**Contract Database Metadata Elements**

**Title:** Niagara Falls, City of and International Union of Operating Engineers (IUOE), Bricklayers and Allied Craftsmen International Union of America (BAC), Empire State Regional Council of Carpenters, Painters & Glaziers District Council, International Brotherhood of Electrical Workers (IBEW), Niagara County Building and Construction Trades Council, AFL-CIO, Local #463, Local #3, Local 289, Local Union #237 (2005) (MOA)

**Employer Name:** Niagara Falls, City of

**Union:** International Union of Operating Engineers (IUOE), Bricklayers and Allied Craftsmen International Union of America (BAC), Empire State Regional Council of Carpenters, Painters & Glaziers District Council, International Brotherhood of Electrical Workers (IBEW), Niagara County Building and Construction Trades Council, AFL-CIO

**Local:** Local #463, Local #3, Local 289, Local Union #237

**Effective Date:** 01/01/05

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JANUARY 1, 2005 THROUGH DECEMBER 31, 2008

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

THE CITY OF NIAGARA FALLS, NEW YORK

AND

THE BUILDING TRADES

RECEIVED

JUL 24 2008

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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EFFECTIVE DATES
January 2, 2005 through December 31, 2008

COLLECTIVE BARGAINING AGREEMENT

THIS AGREEMENT made this 2nd day of January, 2005 by and between the City of Niagara Falls, New York with offices at the City Hall, Niagara Falls, New York (hereinafter referred to as the "City") and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #463 with offices at 3365 Ridge Road, Ransomville, New York, the BRICKLAYERS AND ALLIED CRAFTSMEN INTERNATIONAL UNION OF AMERICA, LOCAL #3 with offices at 2350 North Forest Road Suite 17A, Getzville, New York, the EMPIRE STATE REGIONAL COUNCIL OF CARPENTERS LOCAL 289 with offices at 1159 Maryvale Drive, Cheektowaga, New York, the PAINTERS & GLAZERS DISTRICT COUNCIL with offices at 585 Aero Drive, Cheektowaga, New York, and the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION #237 with offices at 8803 Niagara Falls Boulevard, Niagara Falls, New York, members of the NIAGARA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO (hereinafter collectively referred to as the "UNIONS").

WITNESSETH:

WHEREAS, each of the foregoing Unions have heretofore been recognized by the City as the sole and exclusive bargaining agents for those of its respective members who are, have been, or will be employed by the City; and

WHEREAS, it is the desire of the parties to this Agreement to bargain collectively with regard to wages, hours and working conditions and to avert disputes and secure harmonious cooperation; and

WHEREAS, the parties hereto have entered into a collective Bargaining Agreement effective January 1, 1996 which incorporated the terms of all previous Memoranda of Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1 - Union Recognition and Management Rights

Section 1.1

The City recognizes the Unions as the sole and exclusive bargaining agents of all Electricians, Bricklayers, Carpenters, Painters and Operating Engineers now in the employ of the City, or those who may become employed from time to time.

Section 1.2

Each of the component locals comprising this bargaining unit shall select one (1) Steward. The Steward shall indicate, in writing to the appropriate supervisor the destination and purpose prior to approval of such time, in order that the individual may be contacted in case of emergency. If not possible, the Steward shall obtain oral permission prior and indicate the time in writing afterwards. It is understood that the three hours will be allocated as required throughout any given week. In the event that additional time is required, it shall be authorized by the head of the department.

Section 1.3

It is agreed that the Unions may use City bulletin boards for the purpose of posting Union notices to Union members, providing such notices shall be clearly identified as Union notices, subject to approval by the Union representative and the City representative.
Section 1.4

City agrees that the Unions shall be accorded the right of unchallenged representation status until seven (7) months prior to the expiration of this Bargaining Agreement, said expiration date being December 31, 2004.

Section 1.5

The City and the Union hereby recognize and mutually agree that the management of the City, the control of its properties, the maintenance of order and efficiency, the direction of its employees, including the making and enforcing of reasonable work rules to assure orderly and efficient City operations, are solely the responsibility and right of the employer, City of Niagara Falls, New York. Accordingly, except as specifically abridged, delegated, granted or modified by this Bargaining Agreement or any subsequent agreements that may hereafter be made, all rights, powers, or authority of the City granted to it by virtue of State Law or City Charter, Ordinances and Laws, are retained by the City and remain exclusively within the rights of the City. In the event that any law shall be in conflict with any provisions of this Bargaining Agreement, such law or laws shall supersede the effective provisions of this Bargaining Agreement.

Section 1.6

Nothing herein contained shall be construed as a waiver on the part of the employees through their Unions, to settle any matters of dispute on these subjects in accordance with the terms of the Grievance Procedure herein contained.

Section 1.7

The City will maintain an employee evaluation program annually.

ARTICLE 2 - DEFINITIONS

Section 2.1

As used herein, the following terms have the following meanings:

a. "City" means the City of Niagara Falls

b. "Bargaining Agreement" means this particular Collective Bargaining Agreement between the City of Niagara Falls and the Unions specified at the head of this Agreement, or the current Collective Bargaining Agreement between the parties then in effect.

c. "Employee" shall mean any person employed and compensated by the City of Niagara Falls pursuant to the provisions of this Bargaining Agreement.

d. "Days" in Article 3 herein shall mean all days other than Saturday, Sunday and legal holidays. Sunday, Saturday and legal holidays shall be excluded in computing the number of days within which action must be taken or notice given, within the terms of Article 3 herein.

e. "Grievance" shall include all claimed violations of the Bargaining Agreement.

ARTICLE 3 - GRIEVANCE PROCEDURE

Section 3.1 - Declaration of Policy

The purpose of this Grievance Procedure is to provide an orderly process whereby employees of the City of Niagara Falls hired pursuant to the provisions of this Bargaining Agreement may equitably and expeditiously settle any difference or grievances that may arise in the course of their employment, free from coercion, restraint, interference, discrimination or reprisal. The provisions contained herein shall liberally be construed for the accomplishment of these objectives.
A three- (3) stage grievance procedure with a right of arbitration for employees of the City of Niagara Falls is hereby established as follows:

A. First Stage

The first procedural stage shall consist of the employee's presentation of grievance to his immediate superior who shall to such extent, as he may deem appropriate, consult in turn with his superiors. A statement of grievance at this stage shall be presented on a written form stating the nature of the grievance and the date submitted and shall be receipted by the employee's superior. The discussion and resolution of the grievance at the first stage shall be on an oral and informal basis. However, the action taken at this stage shall be in writing, which writing shall contain the date such action is taken. If such grievance is not satisfactorily resolved at this first stage within two (2) days from the date of submission, the aggrieved employee may proceed to the second stage.

B. Second Stage

The second procedural stage shall consist of a request by the aggrieved employee for a review and determination of his grievance, by the head of the department concerned or his designee. In such case, the aggrieved employee and his immediate superior shall each submit to the head of the department concerned or his designee, within forty-eight (48) hours of the date of the action taken in the first stage, a written statement setting forth the specific nature of the grievance and the facts relating thereto. Such statement shall be made upon a form numbered and supplied by the Personnel Department of the City of Niagara Falls.

Upon receipt of the statement of the grievance, the department head concerned or his designee shall, at the request of the employee, hold an informal hearing at which the employee and/or his representative shall appear and present oral and written statements or recommendations.

The final determination of the second stage of such grievance proceeding shall be made by the head of the department or designee within forty-eight (48) hours from the date of submission of said grievance. The decision shall be made in writing and communicated to the employee presenting the grievance and to the employee's representative, and a copy of the decision shall be submitted to the chairman of the Labor Relations Committee. If such grievance is not satisfactorily resolved at the second stage within forty-eight (48) hours from the date of submission, such employee may proceed to the third stage.

C. Third Stage

The third procedural stage shall consist of a request by the aggrieved employee for a review and determination of his grievance by the Labor Relations Committee. In such a case, the aggrieved employee shall submit his request to the Labor Relations Committee with forty-eight (48) hours from the date of the determination of the department head. The department head, upon notice, shall forward all papers filed pursuant to said grievance to the Labor Relations Committee.

The Labor Relations Committee shall schedule a hearing within five (5) days of the submission of the grievance and shall render its decision within five (5) days of the hearing.

If such grievance is not satisfactorily resolved at the third stage within five (5) days, such employee may proceed to arbitration.

D. Arbitration

All disputes which are not amicably settled as provided for in Section A, B and C of this grievance procedure shall, upon the written demand of either of the parties hereto, be submitted to arbitration. The arbitrator shall be selected as soon as practicable after written notice demanding the appointment of said arbitrator either of the parties hereto, which demand must be made within five (5) days of the date of the Labor Relations Committee's decision. Said arbitrator shall be selected by mutual agreement from names supplied by the American Arbitrators Association, P.E.R.B. and/or the New York State Mediation Service. In the event of the failure to agree upon an arbitrator, either or both of the parties hereto may petition a Judge of the Supreme Court of the Eighth Judicial District of the State of New York who shall appoint such arbitrator. The
decision of the Arbitrator thus selected, shall be binding upon both parties to this Bargaining Agreement when
the same is in accordance with the law and has been made in writing and a copy filed with the employee and
the employee's representative and with the Labor Relations Committee of the City of Niagara Falls, and shall
be considered as a final determination of the question of fact submitted to arbitration. Both parties hereto
shall divide the expenses and fees of the arbitrator selected.

ARTICLE 4 - JURISDICTION OF WORK

Section 4.1

This Bargaining Agreement shall cover all maintenance work, as defined within the trade claims of the
above-named unions in their current collective Bargaining Agreements entered into with their respective
Contractor Employer Associations.

It is agreed that maintenance work shall consist of remodeling, replacement, renovation,
updating, excavating, paving, snow plowing, and change of existing facilities, whether real or personal, which
does not result in a changed use of the product of facility.

Section 4.2

The Unions and the City agree that during the term of this Bargaining Agreement, they will not
surrender jurisdiction over any of the employees or any of the jurisdiction of work covered by the Bargaining
Agreement to any other Union, City Department or Public Agency.

ARTICLE 5 - HIRING OF EMPLOYEES

Section 5.1 - Temporary and Permanent Employees

A. Temporary Employees: When a call is placed to the union requesting a qualified individual to fill a
building trade's temporary position no list is required and a single person is sent out. Upon
completion of the assignment the employee is sent back to his/her union hall for additional work.
If the City repeats the request of a qualified individual to fill a building trade's temporary position,
the union may assign the same employee or another employee who is qualified. (Wages and Fringe
Benefits shall be paid in accordance to the Builders Employers Association Collective Bargaining
Agreement.)

B. Permanent Employees: When a call is placed to the union requesting a qualified permanent
individual to fill a building trade's position the union will submit three (3) qualified individuals for
the City's consideration. (Wages and Fringe Benefits shall be paid pursuant to the Collective
Bargaining Agreement between the City of Niagara Falls and the Building Trades.

Section 5.2

The City shall notify the Union Officer and Shop Steward of the name, address and date of hire for
each employee hired for a job covered by the Bargaining Agreement immediately following hiring of such
employee.

Section 5.3

The City, at its discretion may use apprentice or temporary employees on certain work projects in
accordance to the Employers Association Collective Bargaining Agreement.

ARTICLE 6 - SENIORITY

Section 6.1

It is understood and agreed by the City and the Unions that the job seniority system is recognized. Job
seniority shall be the total length of actual accumulated service of an employee hired in a particular
classification by the City of Niagara Falls, pursuant to the terms of this Bargaining Agreement.
Section 6.2

The seniority of each employee covered hereby which shall entitle such employee to the preferences provided for in this Bargaining Agreement, shall accrue and be determined by the length of continuous employment within the job classification of the bargaining unit covered by this Bargain Agreement.

Section 6.3

Any employee not previously employed by the City shall be considered a probationary employee for one (1) year, during which time that employee may be laid off, transferred or dismissed in the uncontrolled discretion of the City; however, at the end of the probationary period the employee's seniority shall be retroactive to the date of hiring. During the probationary period, the probationary employee shall receive the rate of pay and all benefits provided in his Trade's Collective Bargaining Agreement entered into between his Union and the respective Contractor Employer Association.

Section 6.4

Seniority shall apply in all cases of lay off, recall from lay off, and promotions within each classification of all employees covered by this Bargaining Agreement provided they are equally qualified to do the job.

Section 6.4(a)

Permanent employees will be able to take temporary job opening, based on seniority, and return to original work assignment when temporary job is completed.

Section 6.5

An employee on leave of absence for illness or injury will accumulate seniority for the length of the leave. However, an employee on leave of absence for personal reasons shall not accumulate seniority.

Section 6.6

Seniority of the employee shall be terminated for any of the following reasons:

a.) Voluntary Termination
b.) Discharge for Cause, or
c.) Transfer by City into different classification except the employee's seniority shall not be terminated, upon promotion to a supervisory position.

Section 6.7

In the event of a lay off or absence on leave, seniority shall continue to accrue for a period not to exceed twenty-four (24) months and employment shall be considered to uninterrupted. Recall rights shall terminate at the end of twenty-four (24) months of lay off.

Section 6.8

If any employee is promoted to a supervisory position and is thereafter discharged or transferred from said supervisory capacity, the employee shall accumulate seniority while working in the supervisory position, and when discharged or transferred, shall commence work as an employee with the seniority ranking acquired to the time of his promotion, plus the seniority accumulated while working in the supervisory position.

ARTICLE 7 - HOURS, WAGES AND CLASSIFICATIONS

Section 7.1 - Work Day

The workday shall consist of eight (8) hours per day with one half-hour lunch period. The workweek shall be Monday through Friday, except as otherwise established. (From tentative agreement dated April 28, 1997)
Section 7.1 a

Temporary Winter Work Schedule – Operating Engineers:

The period beginning December 1st, and ending April 1st, is considered winter snow removal operations. During this period the City will institute a work schedule other than Monday - Friday which will include shift hours other than normal day shift. Overtime will be paid for all hours worked in excess of eight (8) on any particular day, or in excess of forty (40) hours in a work week during this winter snow removal period.

Suitable cabs shall be provided to protect the operator in inclement weather. An operator shall not be required to work under unfavorable weather conditions on machines not equipped with suitable cabs and shall not be penalized for his refusal. *(Effective January 1, 2007)*

Section 7.1b - Direct Deposit

“Any item paid to the employee by the City, which is not currently subject to payment through direct deposit, shall henceforth by made pursuant to the direct deposit policy”.

Section 7.2 - Shift Work

Two (2) or three (3) shifts may be employed in a twenty-four (24) hour period with proper notifications and mutual consent of both the Union involved and the City of Niagara Falls. All workers in all shifts shall be allowed one-half (1/2) hour for lunch. There shall be approximately an equal number of workers employed on each shift. Whenever practicable, preference for shift assignment will be given to the service employee in the particular classification.

Special shifts may be arranged with any or all of the Unions where it is found to be impractical to work during the normal work hours. This arrangement shall be made for specific situations and then only with the mutual consent of both the Union involved and the City of Niagara Falls.

No workers shall be permitted to work more than one (1) shift during a twenty-four (24) hour period except by written permission of the Union involved.

The parties agree that all employees covered by this Bargaining Agreement and assigned to shift work shall be paid a shift differential as follows:

“A” Shift - Normal day shift - none

TR-D “B” Shift - Starting time 3:00 p.m. to 11:00 p.m., two and one-half percent 2.5% over base pay. *(Effective January 1, 2007)*

TR-E “C” Shift - Starting time 11:00 p.m. to 7:00 a.m., three percent (3%) over base pay. *(Effective January 1, 2007)*

Section 7.3 - Base Pay

The salary for straight time work to be paid to each employee covered by this Bargaining Agreement during the period hereof, according to the particular classification, shall be that salary as set forth in the Pay Plan for the City of Niagara Falls, New York, for the year of this Bargaining Agreement.

A.) 2005-0%, 2006 - 0%, 2007-3% per hour, 2008-3% per hour.

Section 7.4 - Increments

Each employee covered by the terms of this Bargaining Agreement shall be accorded longevity Increments as provided for in the Pay Plan of the City of Niagara Falls, New York, upon the completion of the Requirements necessary to receive said increments.
Section 7.5 - Overtime

In those departments where work is performed pursuant to a regular schedule of eight (8) hours per day and five (5) days per week all work performed in excess of the regular schedule be considered overtime and paid at the rate of time and one-half (1 ½) the regular hourly rate.

In those departments where work is performed to a regular schedule other than the eight (8) hours per day and five (5) days per week schedule, all work performed in excess of the regular scheduled work week, shall be paid at the rate of time and one-half (1 ½) the regular hourly rate, Saturdays worked will be paid for the time and one-half (1 ½) the employee's regular rate, and Sundays or holidays worked will be paid for at double the employee's regular rate.

Section 7.6 - Call In Time

Effective January 1, 1980, all employees covered by this Bargaining Agreement shall be paid two (2) hours at regular time when called in to work, which shall be known as “Call In Time”, and shall be paid in addition to the regular pay for the actual hours worked, but such two (2) hours of Call In Time shall not be computed on determining the total hours worked for the purposes of overtime; in addition, all employees called into work shall be guaranteed two (2) hours of work at time and one-half (1 ½) the regular hourly rate applicable thereto. (Effective January 1, 2007)

Section 7.7 - Lunches

Effective January 1, 1980, the City, at its expense shall provide lunch for any employee covered by this Bargaining Agreement who is required to work at least two (2) hours overtime, and the City, at its expense shall provide an additional lunch for any employee required to work an additional four (4) hours overtime thereafter. Effective January 1, 1990, meal allowance is increased from $2.50 to $5.00. (Effective January 1, 2007)

Section 7.8 - Unemployment Benefits

All employees covered by this Agreement shall be entitled to New York State Unemployment Benefits.

ARTICLE 8 - RE-OPENING PROVISION

Section 8.1

The City agrees that in the event it hires a trades person whose Union is not a party to this Bargaining Agreement, then, and in that event, any Union party to this Bargaining Agreement, may, on behalf of another Union member of the Niagara County Building and Construction Trades Council, but not a party to this Agreement, request a re-opening of this Bargaining Agreement by a thirty (30) day written notice served on the City, allowing said Union to negotiate with the City for the purpose of becoming a party to this Bargaining Agreement.

Section 8.1(a)

The City agrees that a majority of the Unions may request by written notice 180 days prior to the termination date a re-opening of this Bargaining Agreement for the purpose of negotiating wages and related matters.

ARTICLE 9 - RETIREMENT PLAN

Section 9.1

The City agrees to continue the retirement plan which is presently in existence for all members covered by the terms of this Bargaining Agreement who are now, or shall become in the future, members of the New York State Employee’s Retirement System, so far as may be in compliance with a plan of the New York State Employee’s Retirement System.
ARTICLE 10 - VACATIONS, HOLIDAYS, BEREAVEMENT, SICK LEAVE, AND SEVERANCE PAY

Section 10.1 - Holidays

All employees covered by this Bargaining Agreement, after completing six (6) months service, shall be entitled to eleven guaranteed holidays to be observed as may be designated by the City or prescribed by law, with pay as follows: New Year’s Day, Dr. Martin Luther King, Jr’s Birthday, Lincoln’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day and Christmas Day.

All employees covered by this Bargaining Agreement, in addition to holidays herein noted, shall be entitled to a guaranteed holiday with pay for their birthday; an employee will be entitled to this paid birthday holiday (by taking a day off from work with pay or by having one (1) working day with pay credited to the employee’s accrued vacation) approximately one (1) week before or after the employee’s actual birthday.

Subsection 10.1.1 - Holiday Pay Eligibility

Effective 1997, an employee who is absent from work the last scheduled work day before one of the numerated holiday(s) and/or the scheduled work day after a holiday(s), will not be eligible for holiday pay unless the absence was due to a death of a member of the employee’s immediate family as defined in the Bereavement Section, Vacation, Personal Day, Jury Duty Sections of the Collective Bargaining Agreement.

1. If the employee elects to work a scheduled holiday and fails to report for work, he/she will not be paid holiday pay.

2. Not excusable absences are sick days, worker’s compensation or other time off which is not one of the enumerated exceptions listed above.

The Department Head may consider extenuating circumstances and excuse an absence on one of the scheduled workdays.

Section 10.2 - Vacations

All employees covered by the terms of this Bargaining Agreement shall be entitled to annual vacation with pay in addition to the holidays mentioned in Section 10.1 above as follows:

a.) During the first calendar year of employment - no vacation with pay.

b.) During the second calendar year of service - 5/6th of one (1) working day for each month of service in the previous calendar year.

c.) After the second calendar year of service - two (2) work weeks based on the previous years service.

d.) After five (5) years or completion of two hundred sixty (260) weeks of service - three (3) work weeks based on the previous year’s service.

e.) After ten (10) years of completion of five hundred twenty (520) weeks of service - four (4) work weeks based on the previous year’s service.

f.) After fifteen (15) years or completion of seven hundred eighty (780) weeks of service - five (5) work weeks based on the previous year’s service.

g.) After twenty-five (25) years or completion of thirteen hundred (1300) weeks of service - six (6) work weeks based on the previous year’s service.

In all cases, granting of requests for use of vacation time shall be contingent upon the efficient operation of City services. Requests for use of such vacation time may not be unreasonably withheld. However requests for use of vacation time for periods of one to three consecutive days must be made at least
five business days in advance. Requests for use of vacation time in excess of three consecutive days must be made at least three weeks in advance.

An employee may not schedule more than two (2) weeks' vacation during prime-time period of June 15 to September 15. Unused vacation may be accumulated up to a maximum of twelve (12) weeks including current year vacation with the provision that a minimum of thirty (30) days advance notice be given of the intent to use such vacation.

Section 10.2 a - Vacation for Employees Hired After January 1, 1980

All employees covered by the terms of this Bargaining Agreement and hired after January 1, 1980 shall be entitled to the annual vacations with pay specified in Section 10.2 of Article 10 and subject to the conditions therein noted, in addition to the holidays mentioned in Section 10.1 of Article 10, except that:

a.) Such employees shall be entitled to the vacation benefits contained in Section 10.2 (F), and can earn a maximum of five (5) weeks vacation after fifteen (15) calendar years of service, beginning January 1, 2002.

b.) Effective January 1, 2002, unused vacation may be accumulated by such employees up to a maximum of twelve (12) weeks including current year vacation provided that a minimum of thirty (30) days advance notice be given of the intent to use such vacation.

Section 10.2 b - Conversion of Accrued Vacation

Effective 1997, employees may convert accrued vacation leave into a cash payment at each individual employee's per diem rate in effect at the time of the conversion. Employees who request vacation cash conversion must do so during the month of August (beginning 1997 for 1998) of the preceding year.

The maximum number of vacation weeks which may be converted into cash is two (2) weeks provided the employee uses the same number of vacation weeks for which they are requesting conversion. Vacation Cash Conversion will be payable during the month of July.

If an employee converts vacation time into cash and does not take the equal number of weeks off, they will not be able to carryover those weeks into the next year.

Section 10.3 - Sick Leave

During the term of this Agreement, the Union may elect to have a Sick Bank Program.

All employees covered by the terms of this Bargaining Agreement shall be entitled to pay for absence from work because of illness as follows:

A.) No sick leave shall be afforded to a temporary employee during the first six (6) months of this employment. After six (6) months of service, a temporary employee shall be entitled to one (1) day of sick leave credit for each month of service with the right to accumulate one hundred eighty (180) days.

B.) An employee who is hired as a permanent employee to fill a budget vacancy shall be entitled to one (1) day of sick leave credit for each month of service with the right to accumulate on hundred eighty (180) days.

C.) Sick Leave Buy - Back - Employees entitled to sick leave and who have been in the employee of the City for three (3) or more years, prior to termination of service shall be entitled to compensation equal to the following schedule of their unused sick leave credit upon their termination of service. Upon termination any days between one (1) and ninety-nine (99) will be paid at twenty percent (20%); for any days over ninety-nine (99) and less than one hundred ninety-nine (199), those days will be paid at forty percent (40%); for any days over one hundred ninety-nine (199), those days will be paid at sixty percent (60%).

10
Will be Paid at:

<table>
<thead>
<tr>
<th>Step</th>
<th>Days</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1</td>
<td>1-99</td>
<td>20%</td>
</tr>
<tr>
<td>Step 2</td>
<td>100-199</td>
<td>40%</td>
</tr>
<tr>
<td>Step 3</td>
<td>200+</td>
<td>60%</td>
</tr>
</tbody>
</table>

D.) Whenever an employee is absent because of personal illness, the number of days of absence with pay shall be charged against his sick leave credit. Effective January 1, 1980, if an employee takes a sick leave day the day before or the day after a holiday, then upon the third such occurrence during this Bargaining Agreement term, said employee may be required to provide a physician's letter to the City for that day claimed as a sick leave day, and such sick leave day (for which a physician's letter has been furnished) shall not be counted in the determining whether the employee has had three (3) such occasions during this contract term.

E.) Sick Leave Verification:

An employee covered by the terms of this Agreement who is entitled to sick leave in accordance with the above sub-sections, shall be paid while absent from work due to illness/injury. If such illness/injury continues beyond three (3) working days, the City may in its discretion direct the employee to verify their illness/injury with a statement from the attending physician.

An employee covered by the terms of this Agreement who is entitled to sick leave in accordance with the above sub-sections, shall be paid while absent from work due to personal illness/injury with a statement from the attending physician. An employee off work due to illness or injury for 20 consecutive work days or more may be required to undergo an examination by a City designated physician(s) for determining the necessity for continuation of sick leave. Such examination will be limited to the particular ailment or injury for which the employee is claiming sick leave. In the event of a difference in opinion between the employee's physician(s) and the City's designated physician(s), the matter may be referred to a third physician mutually agreed to by both parties. The opinion of this independent physician shall be binding.

F.) Personal Leave: Effective January 1, 2002, all members of the bargaining unit will be eligible to take four (4) days annual personal leave. The employee will be eligible to take four (4) days on January 1 of each year. Personal leave days may be accumulated up to a maximum of six (6) days. The employee, however, must give notification in advance to the employee's department head. Except in cases of emergency, such notification will be in direct relation to the number of days requested. (For example: one day leave - one day advance notification; five days advanced notification.) Personal leave used to supplement bereavement leave, including funerals of grandparents, grandchildren, uncles, and aunts will not be deducted from accumulated sick leave.

The four (4) annual personal leave days defined in this section will be considered exempt days and taken without deduction from accumulated sick leave. No other personal leave days, deducted from sick leave or otherwise will be allowed; except that said exempt personal leave days may be accumulated to a total of six (6) in any one (1) year, that is three (3) exempt days granted in any current year plus a maximum of three (3) unused exempt days carried over from previous years for a maximum total of six (6) exempt days accumulated in any given year.

In the event of resignation, retirement, or termination (but not death), prior to July 1 of each year, effective January 1, 1980, the employee's leave entitlement for that year shall be prorated, whether the leave has been used in whole or part, as follows: Effective January 1, first day will have been earned, April 1, the second day will have been earned and July 1, all three (3) days will be fully accrued, not subject to pro-rated treatment.
Unused personal days may be carried over and converted to sick leave days. An employee choosing to carry over personal leave time must notify both the Department of Human Resources and their department head prior to December 1st of the previous year.

Section 10.4 - Severance Pay

Severance pay will be granted to employees laid off because of reduction work force. Such pay will be computed as follows:

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<thead>
<tr>
<th>Years of Service</th>
<th>Weeks of Pay</th>
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<tbody>
<tr>
<td>1</td>
<td>2</td>
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<tr>
<td>over 2</td>
<td>5</td>
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<td>over 5</td>
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<td>over 20</td>
<td>25</td>
</tr>
<tr>
<td>over 25</td>
<td>52</td>
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</tbody>
</table>

If an employee receives severance pay and subsequently is rehired, computation of "years of service" as used above will begin with the date of rehire. This severance pay clause does not apply to employees having temporary or seasonal status. This clause in no way contravenes or modifies the existing provisions governing the application of seniority.

Section 10.5 - Service - Connected Disability

A City employee losing time from work for injuries incurred during the course of employment shall be entitled to Workers' Compensation benefit's as follows:

Workers Compensation Policy

Effective 6/30/97, a City employee losing time from work for injuries incurred during the course of employment shall be entitled to Worker's Compensation benefit as follows:

A.) Upon injury, employee will be offered examination by Occupational Health Unit at M. M. C. and may receive treatment at employee's option. If employee exercises right to refusal, City may later have employee examined by City's physician. Disputes will be handled through Compensation Board Referee.

B.) An employee who is off work seven (7) calendar days or less due to a work-related injury/illness, and has filed for Worker's Compensation, reported to Occupational Health and returns to work on or before the seventh (7th) day, may utilize five (5) sick days. Their sick time will be paid retroactive.

C.) If, however, the employee remains off work eight (8) calendar days or more and is approved by Worker's Compensation they will receive Worker's Compensation Statutory pay for the first two (2) weeks.

D.) Beginning the third week the City will subsidize the statutory pay to the employee's full payroll for a period not to exceed eight (8) weeks. After eight (8) weeks the statutory rate will apply only.

E.) Should the injury continue, the employee shall receive straight compensation allotment as per statutory rate for the next 18 week period with the following provisions:
1. No accrual of sick time during the 18 week period. An employee will be credited one sick day for each holiday that falls during their compensation period; days are to be credited at the end of the compensation claim.

2. The compensation leave shall not constitute a gap in seniority for the purposes of benefits, such as accrual of vacation, vacation eligibility, or placement on a longevity scale, and for purposes of layoff.

F.) This policy shall be administered by the City in the following manner:

1. A separate payroll list shall be established consisting of employees on Workers' Compensation.

2. Employee shall receive direct payment from compensation carrier.

3. The City shall supplement such payment to full salary during the eight (8) week period.

4. The 26 week clock shall be monitored by this payroll record. Recurring injuries shall continue the clock to the maximum of 26 weeks.

G.) The employee will not be able to deplete any accumulated time while on compensation leave. Such accumulated time will become available for use upon return to job.

H.) It is mutually agreed that individuals on compensation may be examined for light duty. Upon certification of same, employee may be called back to work to perform functions needed within the division subject to the limitations as prescribed by the physicians.

Subsection 10.5.1

Determination under the Workman's Compensation Laws of New York State as to whether or not disability is service-connected and as to the extent of such disability shall be conclusive.

Subsection 10.5.2

Disability as a result of compensable injury sustained from accident occurring prior to the effective date of this section shall receive benefits in accordance with regulations and laws in effect at the time of injury.

Section 10.6 - Bereavement Leave

In the case of death of a member of the immediate family of any employee covered by the terms of this agreement with one (1) or more years of continuous service, such employees shall be granted as an excused absence such time, to a maximum of four (4) working days, as reasonably may be needed in connection therewith. Any of the first four (4) days beginning on the day of the death or on the day following the day of the death on which the employee is excused from his regularly scheduled work, shall be paid for at the employee's regular rate, but such hours and pay shall not be considered as hours worked in computing overtime payable for hours worked in excess of the regular work week.

For the purpose of determining eligibility for the foregoing benefits, an immediate member of the family shall be limited to: Father, Mother, Step-father, Step-mother, Father-in-Law, Mother-in-law, Husband, Wife, Brother, Sister, Brother-in-law, Sister-in-law, Son, Daughter, Son-in-law, Daughter-in-law, Step-son, Step-daughter, or a relative residing within the household of the employee.

No pay allowance shall be made for multiple or for simultaneous deaths occurring with any four (4) day period. No pay allowance shall be granted commencing with the second day after the holding of the funeral unless such time is actually spent in returning to the City of Niagara Falls from the funeral held outside the City, but in no case shall more than maximum of four (4) working days be granted.

One (1) day bereavement leave shall be granted in the event of the death of relatives other than the immediate family, to include Grandparents, Grandchildren, Uncle, Aunts, Nephews, Nieces, and First Cousins.
Section 10.6.1 - Additional Bereavement Leave

In the case of the death of a grandparent or grandchild, any employee covered by the terms of this agreement shall be granted one (1) day excused absence as bereavement leave.

Section 10.7 - Adoption Leave

The City presently grants its employees "Maternity Leave" in accordance with the terms and provisions of the laws of the State of New York. The City shall grant the same rights to which an employee is entitled under "Maternity Leave" to all employees adopting a child, which shall be called "Adoption Leave" rights. "Adoption Leave" shall be governed in the same fashion as is "Maternity Leave" under the laws of the State of New York.

ARTICLE 11.0 INSURANCE

Section 11.1 - Hospitalization

The City of Niagara Falls Labor Management Healthcare Committee was formed in 2004 for the purpose of uniting both Labor and Management in an attempt to reduce the City's health care costs and also to strengthen the health care available to its employees. This committee is comprised of members of the City Administration, the Niagara County Building Trades, The United Steelworkers of America, Local 9434 (Units 00 and 02), the Niagara Falls Fire Department Officers Association and the Niagara Falls Police Club. The committee met several times throughout 2004 and into 2005 and created a health care program which provides comprehensive and improved coverage for all qualified City employees while at the same time providing the City with enhanced financial stability due to the program's lower cost.

The following terms will govern the administration of the City's health care program:

Section 11.1.1: Effective November 1, 2005, the City of Niagara Falls will provide all qualified unionized and exempt employees with the health care program contained in Schedule "A". A qualified employee shall be defined as any full time, permanent or provisional employee of the City of Niagara Falls in the exempt managerial class, a full time, permanent or provisional member of one of the recognized member bargaining units of the committee, or an elected official. Temporary employees are not eligible for health care coverage until the completion of six (6) consecutive months of full-time employment with the City.

Section 11.1.2: The program contained in Schedule A is comprised of Health and Hospitalization, Vision, Dental, Prescription and Chiropractic benefits and is provided by the City at no cost to qualified employees.

Section 11.1.3: Notwithstanding the provisions contained in Section 11.1.2 above, qualified employees appointed after November 1, 2005 will be responsible for 20% of the monthly premiums for the qualified employees' first year of employment with the City. At the commencement of the qualified employee's second year of employment with the City, the health care program will be provided by the City according to the provisions contained in paragraph "2". Temporary employees must complete six (6) consecutive months of full-time employment prior to being eligible for health care coverage; the temporary employee then will be responsible for the 20% of the premium for one full year once eligible.

The employees' portion of the premium cost of the health care program will be deducted through a bi-weekly payroll commencing with the employee's first pay period.
Section 11.1.4: Any qualified employee who is covered by an alternate health insurance program may elect to opt out of the City health insurance program. Should the employee opt out of the City program, the employee must provide the Department of Human Resources with written proof that he/she is enrolled by the other plan. Written documentation generated by an entity sponsoring the alternate health plan and evidencing the employee’s participation in the plan shall constitute sufficient proof on enrollment. Upon verification of this information by the City, the employee shall be entitled to an amount equal to 50% of the yearly cost (either single plan or family plan, depending on which plan the employee qualifies for) of the City program for that employee. This amount shall be paid to the employee through the employee’s regular bi-weekly pay in a proportionate amount throughout the year. Any employee covered under the City health insurance program who opts out after January 1st of any calendar year will, upon verification of the comparable health insurance plan, be paid a pro-rated amount for that year. Any employee who leaves before the end of the calendar year in which he/she is receiving this amount will forfeit any unpaid amount due and owing for the remainder of the year. Qualified employees hired after November 1, 2005 will not be able to opt out of coverage until after completion of one full year of employment with the City.

Section 11.1.5: All qualified employees retiring from the City of Niagara Falls, effective November 1, 2005, will have the above mentioned health care plan provided to them at no cost to the retiree, upon the same terms and conditions as those applicable to active employees of the City at the time of retirement. Such benefits shall continue until retiree reaches age sixty-five (65), at such time the City agrees to provide coverage as provided above supplemental to Medicare. All rights of employees who retired prior to July 1, 2005 will not be affected by the terms of this Agreement.

Section 11.1.6: Upon ratification of this signed agreement by the Niagara Falls City Council, the terms of the Memorandum of Understanding will be controlling with respect to the administration of health/hospitalization, dental, vision, prescription and chiropractic coverage. Accordingly, all sections of each bargaining unit’s collective bargaining agreement with the City of Niagara Falls in conflict with the provision of these benefits to qualified employees as specified herein shall be null and void. A listing of the conflicting sections of the collective bargaining agreements for each bargaining unit is attached hereto as Schedule B. All other terms and conditions of employment contained in the aforementioned collective bargaining units will remain in full force and effect.

Section 11.1.7: The City of Niagara Falls Labor Management Health Care Committee shall continue to be comprised of two (2) representatives of the Executive Board of each of the member bargaining units, possessing full authority to negotiate on behalf of each member bargaining unit, the Mayor of the City of Niagara Falls, the City Administrator, Corporation Counsel, the Risk Management Director, and the Human Resources Director and their designees.

Section 11.1.8: Through this Memorandum of Understanding, the City and each member bargaining unit confirms its commitment to the City of Niagara Falls Labor Management Health Care Committee. As such, all parties authorize to the City of Niagara Falls Labor Management Health Care Committee to act on behalf of each represented entity in the areas of health and hospitalization, dental, vision, prescription and chiropractic coverage, and to negotiate for and contract with health insurance carriers for said benefits (subject to ratification of any Committee proposal by the membership of each member bargaining unit and notwithstanding the provisions of the collective bargaining agreements between each bargaining unit and the City). No single member or represented entity of the City of Niagara Falls Labor Management Health Care Committee will have the power to alter the terms of the City of Niagara Falls Health Care Program must be approved by a 2/3 vote of the City of Niagara Falls Labor Management Health Care Committee.

Section 11.1.9: Any dispute arising under this Memorandum of Understanding or with respect to the City of Niagara Falls Health Care Program, shall be resolved pursuant to the terms of the grievance procedures contained in the collective bargaining agreements between the bargaining unit of the affected employee and the City.

Section 11.1.10: This memorandum shall be made part of all the Collective Bargaining Agreements between the City and the labor unions that are members of the Labor-Management Healthcare Committee. However, the labor unions recognize that the term of the contract between the City and the Healthcare Company (ies) may not correspond to the term (or effective dates) of the seven Collective Bargaining Agreements. As such, all parties agree that all matters referenced in the MOA are not bound by the dates of the CBA’s between the member Labor unions and the City.
Section 11.1.11: Any member group of the Labor-Management Healthcare Committee may opt out from membership in the Committee upon thirty (30) days notice to all other members of the group.

Section 11.1.12: Any member of the Labor-Management Healthcare Committee may, upon thirty (30) days written notice to the other members of the Committee, request to re-open negotiations on healthcare. During such negotiations, all other terms of this agreement shall remain in effect until new terms are agreed upon.

Section 12 Hospitalization - Retiree

All employees covered by the terms of this Bargaining Agreement and who retire subsequent to January 1, 1990 and have reached age fifty (50) and who have accumulated a combination of years worked plus their age so that such combination totals seventy (70) or greater, shall be entitled to group hospitalization and surgical benefits in accordance with the plan as provided for in Section 11.1 until the individual reached age of sixty-five (65), at which time the City agrees to provide group hospitalization and surgical benefits supplemental to Medicare for those who qualify under this Bargaining Agreement.

None of the foregoing terms of length of service shall include purchased military service.

It is further agreed by all parties that the City has the right to deny the benefit of medical and hospital coverage, including the dental rider to any employee or retiree when it is ascertained that such person is eligible for the equivalent of such coverage as provided by the City from another employer, group or organization at no cost to such person by reason of the employment or membership in a group or organization of such person's spouse or other employment or membership in a group or organization of such person. It is further understood that the City is only responsible for supplemental coverage when such person qualifies for Medicare.

Section 11.3 - Life Insurance

All employees while in the employ of the City and covered by the terms of this Bargaining Agreement shall be entitled to life insurance.

A.) The face amount equal to the lowest thousand dollar sum of the salary of said employee. The cost of said life insurance shall be paid by the City of Niagara Falls, New York.

B.) For employees retiring at age sixty-two (62) or over with twenty (20) years of City employment, the City will provide life insurance protection in the amount of five hundred dollars ($500).

C.) An employee who has at least thirty (30) years of service including purchased military service time up to three (3) years shall have the one-time option of electing to receive five hundred dollars ($500) of life insurance protection or continued participation in the City group hospitalization plan. If the retiree elects to take the hospitalization option, the retiree will be required to certify annually on a form provided by the Personnel Department, that he is not receiving hospitalization coverage as a result of other employment; and in the event such certification is not received, coverage for that year will not be provided.

Section 11.4 - Disability Benefits Law

The City shall administer disability benefits insurance by payroll deduction. Members of the bargaining unit shall participate by contributing 100% of the individual premium for coverage.

ARTICLE 12.0 - EQUIPMENT/SAFETY

Section 12.1 - Safety Shoes

The City agrees to provide safety shoes to employees covered by this Bargaining Agreement whose work requires protection against foot injuries. Employees who require safety shoes will be limited to one (1) pair per year, at a cost to the City not to exceed ($110.00) a pair and that prior to reimbursement for the same, the employee must provide a valid receipt to the City. It will be mandatory the employees wear OSHA
approved shoes while on the job. The City's shoe program shall be administered by the Director of Personnel and the Safety Coordinator. The Union may choose City option of Shoe Van or maintain current safety shoe program. (Effective January 1, 2007)

Section 12.1 - Tool Allowance

Effective January 1, 2002, whenever an employee's required tools are not supplied by the City, the City will pay for lost or damaged required tools up to a maximum of one hundred and fifty dollars ($150.00) per year, per employee and that prior to reimbursement for the same, the employee must provide a valid receipt to the City and it being understood that this tool allowance shall apply only to those tools required for the performance of the employee's work with the City. If however a tool is damaged and needs to be replaced and the maximum amount of $150.00 has been depleted the City will reimburse provided the employee has a valid receipt. (Effective January 1, 2007)

Section 12.2 - Union Dues

The City agrees that upon presentation of dues deduction authorization card signed by the individual employees to which this Bargaining Agreement is applicable, it will make weekly or bi-weekly deductions from the wages of such employees so designated on the authorization cards as membership dues deduction and shall remain valid until cancellation thereof by the individual employees pursuant to established procedures.

Section 12.3 - Uniforms

The City agrees to provide two (2) work uniforms per year for the members of the Bargaining Unit. Uniform choice will be made cooperatively between Stewards and Management.

Section 12.4 - Random Drug Testing

All employees will submit to random drug testing as described in the attached policy. Testing in this regard will be in addition to any test required by the Department of Transportation. An employee testing positive will be dealt with according to policy negotiated by the USWA and the City in 2004.

ARTICLE 13.0 - SEPARABILITY

This Bargaining Agreement and all provisions herein are subject to all applicable laws and in the event any provision of this Agreement is held to violate such laws said provision shall not bind either of the parties but the remainder of this Agreement shall continue in full force and effect.

ARTICLE 14.0 - NO STRIKE PROVISION

Section 14.1

The Unions agree that they shall not engage in any strike in strict compliance with the provisions of the New York State Public Employee's Fair Employment Act.

Subsection 14.2

The Unions agree that they shall file with the City Clerk of the City of Niagara Falls, New York, for the period of its unchallenged representation status the affirmation that it does not assert the right to strike as provided by the New York State Public Employees' Fair Employment Act.

ARTICLE 15.0 - ASSIGNABILITY

At any time during the continuance of this Bargaining Agreement, either party shall have the right to sell, assign, transfer and set over this Bargaining Agreement with all its rights, title and interest therein to any person, firm or corporation, and the assignee thereof shall acquire all the rights granted to the assignor and shall be subject to any obligations that the assignor may have under this contract.
ARTICLE 16.0 - REQUIRED APPROVAL

It is agreed by and between the parties that any provisions of this Agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefore, shall not become effective until the appropriate legislative body has given approval.

ARTICLE 17.0 - DURATION OF AGREEMENT

Agreement becomes effective January 1, 2005 unless otherwise noted and will remain in full force and effective until December 31, 2008.

ARTICLE 18.0 - COPIES OF THIS AGREEMENT

Immediately following the execution of this codified Collective Bargaining Agreement, the City, at its own cost and expense, shall supply sufficient copies of the codified Collective Bargaining Agreement to the Unions which are parties to this Agreement so that all employees covered by this Bargaining Agreement shall be able to receive at least one (1) copy thereof, and to enable the said Unions to have sufficient file copies for future employees covered by this Bargaining Agreement and for their respective counsel.

Water/Wastewater Treatment Plant References: Any specific or inferred reference to the Water Treatment Plant, Wastewater Treatment Plant and/or its employees (should they exist) shall be deleted from the contract. This item will remain open to further negotiation.
2005 – 2008 CONTRACTUAL AGREEMENT

-BETWEEN-

THE CITY OF NIAGARA FALLS, NEW YORK

-AND-

NIAGARA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

IN WITNESS WHEREOF, the parties hereto have executed this Collective Bargaining Agreement between the City of Niagara Falls, and the Niagara County Building and Construction Trades Council.

CITY OF NIAGARA FALLS, NEW YORK

Vincenzo M. Ariello
Mayor

Clyde J. Johnston Jr.
Int. Union of Operating Engineers - Local 463

Mike Barczys
Empire State Regional Council Local 289

Russ Quarantillo
Electrical Workers Local 237

Jeff Herman
Bricklayers & Allied Craftworkers Local 3

City Administrator

Painters & Glaziers
District Council

CITY CLERK

ATTEST

Jeff Herman
A. INTRODUCTION

The City of Niagara Falls, New York (hereinafter, "City") and the Niagara County Building Trades (hereinafter, "Union"), hereby agree to the following Random Drug Testing Policy (hereinafter, "Policy"). This Policy may not be amended or otherwise modified except by mutual agreement between the City and the Union.

B. PURPOSE AND SCOPE

The City acknowledges that all employees have a right to exercise private judgment in matters relating to their personal lives. However, preventing the use of illegal drugs or the improper use of legal drugs by City employees is considered essential to the effectiveness of the City's work force and to the safety of its members and the community. This Policy seeks to promote the health, safety and welfare of City employees and to enhance the safety of members of the general community. It also seeks to identify problems with illegal drugs or the improper use of legal drugs if they exist and to provide assistance and treatment through an Employee Assistance Program to police employees that may experience such problems.

The City further acknowledges that this Policy is being implemented only as a preventative measure and not in response to any existing problems with drug use by City employees.

All employees represented by the Union are subject to and expected to comply with this Policy.

C. DEFINITIONS

For the purpose of interpreting and administering this Policy, the following terms or phrases are defined to mean:

1. **Illegal Drug**: means any drug that is not legally obtainable.

2. **Legal Drug**: means any prescribed drug or over-the-counter drug that has been legally obtained.

3. **Drug Testing**: means the scientific analysis of urine for the purpose of detecting: (1) the presence of an illegal drug or (2) a legal drug not legally obtained or being used for a purpose other than that for which it was prescribed or manufactured. Drugs that will be tested for under this Policy include, but are not limited to, amphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, marijuana, phencyclidine, methadone, methaqualone and propoxyphene.

4. **Prohibited Drug Use**: means a condition in which a police Employee is using an illegal drug or using a legal drug not legally obtained or being used for a purpose other than that for which it was prescribed or manufactured.
5. **Chain of Custody:** means mandated procedures to account for the integrity of each urine specimen by tracking its handling and storage from the point of collection to its final testing and disposition.

6. **Neutral Testing Process:** means that none of the personnel involved in the collection, testing of the urine sample or reporting the results have had any personal or professional contact with the Employee being tested that might give rise to even the appearance of personal bias against the Employee.

**D. POLICY STATEMENT**

No Employee is permitted to engage in any prohibited drug use as defined in this Policy.

Employees who believe that they may have a problem with prohibited drug use are encouraged to seek professional help through the Employee Assistance Program (hereinafter, "EAP") established by this Policy without waiting to be identified through the random testing program. Help voluntarily sought in this manner will be treated as strictly private and confidential.

Employees taking prescribed drugs or using over-the-counter medication that have any doubt about their ability to perform their duties should consult with their doctor and, if necessary, discuss alternative work options with their supervisor. However, under no circumstances will the legal use of legally obtained drugs be considered a violation of this Policy.

**E. AVAILABILITY OF HELP AND FINANCIAL ASSISTANCE**

There are a wide range of professional support programs available for individuals experiencing drug related problems and the City is committed to providing all reasonable rehabilitation support through these channels for police employees subject to this Policy.

Any Employee wishing to avail himself/herself of professional support should approach the EAP Coordinator.

The type of rehabilitation offered by EAP will include but not be limited to:

1. Assessment of current personal situation and future needs;
2. Referral to inpatient or outpatient center;
3. After care and relapse prevention counseling;
4. Introduction to support groups.

**AMNESTY**

The City recognizes that employees may be reluctant to admit they have a problem with prohibited drug use and seek help for such problem for fear of the possibility that adverse employment action will be taken against them. However, the City also recognizes that it is in the interests of the community, the police department and its members to take all reasonable steps to rehabilitate employees experiencing problems with prohibited drug use. Accordingly, under the terms of this Policy, no adverse employment action will be initiated by the City against any Employee who, prior to testing positive in a random drug test, voluntarily seeks assistance from the EAP for problems with prohibited drug use.
The Employee will comply with the EAP Procedure set forth in Section H below.

Employees who choose not to voluntarily seek help and who subsequently test positive for prohibited drug use when subjected to a random drug test will be subject to the following procedure.

**F. EMPLOYEES WHO TEST POSITIVE FOR PROHIBITED DRUGS**

In the event of a positive test result, the testing facility will send a Confidential Report to the City's Director of Human Resources or his designee and the President of the Union containing the following information:

1. Documentation that the testing facility is certified and/or licensed by the SAMHSA and NYSDOH or otherwise as required by applicable law.
2. Documentation that all personnel involved in the collection, testing of the urine sample and/or reporting of the results are properly licensed and certified as required by this Policy and applicable law.
3. Documentation verifying proper chain of custody and testing procedures as defined herein and as required by applicable law.
4. Documentation showing the testing conducted and the results thereof.
5. Any other information required by applicable law to be included in a drug testing litigation report.

An Employee whose drug test is reported positive will be offered the opportunity to:

1. Obtain and independently test, at the employee’s expense, the remaining portion of the urine specimen that yielded the positive result, and
2. Obtain the written test result and submit it to an independent medical review at the employee’s expense.

The Employee may use the City’s medical benefits, to the extent that coverage may apply, for meeting the costs of (1) and (2).

If the Employee questions the results of the test, upon receipt of the lab report and the results of any independent test conducted, the affected Employee, the President of the Union and the City’s Director of Human Resources or his designee will meet to review the matter. The purpose of the meeting will be to determine whether there was a valid positive test or whether the positive finding could have resulted from some cause other than prohibited drug use.

**G. PROCEDURE:**

Following a positive drug/alcohol test, the employee will receive a “Letter of Understanding” which will contain the following information:

1. That the employee is immediately placed on a medical or FMLA (if eligible) leave of absence and will remain on leave until released by the appropriate rehabilitation program(s) to return to work. During the period of the leave of absence, the employee will be able to use accumulated time in the following order: Personal, Sick, and Vacation.
When accumulated time is exhausted, the employee will not receive further payment from the City until the employee returns to work and all benefits will be administered in accordance with current leave policy.

2. Within 48 hours of notification of the positive test result, the employee must contact the Employee Assistance Program for the purpose of enrollment in a recognized drug rehabilitation program.

3. The employee must comply with all Employee Assistance Program and/or Department of Transportation requirements including, but not limited to, mandatory referral to a Substance Abuse Professional (SAP) when the employee in question carries a commercial Driver’s License (CDL).
   a. The employee will sign any and all releases required by the rehabilitation programs. The employee will also sign any and all releases necessary so that the City of Niagara Falls may monitor treatment progress.
   b. The employee must regularly attend and meaningfully participate in all scheduled EAP/SAP appointments.
   c. The employee must provide weekly documentation of attendance at the appropriate rehabilitation programs. (It may be necessary for the employee to sign and submit an attendance form from the proper rehab program).

4. The employee is responsible for any and all out of pocket costs associated with rehabilitation not covered by the employee’s health insurance through the City of Niagara Falls.

5. The employee, while on a medical leave of absence, is not authorized on any City worksite

6. The employee is not authorized to return to work until he or she is released by the appropriate rehabilitation program. If the employee is authorized to return to work by the rehabilitation program, but not approved to return to his safety sensitive position, then:
   a. The employee will return to work in a position commensurate with the employee’s restrictions (a non-safety sensitive classification), should a vacancy exist. The employee will understand and accept any downward classification that may be necessary to meet these restrictions.
   b. The employee is not permitted to work overtime unless authorized by the City Administrator or his designee.
   c. The employee will not return to a safety sensitive position until released by the Rehabilitation Program/Substance Abuse Professional.

7. Upon return from leave, the employee will remain in regular attendance at work. Any appointment relative to rehabilitation should be scheduled after work hours, as practicable. Any appointment that is scheduled during regular work must be pre-approved by the Department Head/Division Manager and the employee will be required to use their own accumulated time for such appointments.

8. The employee is subject to random drug testing by the City of Niagara Falls, in addition to Department of Transportation mandated testing, for a period of one year following the employee’s return to work. Any positive test within that one year period or any failure to
The determination that an Employee is engaging in prohibited drug use can be established only by a competent professional opinion based upon a scientifically valid test (including both an appropriate screening and confirmation test) conducted by a SAMHSA and NYSDOH certified laboratory with properly licensed and certified personnel. The positive drug test result must meet the requirements of a "Neutral Testing Process" as that phrase is defined herein. If either the laboratory and/or personnel are not properly certified or the test does not meet the requirements for a neutral testing process as defined herein, the test results are invalid, may not be used in any way by the City and must be deleted from the employee's record.

Where a test result is positive, the testing process must include an evaluation by testing facility personnel as to whether that positive result may be explained by any factors or circumstances other than prohibited drug use as defined in this Policy. Where a test is positive but it is ultimately determined that the Employee was not engaging in prohibited drug use as defined in this Policy, the result will be recorded as negative test for the purpose of administering this Policy.

I. RANDOM DRUG TESTING

This Random Drug Testing Policy requires any Employee who is on duty and who is selected for testing in accordance with the provisions of this Policy to provide a sample of their urine for the purpose of testing for the presence of prohibited drugs.

Random drug testing may be conducted on a 24 hour, seven day a week basis. However, employees will only be asked to submit to a test while on duty. Employees to be tested will be randomly chosen using a computer program to generate a random list of employee numbers. Employees will be identified by employee number only and not by name. Collection will take place at a location chosen by the City. The City may conduct up to four (4) tests per year and may test up to 20% of bargaining unit members during each test.

The Union President or his designee will be notified of the demand for a random drug test at the same time that the affected Employee is notified.

The City is responsible for all the costs associated with such testing and the Employee will be paid his/her normal pay and benefits for any time spent conducting the test or traveling to or from the site of the test.
J. REFUSAL

A refusal to submit to random testing when ordered shall be considered a positive test and will lead to disciplinary action by the City up to and including termination of employment. In addition to an outright refusal, other behaviors that may be considered a refusal include:

1. Leaving the test site without completing the test;
2. Attempting to adulterate the specimen or collection procedure, and
3. Not reporting to the collection site in the time allotted unless the Employee was unable to report in the time allotted due to circumstances beyond his or her control.

K. CONFIDENTIALITY GUARANTEE

All information concerning the implementation and/or administration of this Policy will be protected by the City as confidential unless authorized in writing by the affected Employee or as may otherwise be required by law. Confidentiality will be maintained by limiting access of the test results to the program administrator and the medical review Employee via secure Internet connection. The City is responsible to maintain the confidentiality of all drug testing results whether stored in a conventional format on paper or in electronic format.

All referrals to EAP will be treated in strict accordance with the confidentiality provisions of this Policy and applicable law. EAP Counselors will not disclose information about employees without their express consent, except in cases where disclosure is required by law. In such cases, the only information provided will relate to compliance issues. Specific details relating to personal counseling, advice and treatment will not be disclosed.

L. TRAINING

Upon the implementation of this Policy, the City will provide training to all employees subject to this policy concerning the implementation and administration of this policy.