

**RESIGNATION AGREEMENT, WAIVER AND RELEASE BETWEEN:
CITY OF LA CROSSE, LOCAL 127, IAFF, AND TRACY JOHNSTON**

THIS AGREEMENT is made and is effective as of the date of execution (the "Effective Date") by and between the City of La Crosse (the "City"), Local 127 of the International Association of Fire Fighters (the "Association"), and Tracy Johnston ("Employee").

WHEREAS, Employee is employed by the City as a Firefighter;

WHEREAS, Employee desires to resign from the City;

WHEREAS, the City, the Association, and Employee desire, through this Agreement, to resolve any claims between the parties related to Employee's employment with the City;

WHEREAS, Employee desires, through this Agreement, to finalize her separation from employment with the City, to receive benefits that she is not otherwise entitled to receive, and to accept the terms of this Agreement.

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. **Separation Date and Health Insurance Benefits.** Employee and the City agree the Employee's voluntary and irrevocable resignation is effective on October 1, 2014 (the "Separation Date"). The City accepts Employee's resignation. Employee asserts she is resigning due to her permanent physical limitations which do not allow her to continue her duties as a fire fighter. The City disputes and does not agree with Employee's assertion that she is resigning due to any permanent physical limitations, and the City denies Employee has any permanent physical limitations. In consideration of Employee's promises and obligations under this Agreement, the City and Employee agree and understand that she has exhausted all paid time off that remains on the books and she shall not receive a separate payout of any paid time off as a result. Employee shall return all City property by the Separation Date. The City shall pay the employer's share of Employee's health insurance premiums for the City's health insurance plan available, to the extent provided in and as may change, in the applicable City policies and through the collective bargaining agreement applicable to the Association through February 28, 2015. Employee understands that she must elect health insurance benefit continuation and she is responsible for timely paying her share of the premium contributions in order to maintain her insurance benefits. Employee understands and agrees the City has no obligation to continue Employee's benefits or pay Employee's premiums for any other benefits beyond the Separation Date. For purposes of state and federal insurance continuation laws, including COBRA, the Separation Date shall be considered the "Qualifying Event." Employee acknowledges and agrees that she is entitled to no further payments or benefits, unless otherwise stated in this Agreement, and hereby waives any other rights to compensation or benefits from the City.
2. **Waiver and Release.** In consideration of the City's obligations and promises under this Agreement, Employee does hereby fully and forever discharge and release the City, which

includes for this section all departments and agencies, and all of the foregoing's past and present employees, officers, agents, representatives, insurers, and attorneys, from any and all actions, causes of action, claims, demands, damages (including but not limited to punitive damages), costs, expenses, attorneys' fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or to result from any action by the City which arose on or before the date of execution of this Agreement.

By way of example only and without in any way limiting the generality of the foregoing language, this release shall include all claims for relief or causes of action under the collective bargaining agreement, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e, et seq., the Age Discrimination in Employment Act; the Americans with Disabilities Act of 1991, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 791, 793 and 794; the Civil Rights Enforcement Statutes, 42 U.S.C. secs 1981 through 1988; Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001, et seq.; the National Labor Relations Act; 29 U.S.C. sec 151, et seq.; the Genetic Information Nondiscrimination Act; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.; the Occupational Safety and health Act of 1970, 29 U.S.C. § 651 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Wisconsin Fair Employment Laws, § 111.33 et seq., Wis. Stats.; the Wisconsin Family and Medical Leave Act, § 103.10, Wis. Stats.; Wis. Stat. 111.70; and any other federal, state or local statute, ordinance, or regulation dealing in any respect with discrimination or termination of employment, and, in addition, from all claims, demands, or actions brought on the basis of alleged wrongful or retaliatory discharge, breach of an oral or written contract, misrepresentation, defamation, interference with contract or intentional or negligent infliction of emotional distress, damage to business or professional reputation, conspiracy, negligence, invasion of privacy, or any other intentional tort or negligence claim or contract claim of any sort under the common law of any state or other jurisdiction. The parties understand and agree this Agreement does not waive Employee's right or ability to file charges or participate in an investigation with the Equal Employment Opportunity Commission but only if such right cannot be waived by law.

The parties understand and agree Employee waives any right to and shall not accept or recover any monetary damages or any other damages or anything of value from the City as a result of filing any action, claim, demand or charge, or for participating in any investigation or proceeding, or for any related claim, action or judgment against the City. Each agrees that in the event Employee, or another person on her behalf, files any action, claim, demand or charge, or receives any money or benefit as a result of such action, claim, demand, investigation, charge or proceeding or related claim, action or judgment, that is paid by the City, then Employee shall indemnify and fully reimburse the City for the City's costs and attorney fees in defense and for any damages paid by the City, regardless of the outcome of any case, and Employee shall indemnify and fully reimburse the City for any amounts paid to Employee, to Employee's attorneys or on Employee's behalf, all within ten days of the receipt of such payment or demand for payment. Section 2 shall not apply to challenges under Wisconsin's unemployment insurance laws, worker's compensation laws, application for short term disability benefits, long term disability benefits, benefits under §40.63 or §40.65 Wis. Stats., or retirement benefits, or to challenge the validity of this Agreement or the validity of the waiver in Section 3 of this Agreement.

3. **Older Workers Benefit Protection Act.** This Agreement is governed by the Older Workers Benefit Protection Act. Under this Act, Employee has been offered at least twenty-one (21) days after being given this Agreement during which she may consider whether or not to sign this Agreement. Further, in compliance with that Act, Employee has seven (7) days following her signing of this Agreement during which she may revoke this Agreement. Therefore, this Agreement will not be effective or enforceable until the eighth day after the date Employee signs this Agreement for delivery to the City's Human Resources Director. To be effective, a revocation must be received in writing within the seven (7) day period by the City's Human Resources Director. The parties understand and agree that, if Employee revokes this Agreement within the seven-day period referred to above, the City will not have any obligation to Employee under this Agreement.
4. **Advice to Consult Legal Counsel.** Because this Agreement includes a waiver of Employee's rights under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Wisconsin Fair Employment Act, and the other statutes and claims referred to in Sections 2 and 3, Employee is advised to consult an attorney before she signs this Agreement. Employee acknowledges she has consulted with legal counsel prior to signing this Agreement. Employee further states and agrees that she has read this Agreement, that she has had the opportunity to have it fully explained to her by an attorney or other representative or advisor, that she fully understands its final and binding effect, and that the only promises made to her to sign this agreement are those stated in this agreement, and that she is signing this agreement freely and voluntarily.
5. **No Admission of Liability.** The parties' participation in this Agreement is not to be construed as an admission of any wrongdoing or liability whatsoever by or on behalf of Employee, the Association, the City, or the City's employees, insurers, attorneys, officials, or agents.
6. **Nonprecedent Setting and Waiver of Association Claims.** The parties agree this Agreement is the product and result of unique facts and circumstances. This Agreement shall not serve as a precedent for any party with regard to any other circumstances or claims. The Association and Employee agree that each shall withdraw any pending labor relations-related claims, with prejudice, and waives any right to file any grievance, prohibited practice claim, duty of representation claim, or any other labor relations-related claim related to Employee's employment or the separation thereof.
7. **Association Acknowledgement.** The Association signs this agreement only as to the extent this agreement discusses rights covered under the Collective Bargaining Agreement between the City and the Association, and any related state or federal laws enforcing the same. The Association's signature does not indicate any opinion by its representatives, agents, or employees regarding the rights an Association member may have under any state, federal or local law prohibiting discrimination on the basis of age, ancestry, sex, race, religion, disability, creed, national origin, marital status, sexual orientation, handicap, or other protected class, or which prohibit retaliation in any way related to the filing of such a claim. Neither the Association, nor its representatives, agents, or employees make any representation by their signature of Employee's rights under any such claim.

8. **Duty of Fair Representation and Release by Association.** Employee acknowledges that the Association has met its Duty of Fair Representation to her in that the Association has represented her interests fairly, impartially and without discrimination. The Association understands and agrees that Employee owes no amounts to the Association for union, membership, or other dues or payments and waives any right to recover any such amounts from Employee. In consideration of the Employee's obligations and promises under this Agreement, the Association does hereby fully and forever discharge and release Employee from any and all actions, causes of action, claims, demands, damages (including but not limited to punitive damages), costs, expenses, attorneys' fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or result from any action by Employee which arose on or before the date of execution of this Agreement.

9. **Choice of Law and Entire Agreement.** This Agreement shall be construed and enforced in accord with the laws of the State of Wisconsin. It constitutes the entire agreement between the parties as to issues provided for in this Agreement. Headings are for the convenience of the parties only and shall not affect the interpretation or application of this Agreement. This Agreement is the product of mutual negotiations, and no rules of strict construction shall be applicable against either party.

10. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the offending provision will be deemed amended or deleted to the extent necessary to conform to the applicable law. If the waiver and release under Sections 2 or 3 of this Agreement is found to be illegal or unenforceable by any court of competent jurisdiction, then this Agreement shall become null and void at the City's discretion, the City shall have no further obligation to Employee under this Agreement.

11. **Counterparts.** This Agreement may be executed in counterparts and shall be as effective as if executed on one document. Facsimile signatures shall be as effective and valid as original signatures. This Agreement shall only be valid and binding upon the signatures of all parties.

IN WITNESS THEREFORE, the undersigned further state that they have carefully read the foregoing Agreement, know and understand its contents and sign the same under their own free will, being duly authorized to do so.

9/8/14
Date

Tracy L. Johnston
Tracy Johnston

9/5/14
Date

Jan [Signature]
Local 127, International Association of Fire Fighters

10/9/14
Date

Stacy Cleveland
City of La Crosse