



IT NOW APPEARING THAT the City desires to settle and resolve the investigation without admitting or denying the OAG's findings, the OAG and the City hereby enter into this Assurance.

**PART ONE: INVESTIGATION AND FINDINGS**

1. The Office of the Attorney General received complaints and allegations from employees and residents of the City that the City engaged in and/or condoned discrimination and retaliation by its agents and employees.
2. In response to these complaints, the OAG initiated an investigation into the City's employment policies, practices, and procedures.
3. The OAG's investigation included numerous interviews with current and former City officials, supervisors, and employees, and a review and analysis of documents produced by the City and provided by employees and residents.
4. Based on this investigation, the OAG has determined that the City lacks sufficient employment policies and procedures to ensure that employment decisions are made fairly and discrimination complaints addressed appropriately, including the lack of an equal employment opportunity officer or equal employment opportunity plan to ensure discrimination laws are complied with and to promote equal employment opportunities. As such, the City's current policies and procedures, and the implementation of those policies and procedures, have been inadequate to ensure a workplace free from discrimination, harassment and retaliation that would be prohibited under the New York Human Rights Law, New York Executive Law Section 290, et seq.

## **PART TWO: COMPLIANCE WITH THE LAW**

5. The City agrees to abide by and enforce all federal, state, and local anti-discrimination laws, as well as a revised Discrimination and Harassment Policy.
6. The City will take all measures necessary to prevent and address any retaliatory conduct against any employee who has filed a discrimination complaint with the City or with any administrative agency or court.

## **PART THREE: DISCRIMINATION AND HARASSMENT POLICY**

7. The City will issue and implement a revised Policy Against Discrimination and Harassment, subject to OAG approval and consistent with the Collective Bargaining Agreements between the City and the United Steelworkers Local 9434-00 and 9434-02 (“Collective Bargaining Agreements” or “CBAs”), that should include (a) more clearly defined procedures for reporting discrimination or harassment; (b) stricter reporting requirements by supervisors; (c) independent review by the EEO compliance officer of all complaints involving harassment, discrimination, and retaliation; and (d) recommended timelines for evaluating complaints and making recommendations. The City will submit the revised policy to the OAG for approval within thirty (30) days of the effective date of this Agreement (“Effective Date”). The revised Policy Against Discrimination and Harassment will be disseminated to all City employees within fourteen (14) days of OAG approval and provided to all new employees upon hiring. All employees should acknowledge receipt of these procedures in writing within fourteen (14) days of receipt. Any proposed changes to the policy must be submitted to the OAG for approval. The City will designate a member of the City’s “Discrimination and Harassment Committee” to respond to any questions about the revised Policy Against

Discrimination and will identify the name and contact information of that person for all employees when disseminating the revised Policy.

**PART FOUR: EQUAL EMPLOYMENT OPPORTUNITY EFFORTS**

8. Equal Employment Opportunity Compliance Officer

The City will create and fund a non-competitive EEO Compliance Officer position. The Compliance Officer will be responsible for Niagara's compliance with federal, state and local anti-discrimination laws and furtherance of equal employment opportunities in public employment. The Compliance Officer will report directly to the Mayor and/or his designee. The Compliance Officer will create and submit reports to the Mayor, City Council, and the OAG regarding employment, recruitment, hiring, promotions, complaints, investigations, resolutions, and compliance by supervisors with EEO reporting and investigation policies. The Compliance Officer will also sit on the City's "Discrimination and Harassment Committee." The City will post the EEO Compliance Officer position within seven (7) days of the Effective Date and make all reasonable efforts to hire a qualified Compliance Officer within ninety (90) days of the Effective Date. In the event the City has not hired the Compliance Officer within ninety (90) days, the City will provide the OAG with documentation of its efforts, including all documents regarding the postings and applications for the position.

9. Review of Discrimination Complaints

Within ninety (90) days of the date of his or her appointment, the Compliance Officer shall conduct a review of all administrative complaints which allege employment discrimination or harassment filed with the City since January 1, 2008. The Compliance Officer shall make a determination whether or not the allegations in the complaints have

merit and submit his or her findings and recommendations for appropriate remedies, if any, in writing to the Mayor and Corporation Counsel for final approval and any appropriate action. Nothing in this provision precludes the Compliance Officer from reviewing complaints filed prior to January 1, 2008 if he or she determines such review is appropriate in carrying out his or her duties.

10. Creation of an EEO Plan

The City will create an Equal Employment Opportunity Plan to conduct targeted outreach, recruitment, and training of minority residents for available municipal positions. The City shall submit the Equal Opportunity Plan to the OAG for approval within sixty (60) days of the date the EEO Compliance Officer is appointed.

11. EEO Complaint Form

The City will utilize a revised EEO complaint form and make the EEO form available online, in offices of the City's Human Resources Department, and at official city job sites and any other centralized locations operated by the City where City employees may congregate, including during breaks while on duty, within fifteen (15) days of the date the EEO Compliance Officer is appointed.

12. Signage at Job Sites

The City will post conspicuous signs (no smaller than 11 x 14 in at least 18 point font) at all official city job sites regarding discrimination/harassment/retaliation policies and how to report discrimination or retaliation confidentially. The City shall submit a sample sign to the OAG for approval within fourteen (14) days of the Effective Date and will post the sign within twenty-one (21) days of OAG approval.

13. Equal Employment Opportunity Postings

The City will post language on all job announcements and on the home page of the City's website and on all links to job and civil service test announcements indicating that it is an Equal Employment Opportunity Employer, within fourteen (14) days of the Effective Date.

**PART FIVE: EMPLOYMENT POLICIES AND PROCEDURES**

14. Tasks and Standards

The City will create, adopt, and implement formal tasks and standards for all exempt and non-exempt municipal positions. Such tasks and standards shall comport with the New York State Civil Service Law, if applicable, and all terms and definitions set forth in the Collective Bargaining Agreements. The City will comply with this provision within one-hundred and twenty (120) days of the Effective Date.

15. Formal Evaluations

The City will create, adopt, and implement a formal evaluation system for all municipal employees that shall comport with the New York State Civil Service Law, if applicable, and all terms set forth in the Collective Bargaining Agreements. The City will comply with this provision within one-hundred and twenty (120) days of the Effective Date.

16. Policies Regarding Seasonal and Temporary Employees

The City will make concerted efforts to recruit, train, and hire seasonal employees for available permanent positions, including:

- a. Maintaining a mailing list of seasonal and temporary employees who received positive performance evaluations;

- b. Outreach and training to encourage and assist seasonal and temporary employees to take the civil service exam; and
- c. Establishing a formal policy of notifying seasonal workers first of seasonal positions as well as open permanent positions (competitive and non-competitive) and examination announcements.

**PART SIX: TRAINING**

17. Supervisory Training on New Anti-Discrimination and Harassment Policy

The City will train all employees with supervisory responsibilities on the new Discrimination and Harassment Policy. The City shall submit the training materials and protocol to the OAG for approval within forty-five (45) days of the date that the EEO Compliance Officer is appointed and will conduct the supervisory training within sixty (60) days of OAG approval of the training materials and protocol.

18. Training on Discrimination Laws and Diversity in the Workplace

The City will conduct formal EEO training of all employees, including what constitutes discrimination, harassment, and retaliation, and the policies against each. Training will include a clear explanation of penalties for engaging in harassment or retaliation as set forth in the revised Discrimination and Harassment Policy and relevant civil service laws and collective bargaining agreements and require all employees to affirm that they have participated in such training and agree to abide by the Policy. Failure to attend the training or affirm participation and compliance will be punishable by discipline. The City shall submit the training materials and protocols to the OAG for approval within sixty (60) days of the date the EEO Compliance Officer is appointed and

will complete the training for all employees within one-hundred and twenty (120) days of OAG approval of the training materials and protocol.

**PART SEVEN: RECORD KEEPING AND REPORTING**

19. Preservation of Documents

For the term of this Agreement, the City shall maintain the following:

- a. A copy of all written discrimination charges or complaints of discrimination or harassment filed with the City or with an agency or court against the City;
- b. Copies of any grievances involving complaints of discrimination or harassment filed by or against any City employee pursuant to a labor contract;
- c. Copies of all files relating to the City's investigation of and response to or resolution of a complaint of discrimination against the City, including notes on oral complaints;
- d. A list of all job applicants, stating each applicant's race and national origin and the date of applications, together with an identification of specific job titles, if any, for which the applicant applied;
- e. A list of permanent, temporary, and seasonal employees hired, stating each employee's race, national origin, starting job classification, and period of employment;
- f. A list of all temporary or seasonal employees appointed to permanent positions, stating each such employee's race, national origin, the

permanent position to which the employee was appointed, and the date of appointment;

- g. A copy of the Discrimination and Harassment Policy the City is required to prepare and all acknowledgement forms submitted pursuant to Section 2 of this Agreement;
- h. A copy of the EEO Plan the City is required to devise and implement pursuant to Section 4, Paragraph 10 of this Agreement and all documents related to the implementation of this plan;
- i. A copy of the EEO complaint form the City is required to prepare pursuant to Section 4, Paragraph 11 of this Agreement;
- j. Copies of the signs the City is required to prepare and utilize pursuant to Section 4, Paragraph 12 of this Agreement;
- k. Copies of all job announcements with EEO postings pursuant to Section 4, Paragraph 13 of this Agreement;
- l. A copy of all tasks and standards the City is required to create and utilize pursuant Section 5, Paragraph 14 of this Agreement;
- m. A copy of all formal evaluations for Niagara employees;
- n. All documents relating to the City's efforts and obligations pursuant to Section 5, Paragraph 16 of this Agreement; and
- o. A copy of the training materials the City is required to prepare and utilize pursuant to Section 6 of this Agreement.

20. Documents that the City is required to maintain pursuant to this Agreement shall be made available for inspection by the OAG at the location where these documents are

maintained in the normal course of business by the City upon receipt of fourteen (14) days prior notice. The OAG will have the right to review any employment-related documents kept in the regular course of business by the City, including those related to an employment discrimination claim, that are reasonably necessary for the enforcement and monitoring of this Agreement. Nothing in this Agreement is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law or this Agreement.

21. Within one-hundred and twenty (120) days of the Effective Date, and every six (6) months thereafter for the subsequent three years, the City shall submit a written report to the OAG that demonstrates compliance with terms of this Agreement. The written report on discrimination complaints, including oral complaints, shall include the name of the employee who made the complaint of discrimination, the office or department in which he or she works, the general subject matter of the complaint, the status of any investigation conducted by the City, any action taken by the City in response, and a copy of any written complaint and response or answer.

#### **PART EIGHT: COMPLIANCE AND ENFORCEABILITY**

22. This Assurance will expire three years and one-hundred and twenty days (120) after the Effective Date, except the OAG may, in its sole discretion, extend the reporting period upon a good-faith determination that the City has not complied with this Assurance, which non-compliance the OAG will discuss and attempt to resolve with the City before making such a determination.

23. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all

appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.

24. The parties may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention. Pursuant to New York Executive Law Section 63(15), evidence of a violation of this Assurance will constitute prima facie proof of a violation of the applicable statutes in any civil action or proceeding hereafter commenced by the OAG.

25. The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

26. If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.

27. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law or this Assurance.

28. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

29. This Assurance is final and binding on the parties including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No

assignment by any party hereto shall operate to relieve such party of its obligations herewith.

30. The City shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, assisted, cooperated, or participated in any manner in the investigation of the matter addressed in this Assurance.

31. Within one hundred and twenty (120) days of the Effective Date, and every six (6) months thereafter for the subsequent three years, the City shall certify that it has complied with the terms of this Agreement.

32. To the fullest extent of the law, the Mayor of the City of Niagara will have the responsibility to ensure full compliance with this Agreement by Department Heads and other public officials of the City. The Mayor shall notify the OAG in the event that a Department Head or other public official willfully refuses to comply with the terms of this Agreement.

33. The City agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects the City's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

34. All communications and notices regarding this Assurance shall be sent by first-class mail and, if twenty-five (25) pages or fewer in length, by facsimile, to:

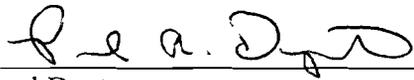
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IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Niagara Falls, New York  
November 16, 2009

CITY OF NIAGARA FALLS

By:   
Paul Dyster  
Mayor of Niagara Falls

CONSENTED TO:

Dated: New York, New York  
November 17, 2009

ANDREW M. CUOMO  
Attorney General of the State of New York

By:   
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Civil Rights Bureau

  
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