

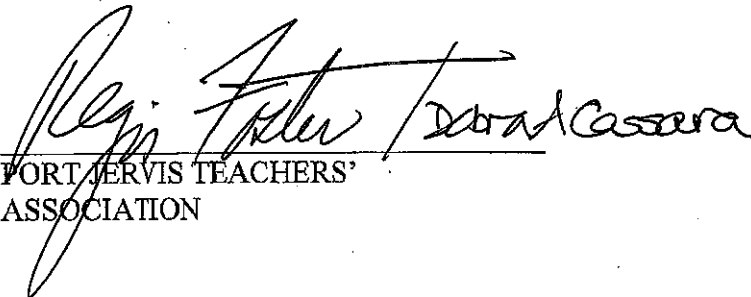
Side Letter of Agreement

It is hereby agreed by and between the Port Jervis City School District and the Port Jervis Teachers' Association as follows:

1. Modify #10 (Payout for Accumulated Sick Leave) of February 24, 2017 Memorandum of Agreement so that in lieu of excess payments being deposited into a 457 plan, excess payments shall be deposited in accordance with the Memorandum of Agreement attached hereto.
2. This Agreement is subject to approval by the Board of Education.

Dated:

PORT JERVIS CITY SCHOOL
DISTRICT



PORT JERVIS TEACHERS'
ASSOCIATION

MEMORANDUM OF AGREEMENT (hereinafter "MOA")

This Agreement is entered into as of the 6th day of June 2017 by and between the Port Jervis City School District ("Employer") and the Port Jervis Teachers' Association ("Association") as follows:

MANDATORY CLAUSES

1. **No Cash Option**. No employee may receive cash in lieu of or as an alternative to any of the Employer's Non-elective Contribution(s) described herein.
2. **Contribution Limitations**. In any applicable year, the maximum Employer Contribution shall not cause an employee's 403(b) account to exceed the applicable contribution limit under Section 415(c)(1) of the Code, as adjusted for cost-of-living increases. For Employer Non-elective Contributions made post-employment to former employees' 403(b) account, the Contribution Limit shall be based on the employee's compensation, as determined under Section 403(b)(3) of the Code and in any event, no Employer Non-elective Contribution shall be made on behalf of such former employee after the fifth taxable year following the taxable year in which that employee terminated employment.

In the event that the calculation of the Employer Non-elective Contribution referenced in any of the preceding paragraphs exceed the applicable Contribution Limits, the excess amount shall be handled by the Employer as follows:

- A. For all members in the New York State Teachers' Retirement System ("TRS") with a membership date before June 17, 1971¹, the Employer shall first make an Employer Non-elective Contribution up to the Contribution Limit of the Internal Revenue Code and then pay any excess amount as compensation directly to the Employee. In no instance shall the Employee have any rights to, including the ability to receive, any excess amount as compensation unless and until the Contribution Limit of the Internal Revenue Code are fully met through payment of the Employer's Non-Elective Contribution; and
- B. For all members in the New York State Teachers Retirement System ("TRS") with a membership date in the TRS on or after June 17, 1971, and

¹Explanation for TRS Categories: Under Education Law § 501(11)(a), the calculation of a pre-June 17, 1971 TRS Tier I member's last five years final average salary (upon which a member's life-time pension is in part calculated) includes any non-ordinary income (such as termination pay) which is received as compensation prior to December 31st of the year of retirement. Thus, such a member would benefit from receiving, as compensation, in their final year of employment that portion of the Employer Non-elective contribution, which is in excess of the maximum Contribution Limits of IRC § 415.

The final average salary of all other members of the TRS (i.e., all TRS members with a membership date on or after June 17, 1971) may not include any form of Termination Pay; therefore, the Employer's post-retirement payment into the employee's 403(b) account of that portion of the Employer Non-elective Contribution, which is in excess of the maximum Contribution Limits of IRC § 415, is more advantageous for those members.

for all members in the New York State Employees' Retirement System regardless of their membership date, the Employer shall first make an Employer Non-elective Contribution up to the Contribution Limit of the Internal Revenue Code. To the extent that the Employer Non-elective Contribution exceeds the Contribution Limit, such excess shall be reallocated to the Employee the following year as an Employer Non-elective Contribution (which Contribution shall not exceed the maximum amount permitted under the Code), and by January 15th of each subsequent year for up to four (4) years after the year of the Employee's employment severance, until such time as the Employer Non-elective Contribution is fully deposited into the Employee's 403(b) account; provided, however, that in the event that an Employee shall die before an amount reallocated to a year subsequent to the Employee's employment severance has been deposited in the Employee's 403(b) account, such amount shall instead be paid to the Employee's estate. In no case shall the Employer Non-elective Contribution exceed the Contribution Limit of the Internal Revenue Code.

3. **403(b) Accounts.** Employer contributions shall be deposited into the 403(b) account of each recipient employee. If the employee does not have a 403(b) or account, the Employer shall deposit the employer contributions, in the name of the employee, into a 403(b) account established in the employee's name. Agents from Participating Service Providers in the 403(b) Plan will be allowed reasonable access to the School District's facilities in order to assist the employees and District's representatives in fulfilling applicable 403(b) legal requirements. OMNI will assist District's representatives in calculating the annual maximum allowable 403(b) contribution under the Internal Revenue Code, based upon salary and payroll information provided to OMNI by the District. Upon the request of the District, OMNI agrees to provide the Employer with their standard hold harmless agreement.
4. **Tier I Adjustments.** Tier I members with membership dates prior to June 17, 1971, Employer Non-elective Contribution hereunder will be reported as non-regular compensation to the New York State Teachers' Retirement System.
5. **Employer Non-Elective Contribution Equal to Termination Pay.** The Employer agrees to make an Employer Non-elective Contribution to the 403(b) account of Employee. The Employer shall make the maximum contribution permitted under Section 415(c)(1) of the Internal Revenue Code of 1986, as amended. The Employer shall deposit the contribution.

Port Jervis City School District:

Port Jervis Teachers' Association:

By: _____

Regis A. Foster / *Dora Casar*
Dated: 6/1/19

Dated: _____