

## **MEMORANDUM OF UNDERSTANDING**

This Agreement is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation, hereinafter called the "City," and the **INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1040**, hereinafter called the "Fire Department."

**WHEREAS**, the City of Rapid City imposed a contract for the period January 1, 2010, through December 31, 2013; and

**WHEREAS**, the City of Rapid City believes it is in the best interests of the parties to include in the imposed contract certain sections which were previously deleted.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed as follows:

1. Article Two, Section 2.03 of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

2.03 To the extent that the above rights are specifically limited by the provisions of this Agreement, alleged violations are subject to the grievance procedure.

2. Article Three, Section 3.03 of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

3.03 Disciplinary Action. It shall be the duty of all employees in the City service to maintain high standards of cooperation, efficiency, and economy in their work for the City.

A. Five Alternatives. Whenever work habits, attitude, production, infraction of regulations or personal conduct of an employee falls below an acceptable standard, supervisors should point out the deficiencies at the time they are observed. The Fire Chief or his designee may take any one or a combination of the following disciplinary measures, as appropriate, for just and reasonable cause:

1. Oral reprimand;
2. Written reprimand;
3. Suspension without pay;
4. Demotion;
5. Dismissal.

B. Written Reasons. When disciplinary action is taken by the Fire Chief or his designee, all matters pertaining to the action shall be filed in the employee's personnel record, with a copy given to the employee and the Union;

C. Suspension Status. Normally, suspension may be for a period not to exceed thirty (30) consecutive calendar days without pay and entitlements. An employee under suspension will not be permitted to exchange suspension for any paid leave, or accrue the same.

3. Article Three, Section 3.04 of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

3.04 Reduction in Force. If it is necessary to reduce personnel, the selection of employees to be retained shall be based upon Article Thirty, Section 30.02.

4. Article Five, Section 5.02 of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

5.02 Whenever the City shall combine job classifications, change job classifications, or establish new job classifications, it shall put such changes into effect. In the event the Union disagrees with the rate or rates so established, said rate shall be subject to the grievance procedure.

5. Article Seven, Section 7.01 of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

7.01 Probation Period.

- A. All newly hired employees shall be probationary employees for the first year.
- B. The Fire Chief shall have the discretionary authority to waive all or part of the probation period.
- C. During the first ninety (90) calendar days the employee shall not be eligible for any paid leave, including holiday, Kelley Day, annual leave, or sick leave.
- D. Probationary Employees. For performance purposes, all newly hired employees shall be probationary employees for a period of one (1) year. During the probationary period, the employee shall have no seniority status, and may be laid off or terminated at the sole discretion of the City with or without just cause.

Upon satisfactory completion of the employee's probationary period, seniority shall date back to the date of latest hire. The time from the date of most recent hire for continuous, benefited or part-time work within a department shall count toward the probationary period. However, no retroactive pay shall be made for benefits credited herein. Probationary employees, for the purpose of accruing and using benefits, shall be eligible employees after ninety (90) calendar days from their latest date of hire.

Upon the completion of the probation period, the employee shall be granted full rights and benefits of the regular employee.

- E. The Fire Chief may extend the probationary period for performance deficiencies or if the employee has a lost time due to injury or illness. Such extension shall not exceed 6 months.
- F. The Department has adopted an Administrative Rule implementing a residency policy for Fire Department employees to insure the protection of the public

health, safety and welfare. This section of the contract is intended to make the substance of the Administrative Rule contractual.

- 1) All employees of the Department must live within 30 minutes of the Main Fire Station located at 10 Main Street, Rapid City, South Dakota. The Department will maintain a map that includes the boundaries of the 30 minute response time.
- 2) Any employee currently residing more than 30 minutes from the Main Fire Station, but who is grandfathered under the existing Administrative Rule, shall continue to be grandfathered, subject to the provisions of the Administrative Rule. Any employee currently residing more than 30 minutes from the Main Fire Station, but who is not grandfathered under the existing Administrative Rule, shall be subject to discipline up to and including termination at the discretion of the Chief.
- 3) All other matters pertaining to residency shall be handled in accordance with the Administrative Rule or any future amendments thereto.

6. Article Seven, Section 7.02 of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

7.02 Promotion to Lieutenant.

- A. Promotions shall be made through determination of qualifications, utilizing a merit system procedure;
- B. Fire Department merit system requirements include a written examination, time-in-grade requirements, and a qualifications review by an inter-department promotion reviewing board, submitting recommendations to the Fire Chief;

C. Seniority shall be the basis for promotion where the promotion board finds all other merits equal between applicants.

7. Article Twenty-Four of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

**ARTICLE TWENTY-FOUR  
LAYOFF PROCEDURE**

24.01 Layoffs. In the event that the City determines that a reduction in the size of the labor force is necessary, the City shall proceed as follows:

A. Prior to laying off any employee, the City shall give fourteen days notice to the employee and the Union;

B. When deciding which employee or employees to lay off, the City shall consider:

- 1) Impact to services provided throughout the City;
- 2) Relative qualification and ability to perform the work;
- 3) Productivity and performance in current or previous position;
- 4) Whether the employee and position are critical as determined by the City;
- and
- 5) Physical fitness for the position;

C. If, after considering the above factors, the City determines that the qualifications of two or more employees are equal, the least senior employee or employees will be laid off.

24.02 Recall.

A. Following a layoff, if the City decides to hire employees, the City shall first notify laid off employees to return to work. Laid off employees shall be recalled in

reverse order of lay off, so that the last employee laid off shall be the first to be given the opportunity to return to work.

B. The City shall provide written notice to those employees who are eligible to return to work. The employee shall respond in writing to the written notice within seven days. In the employee's written response, the employee shall either agree to return to work as requested or decline to return to work.

C. If the employee declines in writing to return to work as requested, or if the employee fails to respond in writing or if the employee is absent without leave on the first shift the employee is scheduled to work, the employee shall be deemed to have resigned as a City employee and shall have no further right to be recalled.

D. Any employee who is laid off must insure the City has a current address for the employee. Non-receipt of a notice to return to work due to an outdated address shall not excuse the employee's obligation to respond within seven days.

Notwithstanding the employee's obligations, the City shall make a good faith effort to contact the employee via telephone if the employee leaves a current telephone number on file with the Chief.

E. Any employee recalled from a lay off must meet all physical fitness requirements for the position. The City may require the employee to complete a physical prior to returning to work. Failure to pass a physical or to meet all physical fitness requirements shall be deemed a voluntary resignation and the employee shall have no further right to be recalled.

8. Article Twenty-Six of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

## **ARTICLE TWENTY-SIX PERFORMANCE RATINGS**

Employees shall receive annual performance ratings by their supervisors. Performance rating shall be noted in employee service records and shall be considered in effecting personnel actions. If the employee disagrees with the evaluations such employee may rebut said evaluation directly to the Chief in writing.

9. Article Thirty-Two of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

## **ARTICLE THIRTY-TWO SENIORITY**

32.01 Seniority means the length of continuous service with the Fire Department, beginning with the latest date of hire with the City in the Fire Department.

32.02 Both parties are in accord that, along with other considerations, seniority within the division should be a factor in filling vacancies, in promotions, demotions, layoffs and recalls. All actions taken in these areas shall be taken with due consideration to ability, fitness, experience, qualifications, past performance and relative seniority. If all other considerations are relatively equal, seniority will prevail. The City shall be the judge of the controlling considerations but shall not act arbitrarily or capriciously in its decision. If seniority is bypassed, the employee shall, upon request, be furnished with written reasons therefore, and such affected employee may process his complaint through the grievance procedure under this Agreement.

32.03 The Department will furnish the Union a list of the employees within the bargaining unit, showing the names of all employees in the order of their seniority ranking, within thirty (30) days after the effective days of this Agreement, and a revised listing each six (6) months thereafter. Protests of errors in or omissions from seniority rosters must be made to the City within sixty (60) days from the date of the first furnishing of the list, or the list, and all subsequent lists, will be

deemed correct for all purposes. An information copy may be posted in the Main Station and each substation.

32.04 Termination of Seniority. Seniority shall terminate when an employee:

- A. Quits;
- B. Is discharged for just cause;
- C. Is retired;
- D. Is laid off for a continuous period of thirty-six (36) months, unless such time is extended in writing by the City and requested by the employee;
- E. Is absent beyond any paid leave for six (6) months because of a non-occupational illness or injury, unless such time is extended in writing by the City and requested by the employee, or unless the member is on a leave under Article Eighteen or Article Nineteen;
- F. Is absent beyond any paid leave for thirty-six (36) months because of an occupational illness or injury, unless such time is extended in writing by the City and requested by the employee.

32.05 The Union and the City shall agree on circumstances under which persons who leave the classifications of work covered by this Agreement, but remain in the employ of the City in some other capacity, may retain seniority rights upon their return to their original unit. In the absence of such express agreement, such employees shall lose all seniority rights. All previous commitments shall be honored with regard to this section.

10. Appendix C of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:



## **APPENDIX C**

### **STANDARD SCHEDULE OF DISCIPLINARY OFFENSES/PENALTIES FOR CITY OF RAPID CITY EMPLOYEES**

1. This list is not intended to cover every possible type of offense. Penalties for offenses not listed will be prescribed by the Department Director, Division Manager or Supervisor, consistent with penalties for offenses of comparable gravity, unless superseded by contract or law.
2. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it nonspecific.
3. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for four infractions committed in any 24-month period.
4. Where appropriate, consideration may be given to change to lower grade in lieu of dismissal.
5. Suspension penalties on this schedule apply to work days.
6. Reckoning periods commence on the date of the offense.
7. Departments may establish additional rules pertaining to each department, which are not in conflict with these rules.
8. Disciplinary action to suspend or dismiss an employee must be reviewed with the Human Resources Director and/or City Attorney's Office or designees prior to final action.
9. All rules and disciplinary actions are enforced in compliance with current federal and state statutes and regulations, as example the Fair Labor Standards Act.
10. Definitions: For clarity of interpretation, the following terms are defined:

Competent Authority – defined as those authorities that are properly appointed to carry out the supervisory/management duties as assigned by the City and as defined by the supervisory/management position.

Reckoning Period – defined as the period of time applicable to an offense in which no similar offense can occur. If, for instance, a first offense occurs and the reckoning period is six months and a similar infraction occurs within the six-month period, the similar infraction is counted as the second offense. If the reckoning period expires and another similar infraction occurs, the new occurrence may count as a first offense. This does not imply that continued patterns or frequencies of occurrence might not result in more severe penalties based upon performance factors.

11. Appendix D of the Union Contract for the period January 1, 2010, through December 31, 2013, shall read as follows:

#### **APPENDIX D RANGE OF PENALTIES FOR STATED OFFENSES**

*Penalties for disciplinary offenses will, in general, fall within the range indicated. In unusual circumstances, depending on the gravity of the offense, the past records, and the position of the employee, a penalty outside the general range may be imposed.*

*(Reprimands – Suspensions – Dismissals)*  
**NUMBER OF INFRACTIONS IN RECKONING PERIOD**

<u>NATURE OF OFFENSE</u>	<u>MIN</u>	<u>MAX</u>	<u>1ST OFFENSE</u>	<u>2ND OFFENSE</u>	<u>3RD OFFENSE</u>	<u>RECKONING</u>	<u>PERIOD</u>
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1.	Unexcused failure to report or tardiness at designated reporting site and time as assigned by department. Disciplinary action is in addition to non-pay status for period of tardiness.	R	1	1	5	5	15	6 months
2.	Failure to report in proper uniform as specified in department regulations. Disciplinary action is in addition to non-pay status for lost time to comply with uniform regulations.	R	1	1	5	5	15	6 months

3.	Failure to report on-duty personal injury or accident.	R	1	1	5	5	15	1 year
4.	Unexcused or unauthorized absence on one or more scheduled workdays. (Tardy=if less than 1 hour; Unexcused Absence = over 1 hour.) The charge of EXCESSIVE UNAUTHORIZED ABSENCE & penalty of dismissal may be used when absence exceeds 3 workdays or when it appears that employee has abandoned his position. Extenuating circumstances offered by the employee should be considered.	R	5	3	10	10	D	1 year
5.	Leaving job or premises to which assigned at any time during working hours without permission.	R	5	3	10	10	D	1 year
6.	Failure to observe precautions for personal safety, posted rules/City policies, signs, safety instructions, or to use protective clothing or equipment.	R	5	3	10	10	D	1 year
7.	Failure to report receipt of traffic citations, violating traffic regulations, reckless driving or improper operation of motor vehicle while on duty or at any time while operating a City vehicle.	R	5	3	10	10	D	1 year
8.	Loafing, wasting time, or inattention to duty.	R	5	3	10	10	D	1 year
9.	Carelessness resulting in spoiling or waste of materials or delay in productivity.	R	5	3	10	10	D	1 year
10.	Failure or delay in carrying out orders, work assignments, or instructions.	R	5	3	10	10	D	1 year
11.	Repeated garnishments showing failure to honor just debts without good cause.	R	5	1	5	5	D	1 year
12.	Unauthorized possession of, loss of, or damage to City property or property of others, or endangering same through carelessness.	R	5	10	10	10	D	2 years
13.	Disorderly conduct, fighting, threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay; or, resisting competent authority.	R	D	10	D	15	D	2 years

14.	Unlawful use or possession of alcohol, drug paraphernalia or illegal drugs on City property or while conducting City business; reporting to work under the influence of alcohol, illegal drugs, or through the improper use of prescribed drugs.	R	D	10	D	D	D	2 years
15.	Unlawful distribution of alcohol or drugs on City property or while conducting City business.	R	D	10	D	D	D	2 years
16.	Sleeping on duty except when necessitated by operations or authorized by competent authority.	R	D	15	D	D	D	2 years
17.	Intentionally revealing or releasing confidential information without proper authorization or use of such information for personal gain.	R	D	15	D	D	D	2 years
18.	Endangering the safety of or causing injury to personnel or citizens through carelessness.	R	D	15	D	D	D	2 years
19.	Malicious damage to City property or the property of others.	R	D	15	D	D	D	2 years
20.	Actual or attempted theft of City property.	R	D	15	D	D	D	2 years
21.	Conviction of a felony or misdemeanor with readily discernible harmful effects on City operation (e.g. employee morale or discipline)	R	D	15	D	D	D	2 years
22.	Immoral, indecent, or notoriously disgraceful conduct which reflects unfavorably on the City.	R	D	15	D	D	D	2 years
23.	Disrespectful conduct; use of insulting, abusive, or obscene (profane) language in connection with City duties.	R	D	15	D	D	D	2 years
24.	Discrimination against an employee or applicant because of race, color, religion, sex, age, national origin, or disability; or any reprisal action against employee.	R	D	15	D	D	D	2 years
25.	Falsification, misstatement, exaggeration, or concealment of material fact in connection with employment, promotion, any record, investigation, or other proper proceeding.	R	D	15	D	D	D	2 years
26.	Falsifying attendance record for oneself or another employee.	R	D	15	D	D	D	2 years

27.	Disobedience to competent authorities, or deliberate refusal to carry out a proper order from any supervisor having responsibility for the work of the employee; insubordination.	R	D	15	D	D	D	2 years
28.	Failure to immediately notify employee's department head of the loss of a valid South Dakota driver's license through revocation, suspension, or other ineligibility, if such license is required in the performance of job duties.	R	D	30	D	D	D	Continuous

R = Reprimand

# = Days of Suspension Without Pay

D = Dismissal

Dated this \_\_\_\_ day of January, 2011.

INTERNATIONAL ASSOCIATION  
OF FIREFIGHTER LOCAL 1040

By: 

CITY OF RAPID CITY  
A Municipal Corporation

  
Mayor

ATTEST:

  
*Acting* Finance Officer

(SEAL)