the duration of this period in instalments similar to those used to pay the base salary (the Payout Period). MANAGER acknowledges [his/her] obligation to minimize the payments due to [him/her] under this paragraph B and agrees to make every reasonable effort to obtain other similar employment as long as the CITY has the obligation to make payments under this paragraph B. If the MANAGER obtains new employment, the CITY's financial obligations under this paragraph B shall be reduced by the total compensation received by MANAGER in [his/her] new position, including employee benefits, whether in cash, deferred payments, or in kind. If MANAGER's salary in [his/her] new position exceeds that which MANAGER would have been paid at the CITY, the CITY's financial obligations shall immediately cease. MANAGER shall immediately, upon acceptance of other employment, notify the Treasurer of the CITY in writing of such employment and the total compensation to be paid to MANAGER for the employment. In addition, MANAGER agrees to provide the CITY with a copy of [his/her] W-2 form for as long as the CITY has the obligation to make payments under this paragraph B. If the CITY ends this Agreement without cause prior to the termination date stated in SECTION 2, in accordance with the provisions of this paragraph B, the CITY in no case shall be liable for MANAGER's loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities, consulting relationships or from any other sources that may result from the CITY's termination of this Agreement without cause.

C. Termination of Employment by MANAGER. The Parties agree that MANAGER has special, exceptional, and unique knowledge, skill, and ability which, in addition to the continuing acquisition of experience at the CITY, as well as the CITY's special need for continuity, render MANAGER's services unique. MANAGER further recognizes that [his/her] promise to work for the CITY for the entire Term of this Agreement is an essential consideration in

the CITY's decision to employ [him/her] as MANAGER. MANAGER also recognizes that the CITY is making a highly valuable investment in [his/her] continued employment by entering into this Agreement and its investment would be lost or diminished were MANAGER to resign or otherwise terminate [his/her] employment as MANAGER with the CITY prior to the expiration of this Agreement. Accordingly, MANAGER agrees that if [he/she] voluntarily resigns or otherwise voluntarily terminates [his/her] employment under this Agreement prior to the expiration of the Term of this Agreement, MANAGER shall pay to the CITY as liquidated damages, and not as a penalty, the following amounts:

1. If MANAGER leaves during the first year of this Agreement, [he/she] will pay the CITY \$ 5,000.00 ;
2. If MANAGER leaves during the second year of this Agreement, [he/she] will pay the CITY \$ 2,500.00; and
3. If MANAGER leaves during any later year of this Agreement, [he/she] will not be required to pay the CITY any liquidated damages.

Payment of such liquidated damages will be in a single lump-sum amount with payment to be made by payroll deduction with any balance paid within 15 days of MANAGER ceasing to be the MANAGER. If MANAGER terminates [his/her] employment under this Agreement prior to its expiration in accordance with this paragraph C, [his/her] compensation and benefits, to the extent not already vested, shall cease upon the termination date.

D. Waiver of Claims. The financial consequences of termination of this Agreement or suspension under this Agreement are exclusively set forth in this Agreement. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause, or suspension effected in accordance with the procedures established in this Agreement, neither MANAGER nor the CITY shall be entitled to receive, and each waives any claim against the other, and their respective officers, directors, agents, employees, successors, and personal representatives, for consequential damages by reason of any alleged economic loss, including but not limited to loss of collateral income, deferred income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of fees from other outside activity, or exception income, or damages allegedly sustained by reason of alleged humiliation or defamation resulting from the fact of termination, the public announcement of such termination, or the release by the CITY or MANAGER of information or documents required by law. MANAGER acknowledges that, in the event of termination of this Agreement for cause, without cause or otherwise, MANAGER shall have no right to occupy the position of MANAGER and that [his/her] sole remedies are provided in this Agreement and shall not extend to injunctive relief.

E. Termination for Disability or Death. If MANAGER dies or becomes permanently disabled to the extent that, in the judgment of the CITY, MANAGER cannot satisfactorily perform the duties of MANAGER, this Agreement shall terminate and all obligations of the CITY to compensate MANAGER pursuant to this Agreement shall cease as of the date of such death or disability. MANAGER shall be eligible for post termination benefits applicable to regular employees of the CITY (i.e., COBRA insurance eligibility, sick or vacation leave payouts, etc.). The CITY shall be obligated to compensate MANAGER or MANAGER's estate in accordance with this Agreement for services performed prior to the termination date, and MANAGER or MANAGER's estate shall be entitled to those benefits, if any, that are payable under any CITY sponsored group employee insurance or benefit plan in which MANAGER is enrolled.

6. Compensation of MANAGER

MANAGER is entitled to compensation and benefits, as set forth below.

- a) **Salary:** The CITY shall pay the MANAGER an annual salary of \$ 100,000.00, prorated the first year, as compensation ("Salary") for all work performed during the Term of this Agreement. The salary may only be increased as provided in paragraph (b) and (c) below. The CITY will make salary payments by direct deposit every 2 weeks on normal payroll dates.
- b) **Goals and Salary Adjustment second 12 months:** The MANAGER and the CITY shall jointly develop goals and objectives for the MANAGER, for approval by the CITY no later than June 30, 2020, addressing key operating priorities supporting the CITY's mission. The MANAGER is eligible for a Salary increase at the conclusion of year one contingent upon successfully accomplishing agreed upon goals and objectives, providing evidence of success to the CITY, and with the CITY's written authorization for Salary adjustment. The adjustment will be determined in the discretion of the City Commission but shall not exceed 5%.
- c) **Goals and Salary Adjustment third 12 months:** The MANAGER and the CITY shall jointly develop goals and objectives for the MANAGER, for approval by the CITY no later than June 30, 2021, addressing key operating priorities supporting the CITY's mission. The MANAGER is eligible for a Salary increase at the conclusion of year two contingent upon successfully accomplishing agreed upon goals and objectives, providing evidence of success to the CITY, and with the CITY's written authorization for Salary adjustment. The adjustment will be determined in the discretion of the City Commission but shall not exceed 5%.
- d) **Benefits:** The MANAGER shall be entitled automatically to all regular benefits ("Benefits") provided by the CITY to executive group employees, and such Benefits may be modified from time to time or terminated during the Term of this Agreement. These Benefits include, but are not limited to, the benefits as outlined in Attachment 1 to this Agreement. Enrollment in Benefits is contingent upon MANAGER completing all necessary documents prior to benefit effective dates.

7. Residence

The MANAGER intends to reside in the City limits. The MANAGER may seek the CITY's approval, in advance,

- a) To change his residency to a 20 mile range as provided in city policies;

8. Director's and Officer's Insurance.

The MANAGER shall be provided with director's and officer's liability insurance coverage and be protected by indemnification agreements on the same terms and conditions enjoyed by senior administrators, said coverage to survive termination as to matters relating to actions taken within the scope of the office.

9. Automobile

For the period that MANAGER is the MANAGER at the CITY, the CITY will, at manager's option, either

- a) obtain an automobile from a local dealership, titled and labeled by the City, for MANAGER's unlimited use, with all service, fuel, and insurance paid by the City. MANAGER shall keep a mileage log for taxation purposes. For personal use outside of Chippewa County the MANAGER shall pay the city the then published IRS mileage rate for deduction purposes multiplied by the out of county travel miles, or
- b) pay MANAGER a **\$800.00 monthly** car allowance with manager paying all fuel, service, and insurance on his personal vehicle.
- c) If the Manager elects option (b) he shall be entitled to use a city pool car for CITY business purposes.

Under either option, MANAGER will comply with all rules relating to the use of the car or the car allowance. At a minimum, if an automobile is provided to MANAGER, MANAGER will report the business and personal use of the automobile monthly to the Finance Department in a format determined by that office. The personal use of such automobile will be valued according to the guidelines of the Internal Revenue Service and reported as income to MANAGER.

10. Travel and Expenses for the CITY's Business

The CITY shall pay the reasonable travel expenses, hotel bills, and other necessary and proper expenses for the MANAGER to conduct CITY business, in accordance with the CITY's travel regulations, when he is traveling or in attendance at events outside city limits and on CITY business. The MANAGER may seek reimbursement for expenses by submitting a list of same to the Finance Department, together with the reason and receipts for all expenses.

11. Professional Dues and Meetings

The MANAGER may attend educational conferences, conventions, courses, seminars and other similar professional activities, which

- a) Are in the best interest of the CITY
- b) Support and enhance the role of MANAGER
- c) Do not interfere with the proper discharge of the duties as MANAGER.

Upon CITY approval, the CITY shall pay reasonable expenses in connection with these activities, including memberships in professional organizations.

12. Expense Reporting and Audit

The MANAGER shall also submit a written report in reasonable detail for all financial disbursements to the Finance Department upon their request from time to time.

13. Dispute Resolution

A. The parties expect that differences may arise between the CITY and the MANAGER arising out of or relating to the MANAGER's employment with the CITY or the termination of that employment.

B. The parties agree that resolution of any differences in the courts is rarely timely or cost-effective for either party.

C. The CITY and the MANAGER accordingly wish to arbitrate claims in order to establish and gain the benefits of a speedy, impartial and cost-effective dispute resolution procedure.

D. THE PARTIES RECOGNIZE THAT THIS AGREEMENT TO ARBITRATE SHALL WAIVE EACH PARTIES RIGHT TO HAVE CLAIMS RESOLVED IN A JUDICIAL FORUM BY EITHER TRIAL BEFORE A JUDGE OR TRIAL BEFORE A JURY.

E. THE PARTIES RECOGNIZE THAT THIS AGREEMENT TO ARBITRATE SHALL REQUIRE EITHER PARTY TO COMMENCE ANY ACTION OR OTHER LEGAL PROCEEDING NOT MORE THAN 6 MONTHS AFTER THE EVENT COMPLAINED OF AND THEY AGREE TO WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY EXCEPT FOR ACTIONS UNDER THE FEDERAL FAIR LABOR STANDARDS ACT WHICH SHALL FOLLOW THE STATUTORY LIMITATIONS PERIOD AND CLAIMS UNDER THE FEDERAL AMERICANS WITH DISABILITIES ACT WHICH SHALL HAVE A 12 MONTH LIMITATIONS PERIOD.

SECTION ONE.

AGREEMENT TO ARBITRATE

Except as otherwise provided in this agreement, the CITY and the MANAGER consent to the resolution by arbitration of all claims or controversies for which a court otherwise would be authorized by law to grant relief, whether or not arising out of, relating to or associated with the MANAGER's employment with the CITY, or its termination, which the CITY may have against the MANAGER or that the MANAGER may have against the CITY or against its officers, directors, MANAGERS or agents in their capacity as such or otherwise. The termination claims covered by this agreement include, but are not limited to: claims for wages or other compensation due; claims for breach of any contract or covenant, express or implied; tort claims, claims for discrimination, including but not limited to discrimination based on race, sex, religion, national origin,

age, marital status, sexual orientation, disability or medical condition; claims for benefits, except as excluded in the following Section; and claims for violation of any federal, state or other governmental constitution, statute, ordinance or regulation.

SECTION TWO.

CLAIMS NOT COVERED BY THIS AGREEMENT

This agreement does not apply to or cover claims for workers' compensation benefits; claims for unemployment compensation benefits; claims by the CITY for injunctive or other equitable relief for unfair competition or the use or unauthorized disclosure of trade secrets or confidential information; and claims based upon an MANAGER pension or other benefit plan the terms of which contain an arbitration or other non-judicial dispute resolution procedure in which case the provisions of such plan shall apply. Nothing in this agreement affects an MANAGER's right to file a discrimination charge with an administrative agency such as THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, STATE OF MICHIGAN UNEMPLOYMENT COMMISSION, OR STATE OF MICHIGAN WORKERS COMPENSATION COMMISSION.

SECTION THREE.

ARBITRATION PROCEDURES

Any arbitration required by this agreement shall be conducted in accordance with the procedures specified in the FEDERAL ARBITRATION ACT at 9 USC 1 and in accordance with the rules of appellate review, right to representation, and procedure as stated in REMBERT v. RYAN'S FAMILY STEAK HOUSES, INC. (a Michigan appellate court decision) as supplemented by the attached exhibit entitled "Arbitration Procedures," which is incorporated by reference and which the MANAGER acknowledges having received and read prior to signing this agreement.

Attachment 2 to this agreement contains procedures for arbitration which apply to this contract.

SECTION FOUR.

CONSIDERATION

Each party's promise to resolve their claims by arbitration in accordance with the provisions of this agreement, rather than through the courts, is consideration for the other party's like promise. In addition, the consideration by the CITY of the MANAGER's application for employment or employment by CITY are independent considerations for MANAGER's agreement to arbitrate termination claims.

SECTION FIVE.

INTERSTATE COMMERCE

MANAGER understands and agrees that the CITY is engaged in transactions involving interstate commerce and that his or her employment involves such commerce.

SECTION SIX.

TERM; MODIFICATION AND REVOCATION

This agreement shall survive the relationship between the CITY and the MANAGER and shall apply to any termination claim whether it arises or is asserted during or after termination of the MANAGER's employment with the CITY. This agreement can be modified or revoked only by a writing signed by both parties that refers to this agreement and specifically states an intent to modify or revoke this agreement. In addition the CITY may, prior to the demand to arbitrate but not after, unilaterally upon 30 days advance written notice to the MANAGER modify the arbitration procedures attached hereto at Attachment 2.

SECTION SEVEN.

CONSTRUCTION AND ENFORCEABILITY

Any issue or dispute concerning the formation, applicability, interpretation, or enforceability of this agreement, including any claim or contention that all or any part of this agreement is void or voidable, shall be subject to arbitration as provided in this agreement. Any dispute concerning the initial question of arbitrability or the application of this arbitration agreement to the claim in question shall be decided by the arbitrator and not by a court of law. The arbitrator, and not any federal, state, or local court or agency, shall have authority to decide any such issue or dispute. The decision of an arbitrator on any such issue or dispute, as well as on any termination claim submitted to arbitration as provided in this agreement, shall be final and binding upon the parties.

MANAGER and CITY agree that if any court of competent jurisdiction declares that any part of this arbitration provision is illegal, invalid or unenforceable, such a declaration will not affect the legality, validity or enforceability of the remaining parts of the arbitration provision and the illegal, invalid or unenforceable part will no longer be part of this arbitration provision.

Captions and section headings used in this agreement are for convenience of reference only and shall not be deemed part of the contents of this agreement and shall not affect its interpretation.

Either party may bring an action in any court of competent jurisdiction to compel arbitration under this agreement and to render judgment to enforce the arbitration award in accordance with the arbitrator's decision. Except as otherwise provided in this agreement, both the CITY and the MANAGER agree that neither party shall initiate or prosecute any lawsuit or administrative action (other than an administrative charge of discrimination) that relates in any way to any termination claim covered by this agreement.

SECTION EIGHT.

MANAGER acknowledges that he or she has carefully read this agreement, that he or she understands its terms, that all understandings between the MANAGER and the CITY relating to the subjects covered in this agreement are contained in it, and that he or she has entered into this agreement voluntarily and not in reliance on any promises or

representations by the CITY other than those contained in this agreement itself. Without limiting the above, MANAGER further acknowledges and agrees that pursuant to this agreement MANAGER is giving up any right he or she might possess to have the disputed claims litigated in a court or jury trial.

MANAGER further acknowledges that he or she has had a reasonable period of time to review and consider this agreement before signing it and that he or she has had an opportunity to discuss this agreement with his or her personal legal counsel and has used that opportunity to the extent he or she wishes.

14. Modification of Contract

No waiver or modification of any provision of this Agreement, including but not limited to this Section, shall be valid unless in writing and executed by both parties and in the case of the CITY, approved by a majority of the CITY.

15. Waiver of Breach

No waiver of either party of any rights under this Agreement shall be valid unless set forth in writing signed by that party. The failure of either party to insist upon strict performance of this Agreement shall not be construed as a waiver.

16. Tax Liability

The MANAGER shall be responsible for any taxes on all compensation received by the MANAGER as a result of this Agreement.

17. Severability

If any provision of this Agreement is held by the courts to be illegal or unenforceable, the remaining provisions shall continue to be valid, and the Agreement shall be enforced as if it did not contain the provision held to be invalid.

18. Notices

All notices required or allowed by the Agreement shall be hand delivered or mailed by certified mail, postage prepaid, return receipt requested. Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to the CITY:

City of Sault Ste Marie
225 E. Portage Ave.,
Sault Ste. Marie, MI 49783
Attn: Deputy City Manager

With a separately mailed copy to the attention of the Mayor.

If to the MANAGER:

Brian J. Chapman
At address provided for payroll purposes

19. Governing Law

This Agreement shall be considered to have been made in Sault Ste. Marie, Michigan and this Agreement shall be governed and construed, and the rights and obligations of the parties hereto shall be determined, in accordance with the laws of the State of Michigan, including its choice of laws rules.

20. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument.

21. Headings

The headings in this Agreement are for convenience only and do not control or modify the text.

22. Entire Agreement

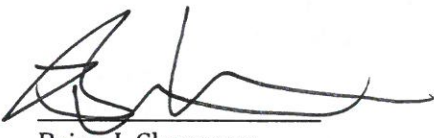
This Agreement is the complete and entire agreement of the parties regarding the subject matter contained herein, and it supersedes and replaces any previous written or oral agreements by the parties concerning the subject matter contained herein.

IN WITNESS WHEREOF, the parties sign below.

For the CITY

By:


Anthony Bosbous, Mayor


Brian J. Chapman

Date:

8/29/2019

Date:

8-29-19

ATTACHMENT 1: BENEFITS

1. Retirement Program: The City will match employee contribution to the defined contribution plan up to a maximum of 7 percent of base salary. The employee will contribute 4.7% of base salary to the defined benefit portion of the plan and the employer will contribute any required contribution above that amount. Final average compensation (FAC) shall include only base salary. Healthcare Opt Out, Sick leave payout, and all payouts upon retirement are excluded from FAC.
2. Medical, Dental, and Vision Insurance as provided to other administrative employees, with coverage beginning as soon as allowed.

3. Life Insurance of \$100,000.00.
4. Long Term Disability Insurance as provided to other administrative employees.
5. Funeral Leave as provided to other administrative employees.
6. Holidays as provided to other administrative employees.
7. Sick leave as provided to other administrative employees.
8. Vacation Schedule:
 - 4 weeks.
9. Maximum accrual of sick and vacation is limited as to other administrative employees.
10. Free parking at City Hall.
11. Moving expense reimbursement up to \$6,000.00 based upon actual costs incurred as verified by finance department. MANAGER must use a Sault Ste Marie Moving Company in order to be reimbursed this expense.

ATTACHMENT 2. Arbitration Procedures

SECTION ONE.

REQUIRED NOTICE OF ALL CLAIMS

The aggrieved party must, file a request for arbitration with the AMERICAN ARBITRATION ASSOCIATION (tribunal) on such forms as are required by the tribunal, and give written notice of any claim (including an appeal of an earlier decision rendered during the CITY's grievance process) to the other party within six months after the event complained of.

Written notice to the CITY, or its officers, directors, employees or agents, shall be sent or delivered to the CITY at the home office of the CITY. The MANAGER will be given written notice at the last address recorded in the MANAGER's personnel file. The written notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. The notice shall be personally delivered to the other party or sent by certified or registered mail, return receipt requested.

SECTION TWO.

DISCOVERY

"Discovery" is the term used to describe the way each party can find out relevant information from the other party. Under this procedure, discovery consists of the following:

- (a). Each party shall have the right to take the deposition of any individual and any expert witness designated by either party.
- (b). Each party shall have the opportunity to obtain documents from the other side through a request for production of documents.

The subpoena right specified below applies to discovery. Additional discovery may be had only where the arbitrator so orders, upon a showing of substantial need. Any disputes regarding depositions, requests for production of documents or other discovery shall be submitted to the arbitrator for determination.

SECTION THREE.

DESIGNATION OF WITNESSES

At least 90 days before the arbitration, the parties must exchange lists of witnesses, including any experts, and copies of all exhibits intended to be used at the arbitration.

SECTION FOUR.

SUBPOENAS

Each party shall have the right to subpoena witnesses and documents for the arbitration by requesting a subpoena from the arbitrator. Any such request shall be served on the other party, who shall advise the arbitrator in writing of any objections that party may have to issuance of the subpoena within 10 calendar days of receipt of the request.

SECTION FIVE.

ARBITRATION PROCESS

Except as otherwise provided in this procedure, or by mutual agreement of the parties, any arbitration shall be administered by the AMERICAN ARBITRATION ASSOCIATION as tribunal in accordance with the then current employment arbitration procedures and rules of the American Arbitration Association.

The arbitration or any mediation shall be held in the City of Sault Ste. Marie.

Prehearing and post hearing procedures may be held by telephone or in person as the tribunal or arbitrator deems necessary. The parties will cooperate with each other to hold and schedule any arbitration in a manner to minimize the disruption and expense to the parties.

The arbitrator shall be selected as follows:

- (a). If the parties cannot agree on an arbitrator, the tribunal shall then provide the names of seven available arbitrators experienced in labor and CITY law matters along with their resumes and fee schedules.
- (b). Each party may strike a single name on the list it deems unacceptable.
- (c). The parties shall strike names alternately until only one remains.
- (d). The party who did not initiate the claim shall strike first.

The arbitrator shall interpret CITY policy or rules and regulations and apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claims asserted. All remedies (legal

or equitable) available under the applicable laws are preserved and are available for the Arbitrator to consider and order. Neither the Federal Rules of Evidence nor the Rules of Evidence of any State shall apply. In reaching his or her decision, the arbitrator shall have no authority to change or modify any lawful CITY policy, rule or regulation or this agreement. The arbitrator, and not any federal, state or local court or agency, shall have exclusive and broad authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement, including but not limited to any claim that all or any part of this agreement is void or voidable. The arbitration shall be final and binding upon the parties.

The arbitrator shall have authority to entertain a motion to dismiss or motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure.

The Arbitrator shall arrange for a court reporter to provide a stenographic record of proceedings.

Either party, upon request at the close of hearing, shall be allowed to file a posthearing brief. The time for filing such brief shall be set by the arbitrator.

The arbitrator shall render an award and opinion in writing and shall include findings of fact and conclusions of law in sufficient detail to allow meaningful judicial review of such decision. The arbitrators award shall recognize:

(i) it is the CITY's right in its sole and absolute discretion to determine the quality of the performance being given by the MANAGER; and (ii) if the Arbitrator is satisfied that MANAGER did engage in the conduct complained of, or if the Arbitrator is satisfied that CITY reasonably believed that MANAGER engaged in the conduct complained of, the Arbitrator is not to determine what discipline she or he would have taken had she or he been in the position of CITY, but rather the Arbitrator must uphold the action taken by Employer.

SECTION SIX.

JUDICIAL REVIEW

Either party may bring an action in any court of competent jurisdiction to enforce the arbitration award within the time set by the Federal Arbitration Act.

A party opposing enforcement of an award may not do so in an enforcement proceeding, but must bring a separate action in any court of competent jurisdiction to appeal and set aside the award. Such appeal action must be filed within 93 days of such award.

SECTION SEVEN.

ARBITRATION FEES AND COSTS

The parties shall equally share all such fees and costs. Each party will deposit funds for

the party's share of the arbitrator's fee and expenses of the Arbitration, in an amount and manner determined by the tribunal.

(A). Each party shall pay for its, his or her own other expenses associated with the arbitration process and their own attorney fees, if any. However, if any party prevails on a statutory claim entitling the prevailing party to attorney fees or costs, or if there is a written agreement providing for fees or costs, then the arbitrator may award reasonable fees or costs to the prevailing party in accordance with such statute or agreement.

(B).The tribunal fees, the arbitrators fees and his or her expenses are taxable as costs the arbitrator may apportion in any award decision.

When the subject matter of the arbitration concerns an MANAGER's claim to vindicate a Federal or State statutory right, as an alternative to this sections requirement that each party advance its share of the required forum fees and costs, the MANAGER may request at the time the request for arbitration is filed that its advance deposit for the forum fees and costs be advanced by the CITY due to financial hardship of the MANAGER. Before action on the merits of the primary claim commence the Arbitrator (at the initial expense of the CITY) shall determine if the required deposit shall be advanced on behalf of the MANAGER by the CITY. The inquiry made to determine this shall turn upon the MANAGER's ability to pay its share of the forum fees and costs at issue or whether the forum's fees and costs in a particular case are so expensive as to deter arbitration by the class of such similarly situated MANAGERS by job description and socioeconomic background. This paragraph shall not impact the Arbitrator's authority to apportion the total of all fees and costs as allowed in subsection (A) and (B) above.

