

# **MEMORANDUM OF AGREEMENT**

between

**CITY OF NIAGARA FALLS, NEW YORK**

and

**NIAGARA FALLS FIRE DEPARTMENT OFFICERS ASSOCIATION, LOCAL 3359**

**WHEREAS**, the City of Niagara Falls, New York ("City") and the Niagara Falls Fire Department Officers Association, Local 3359, AFL-CIO ("Union") are parties to a collective bargaining agreement covering the terms and conditions of employment for fire officers of the Fire Department of the City of Niagara Falls, effective January 1, 2014-December 31, 2024; and

**WHEREAS**, the City expects a budget deficit in 2019; and

**WHEREAS**, the Union desires to provide temporary financial concessions to assist the City in balancing the budget; and

**WHEREAS**, the City agrees to provide safe staffing of the Fire Department and to fill all vacancies for currently budgeted positions in consideration for the concessions provided by the Union; and

**WHEREAS**, the Union and the City are desirous of arriving at a mutually agreeable resolution to their issues in a manner that will ensure the health and safety of bargaining unit members (hereinafter "Members").

**NOW, THEREFORE**, the City and the Union agree as follows:

1. Notwithstanding the rights and provisions contained in all previous Memorandum of Agreements and Memorandum of Understandings, the City shall promote to the rank of Captain and/or Battalion Chief a qualified candidate within ninety (90) days of any vacancy in the rank pursuant to Civil Service Laws and Procedures. The candidate promoted shall be temporarily assigned to a vacant position within that rank until such time as the bid

process for the individual positions are finalized. Nothing herein shall eliminate the City's obligation to post each individual vacant position for a period of sixteen (16) days. Should the City refuse to promote to the rank of Captain and/or Battalion Chief, refuse to request a list of qualified eligible candidates so that a promotion can be made, elect to abolish Captain and/or Battalion Chief positions pursuant to Civil Service Law, fund any Officer positions at a reduced monetary amount, and/or create new ranks between that of Captain and Firefighter without first reaching agreement with the Union, this will be considered a breach of this agreement and invoke the Hazard Pay set forth in paragraph 8, herein. The provisions of this paragraph shall become effective immediately upon execution of this agreement and shall continue past the expiration of this Agreement.

2. The City agrees that it will maintain safe staffing of the Fire Department which includes the uninterrupted operation of five engine companies, two truck companies, and a Battalion Chief per shift. During the period of time set forth above, the City shall not remove from service any departmental apparatus presently in service as of the date of execution of this Memorandum of Agreement without replacing it with the same or similar type of apparatus.

3. The parties agree to the following in an effort to reduce overtime:

- (a) between June 1, 2019 and September 30, 2019 and between June 1, 2020 and September 30, 2020, a Special Bank for vacations will be created and made available to all Members. This Special Bank allows Members to have the option of placing vacation week(s) they draw for the time period referenced above and placing them in the Special Bank. The Special Bank will be paid out at separation of service. Any week(s) placed in this Special

Bank will not be accessible to the employee and will remain in the Special Bank until separation when the banked time will be credited to the employee's accrued time buyout. Any employee interested in utilizing the Special Bank will need to submit a Special Report to the Relief Chief no later than 48 hours prior to beginning of vacation week(s);

- (b) for the years of 2019 and 2020, all "Holiday Pay" hours for each and every paid holiday shall be converted to "Red Compensatory" days on an hour for hour basis. These Red Compensatory days will either be paid out at separation of service and they will be credited to the employee's accrued time buyout, or be submitted for time off as per the current Red Compensatory policy. If submitted for time off, approval will not occur prior to 48 hours before the day requested, contingent on no overtime being caused by said time off.
- (c) for the years 2019 and 2020, the City shall convert four (4) of the Member's "Blue Compensatory" days to "Red Compensatory" days on an hour-for-hour basis. These Red Compensatory days will either be paid out at separation of service and they will be credited to the employee's accrued time buyout, or be submitted for time off as per the current Red Compensatory policy. If submitted for time off, approval will not occur prior to 48 hours before the day requested, contingent on no overtime being caused by said time off. The remaining ten (10) Blue Compensatory days shall be drawn or banked pursuant to the current

vacation/compensatory draw policy. Any Blue Compensatory days banked shall be paid to the Member annually in November of that respective year pursuant to the Collective Bargaining Agreement.

4. The City acknowledges that the Exchange of Time/Work Substitution of the Members is a benefit to the City and has a positive impact on reducing overtime costs for the City. In an effort to reduce overtime, the City agrees that all Members are entitled to twenty-five (25) open and unrepaid Exchange of Time/Work Substitutions within their rank at any given time. The City also agrees that there shall be no time frame for a Member to repay Exchange of Time/Work Substitution within their rank at any given time. However, all Members must repay any and all time owed to other members prior to their separation from service or promotion/demotion. All other provisions of the current Order/Directive not otherwise modified by this agreement shall remain in full force and effect. The provisions of this paragraph shall remain in effect and continue independently past the expiration of this Agreement until such time that the parties agree to modify or terminate this provision.

5. The Members are entitled to draw vacation up to two slots per shift. After the annual vacation draw has concluded, any open vacation slots allotted to this bargaining unit shall remain available to the Members to draw throughout the year. After the vacation draw has concluded, open vacation slots may be requested to be used by the Members at any time, and shall be awarded on a first come first served basis. Members interested in the slot will submit a Special Report to a Battalion Chief and the request shall be approved or disapproved at least fourteen (14) days prior to the start of the time off. The City shall grant the Members' use of the slot if it does not cause overtime or if the City can schedule a Relief Captain to cover

said slot requested. The City has no duty to reschedule a Relief Captain to cover the slot from another scheduled day that is scheduled to fill a slot that would otherwise cause overtime.

Once the request is approved, the City shall not rescind the use of the requested slot for any reason unless the Member requests to cancel this request. This provision shall not apply to Members that do not draw in the annual vacation draw (i.e. office staff, Battalion Chiefs, Relief X-Captains, and mechanics). The provisions of this paragraph shall remain in effect and continue independently past the expiration of this Agreement until such time that the parties agree to modify or terminate this provision.

6. Retirement buyouts are currently composed of any unused banked vacation weeks, "Red Compensatory" days, unused banked sick days and for eligible members an Impact award payout. These components are currently paid out in one lump sum after retirement. In the city's interest of budgeting and having more manageable payouts, the City and the Union agree that the buyout payments options shall be:

- (a) Thirty-six (36) months prior to retirement any member eligible for Impact awards and/or Red Comp buyout hours will receive these monies. Twenty-four (24) months prior to retirement the member will sell all unused vacation. Twelve (12) months prior to retirement, the member will sell all unused sick days with the exception of twenty (20) sick days. The member shall continue to accrue all time and benefits during this time. The balance of all remaining accumulated and unused time shall be paid to the member upon retirement as is normal practice. Section 341(j) of the Retirement and Social Security Law provides Members with an optional sick leave benefit permitting Members to receive service credit for all unused sick leave at retirement. This benefit is currently extended to the Members at their option. The City shall provide the Member, and the State Retirement System

if necessary, documentation showing the entire balance of accumulated sick time that has been sold pursuant to this agreement and the Collective Bargaining Agreement regardless of when the sick time buyout occurred. The City shall also provide the Member, and the State Retirement System if necessary, documentation showing the entire balance of accumulated sick time that has not been sold pursuant to this agreement and the Collective Bargaining Agreement. Nothing in this agreement shall be deemed to limit an individual Member's ability to receive full service credit for unused sick time if the buyout is received during the course of the employment and/or after separation. The provisions of this paragraph shall remain in effect and continue independently past the expiration of this Agreement until such time that the parties agree to modify or terminate this provision; or

- (b) The Member may elect to receive the entire balance of his/her accrued time within a reasonable period of time after his/her retirement pursuant to the current agreement.

7. The City also acknowledges that the uninterrupted and efficient management of the Fire Department is necessary to minimize expenses and overtime. The City agrees to enter into a separate Memorandum of Agreement with the Union to provide for the timely hiring of a Fire Chief in the event that position becomes vacant.

8. The City acknowledges that the concessions made by the Union cause an immediate financial detriment and safety hazards to the Members, and a breach of this Agreement by the City will cause damages to the Union and its Members. In the event of the City's breach of this agreement, the City shall pay each Member the amount of two times the rate for all fourteen (14) Blue Compensatory days regardless of whether those days have been previously utilized or compensated. The compensation shall be paid to each Member for each year during which the agreement is breached. Further, in the event of the City's breach of this

agreement, paragraph 3(b) herein, shall be terminated and all holidays shall be paid pursuant to the Collective Bargaining Agreement. This shall in no way limit any other and further causes of action and/or grievances for the enforcement of the rights herein or in the Collective Bargaining Agreement.

9. This entire Agreement will take effect January 1, 2019 unless otherwise stated herein. All of the provisions of this agreement will expire on December 31, 2020 except for those matters set forth herein that the parties agree shall continue past the expiration of this Agreement. Those provisions will remain in effect until a new agreement is reached either modifying or changing those provisions.

10. The obligations established by this agreement do not constitute a no-layoff clause that guarantee Members employment for the duration of this agreement.

11. The obligations established by this agreement do not constitute a job security clause that guarantee Members employment for the duration of this agreement.

12. The obligations of the City established by this agreement are being agreed to preserve the health and safety of the Members.

13. This agreement does not mandate a total number of Members that the City must employ.

14. This agreement is not being negotiated during a period of legislatively declared financial emergency.

15. The parties are entering into this agreement voluntarily and recognize that they have equal bargaining power when reaching this agreement.

16. This Memorandum of Agreement shall have no precedential value and shall not be construed in any way to alter or impair the rights under the collective bargaining agreement or any other agreements between the parties currently in effect.

17. Should any term or provision of the contract be in conflict with any State or Federal Statute or other applicable law or regulation binding upon the Union or City, such law or regulation shall prevail. In such event, however, the remaining terms and provisions of this contract will continue in full force and effect.

18. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

19. This Memorandum of Agreement shall be enforced through the grievance procedures as set forth in the parties' current collective bargaining agreement, effective January 1, 2014 through December 31, 2024. As to those matters that continue to remain in effect after this Memorandum of Agreement, disputes as to those matters may be enforced under the parties' current collective bargaining agreement, effective January 1, 2014 through December 31, 2024, and any successor collective bargaining agreements, as applicable.

Dated: October 31, 2018

CITY OF NIAGARA FALLS, NEW YORK

NIAGARA FALLS FIRE OFFICERS,  
LOCAL 3359

By: \_\_\_\_\_  
Paul Dyster, Mayor

By: \_\_\_\_\_  
Michael Perri, President



By: \_\_\_\_\_  
Nicholas Melson, City Administrator