

AGREEMENT

BETWEEN

THE CITY OF MIDDLETOWN

AND

**THE MIDDLETOWN PROFESSIONAL
FIREFIGHTERS, INC.**

January 1, 2009 to December 31, 2012

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THIS AGREEMENT, made and entered into by and between the CITY OF MIDDLETOWN, Orange County, New York, a domestic municipal corporation, having an office and principal place of business at 16 James Street, Middletown, New York (hereinafter referred to as "City"), and MIDDLETOWN PROFESSIONAL FIREFIGHTERS ASSOCIATION, INC., a domestic corporation having an office and principal place of business at Central Firehouse, East Main Street, Middletown, New York (hereinafter referred to as "Firefighters").

In order to effectuate the provisions of Chapter 392 of the Law of 1967 (the Public Employees Fair Employment Act, Article 14 of the New York State Civil Service Law as amended) to encourage and increase effective and harmonious relationships between the City and its Professional Fire Department represented by the Firefighters and so that the Middletown Fire Department may better serve the interest of the residents and taxpayers in the City of Middletown, the City and the Firefighters enter into this agreement.

ARTICLE I - RECOGNITION AND DUES DEDUCTION

A. The City has recognized the Middletown Professional Firefighters Association, Inc., as the exclusive negotiating agent for the paid members of the Middletown Fire Department.

B. The Association is hereby granted the right to membership dues deductions and agency fee deductions. The Association shall also supply a list of names to the City of those members of the bargaining unit who are not members of the Association. Payroll deductions shall be made from those individuals in the same manner as Association members for a dollar amount indicated by the Association. The City shall transmit those monies to the Association in the same manner as the monies of the members of the Association.

ARTICLE III - HEALTH INSURANCE

A. The City shall pay for the entire cost of a health insurance program for the existing employees in accordance with presently established practice pursuant to a family plan coverage as governed by the rules and regulations of the medical insurance carrier. New employees hired after January 1, 1995 are to pay fifteen (15%) percent of medical insurance costs.

B. Effective July 1, 2009, new employees hired on or after January 1, 1995 ("new employee") shall pay a portion of the premium cost for health and hospital insurance coverage (hereafter "health insurance") in accordance with the following schedule.

- i. Commencing the first day the new employee is covered by and the City makes premium payment on behalf of the employee for purposes of the health insurance plan, the new employee shall pay fifteen percent (15%) of the premium cost paid by the City for the health insurance coverage for no more than sixty consecutive (60) months. The premium cost payment shall be made by the new employee in accordance with existing arrangements for bargaining unit members to pay a portion of the cost of the health insurance premium.
- ii. The fifteen percent (15%) premium cost payment as provided herein shall be made by the new employee for a total of sixty (60) months of premium cost payment by the employee for health insurance coverage provided to the new employee and/or the new employee's dependents.
- iii. Commencing the sixty-first (61st) month of health insurance coverage for which the City makes premium cost payment, the new employee shall pay ten percent (10%) of the premium cost paid by the City for the health insurance coverage for no more than twelve months. The premium cost payment shall be made by the new employee in accordance with existing arrangements for bargaining unit members to pay a portion of the cost of the health insurance premium. The ten percent payment shall be made

plans. A welfare fund committee composed of three members of the union and three members designated by the city shall administer the welfare fund. The welfare committee shall prepare an annual statement of said welfare fund and distribute to all six welfare fund committee members and upon request by either party an independent audit of the welfare funds financial records can be required and paid by the requesting party.

~~E D~~ E. The City may change insurance carriers provided the schedule of benefits is at least equal to the coverage being replaced and of the same area health care institution acceptability, provided that any replacement carrier has no less BEST's rating and that there be no lapse in benefits.

~~F E~~ F. The City reserves the right to provide for disability coverage on a self-insurance, self-funded, or insurance basis without resorting to bargaining.

~~G F~~ G. Employees who waive their city health insurance benefits will receive 50% of the cost of the policy. Each employee whom opts to waive their health benefit must provide documentation of enrollment into another health plan to the city prior to obtaining this benefit. The employee must annually show evidence of other similar coverage. The employee may re-enroll if other coverage is dropped. The employee must sign a waiver.

~~H G~~ H. The City allows an employee the option in lieu of the current health insurance coverage, to participate in an HMO. The cost of which shall not exceed the current premiums now in effect. This excludes the insurance coverage buyout.

~~I H~~ I. The City will provide an optical plan for all union members as submitted. The premium is \$75/employee and must use the city provider. If not, an allowance not to exceed \$75 will be given for the non-participating optical service.

~~J I~~ J. The City will provide a \$25,000 life insurance policy for all union employees. The city proposes to self-insure this policy. The duration of the policy is only for the duration of employment. Any firefighter who dies in the line of duty or as a result of an on the job injury will receive a \$5,000.00 allowance towards funeral expenses.

D. Schools may be attended outside the borders of the State of New York. District of travel is to be restricted to 440 miles from the City of Middletown (880 miles round trip). The Term "schools" shall include seminars, training sessions, and include the National Fire Academy. Travel restrictions shall not apply to Fire Inspectors, but it must be with the approval of the Chief of the Fire Department.

E. Attendance and use of the education fund shall be on a seniority rotation system. Attendance is strictly voluntary.

F. College courses related to fire may be taken. Courses in physics and chemistry and the math required for these courses may also be taken. Elective courses and other required courses for the award of a degree shall not be provided for by the education fund. It is not the intent of the City of Middletown to provide a college degree to paid firefighters.

G. All cost for travel, meals, and lodging shall come from the education fund. Allowances for these items shall be set by the Professional Firefighters Association and the Fire Chief.

H. Advanced approval in writing must be obtained from the Fire Chief and the Professional Firefighters Association before any of the above training or college courses may be taken and only for job related courses approved by the Chief of the Fire Department.

I. Reimbursement shall be denied or recouped from employee if a grade below "C" where letter grades are given, is received. The city agrees the money is to be used for education only and not for overtime.

J. Training needed after promotion, or training mandated by the City of Middletown, State of New York or the Federal Government shall not be included in these provisions. Lieutenants may attend training and education courses, paid for by the city, with the approval of the Chief and subject to budgetary conditions.

ARTICLE VI - PROMOTION

A. In the event that promotions are to be made in the Middletown Fire Department, such

D. The fire Inspectors regularly assigned shift will be 08:00 hours to 16:00 hours

ARTICLE VIII - WORK SCHEDULES

A. Work schedules shall be prepared by the Chief of the fire department in consultation with and approval by the paid firefighters. As used in this contract, a work week is defined as consisting of forty (40) hours.

B. The firefighters shall be authorized, upon the express approval of the Chief, to exchange tours of duty of equal duration with other members of the unit. The Chief or Assistant Chiefs shall be the sole determining factor in applications for exchanges. They shall not be unreasonably withheld.

C. Training shall not exceed four (4) hours per shift and all training shall be completed by 4:00 P.M. with the exception of new firefighters during their break-in training period. Makeup training will be completed on assigned duty days in compliance with the four (4) hour limitation. There shall be no training on Sundays or holidays except where the Chief of the fire department deems it necessary.

D. Except for responding to fire calls, covering at stations and the normal working routine including shoveling snow and general house cleaning, there will be no outside activities assigned to firefighters when the temperature reaches 90° or higher, or 32° or lower, except where the Chief of the fire department deems it necessary. This inclement weather clause will also cover rain or snow storms. Traveling directly to and from stations for the purpose on in-station training is permissible and will not affect this inclement weather section.

E. A professional firefighter shall be considered on duty 24 hours per day in any activity in which he takes part as a firefighter. A firefighter shall report to the duty chief at any fire or emergency he attends off duty.

F. TIME OWED: Any firefighters owing time, shall be used first and until paid back, at the reasonable discretion of the chief. Any firefighter who owes time at the time of separation from the City service will be responsible to negotiate a reasonable repayment schedule of the time owed for all payments made to the employee or on his behalf.

the firefighter to obtain clothing out of that allocation.

B. Additionally, if OSHA should require changes in safety equipment or uniforms, these items will be initially furnished by the department at no cost to the employee.

C. A new employee is to be paid a full uniform allowance upon his employment. A retiring or resigning or terminated employee's clothing allowance is to be pro-rated at the time of termination. Excess funds paid on said pro-rated basis to be recouped by the City through said employee's last payroll check or from an accumulated sick time fund.

D. Effective January 1, 2010 the City shall have the right to replace the cleaning allowance provided by the contract with a cleaning service. The City shall provide thirty days notice of intent to implement the cleaning service no later than January 1, 2010. If the City does not provide the notice as provided herein, the City shall continue to make the cleaning service payment as provided by the contract. In no circumstance will the City be obligated to make a cleaning allowance payment and provide a cleaning service for the same fiscal year.

E. Effective January 1, 2010, the City shall have the right to replace the clothing allowance provided by the contract with a voucher system whereby an employee is provided a voucher issued to a uniform supply company for purposes of purchase of uniform item(s) for use in employment with the Fire Department. The annual uniform allowance voucher shall be \$525 and shall be provided to each bargaining unit member by February 1 annually. In addition, the parties shall form a uniform committee for purposes of review, evaluation and recommendation for implementation of a quarter master program to provide uniform items to members of the Department in place of the uniform voucher allowance. The uniform committee shall consist of no more than two representatives of the Union and two representatives of the Department/City. The uniform committee shall be formulated and hold its first meeting no later than sixty (60) days after June 24, 2009 and the uniform committee shall provide a recommendation on implementation of the quarter ^{MASTER} system no later than November 30, 2009. If the voucher system is not implemented, the City shall continue to make the uniform allowance

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C. Effective January 1, 2010, the salary schedule in effect on December 31, 2008 shall be increased by three percent (3.0%) for each position and salary step reflected on the Salary Schedule attached to the contract.

D. Effective January 1, 2011, the salary schedule in effect on December 31, 2010 shall be increased by three point one-five percent (3.15%) for each position and salary step reflected on the Salary Schedule attached to the contract.

E. Effective January 1, 2012, the salary schedule in effect on December 31, 2011 shall be increased by three point three-five percent (3.35%) for each position and salary step reflected on the Salary Schedule attached to the contract.

F. The Lieutenant designated as MTO for administration of the training program as required by New York State, shall receive an additional \$1000 in salary for such duties, paid quarterly.

G. All salaries shall be paid on a bi-weekly basis.

ARTICLE XVI - OVERTIME

A. Payment for overtime shall be at the rate of time and one-half. Overtime will be scheduled on rotation starting with the most senior firefighter first.

B. Overtime shall be assigned equally throughout the paid members of the fire department. There shall be one seniority list for the assigning of overtime for all seven fire apparatus. There shall be no exclusionary rules concerning the assignment of overtime due to seniority of individuals assigned to a specific company.

C. Lieutenants shall be subject to the same rules of overtime assignment as all other members of the paid force. Lieutenants shall be paid time and one-half of their Lieutenants salary for all overtime worked.

D. The Chief of the fire department will assign a regular firefighter as acting Lieutenant in the event no Lieutenant is on duty. This assignment will be made by seniority and qualifications, on a

employee's continuous employment with the city. Any unit member shall be paid for all such time which remains accumulated and unused at the time of severance from city employment for any reason.

D. The current practice with regard to the method and procedure of implementation and payment for accumulated sick leave shall continue.

E. Employees may accumulate up to 2080 hours. Employees with more than 2080 hours as of 12/31/92 will not lose those days. However, they will not be able to accumulate more. Those employees with more than 2080 hours shall have a personal sick leave cap equal to the amount on record as of 12/31/92, and that amount shall be applied at the time of retirement.

F. Employees may accumulate an unlimited number of sick leave hours for their use. Section E applies only for the purpose of determining the number of accrued hours to base payment at retirement.

G. If the fire chief detects a pattern of sick leave abuse or if a firefighter take sick leave for more than two consecutive twelve hour shifts (3-12 hour shifts), the fire chief may require the firefighter to produce a doctors note explaining such a sick leave.

ARTICLE XVIII - VACATIONS

A. After one year of service a paid firefighter is entitled to two weeks vacation. After five years of service a firefighter shall receive three weeks of vacation. After fifteen years of service a firefighter shall receive four weeks of vacation.

B. All employees' will receive their vacation allowances on a pro-rated monthly basis according to their grade.

The existing method of selection and taking of vacation shall remain the same.

C. In the event that a firefighter completes five years of service or fifteen years of service prior to July 1st in any year, that person shall receive the vacation accorded to a five year firefighter or a fifteen year firefighter, as the case may be, as provided for above, prior to December 31st of that year.

ARTICLE XIX - GRIEVANCE PROCEDURE

A. It is the intent of this procedure to provide for the orderly settlement of differences in a fair

employee and/or his representative may appeal in writing to the Mayor of the City of Middletown for review and determination. Within five (5) working days after receipt of the written grievance, the Mayor must render a formal decision to the employee and the employee's representative in writing. If the grievance is not satisfactorily resolved by the written decision of the Mayor, the employee, within ten (10) days of the receipt of the Mayor's written decision, may appeal in writing to the Labor-Management Committee contained in Article XX. At this hearing, the employee or a representative may appear and present oral or written statements and arguments. Both sides shall be permitted to present all evidence available. The Review Board Shall render a written decision within five (5) days after the hearing.

C. After such hearing, if the employee or a representative is not satisfied with the decision, the union may submit the grievance to arbitration by written notice to the Mayor and Chief of the Fire Department within ten (10) days of the rendering of a decision. The employee shall not lose any employee rights afforded under NYS Civil Service Law. Within five (5) working days after such written notices of submission to arbitration, the Mayor and the President of the Middletown Professional Firefighters Association, Inc. will request a list of arbitrators from the American Arbitration Association or PERB. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators will be made to the American Arbitration Association or PERB by either party.

The parties will then be bound by the rules and procedures of the American Arbitration Association or PERE in the selection of an arbitrator. The selected arbitrator will hear the matter promptly and will issue a decision not later than 14 calendar days from the date of the closing of the hearing, or if oral hearing has been waived, then from the date the final statements and proof are submitted. The arbitrator's decision will be in writing and set forth findings of fact, reasoning and conclusion on the issues. The arbitrator shall have no authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this agreement. The decision of the arbitrator shall be final and binding upon all parties. The cost for the services of the arbitrator, including

3. Bunker coat and pants with liners, fit to size, safety striped, made by Globe, or comparable.
4. Gloves, made by Globe, or comparable.
5. Nomex hood, personal safety rope and Gemtor Harness and straps if it will not create any loss of warranty of the equipment.
6. Any Firefighters Protective Equipment in need of replacement will be reissued protective equipment described within this article. (Info not to be included in contract. Gemtor Harnesses will be issued from supply room on the 3rd floor of central firehouse. No extra cost to the city).

B. All protective equipment shall be OSHA and NFPA approved; style and color shall conform to current department standards.

C. The probationary period for a new firefighter shall be six (6) months.

ARTICLE XXII – LIEUTENANTS

A. The assignment of a lieutenant shall be done in such a manner that no firefighter assigned to a specific company will have to surrender a position to make room for a lieutenant appointment on a group.

B. There will be one person assigned to each group as a lieutenant. Date of appointment shall determine lieutenant's seniority.

C. In the event of more than one firefighter being promoted from one group, the senior lieutenant shall have the choice of remaining on that group or accepting a vacation position on a group that has no lieutenant; if the senior firefighter decides to remain on the group, the other firefighter will have to accept a vacation position on a group that does not have a member being promoted to lieutenant (if there is no vacant position to be bid.)

D. ~~D.~~ Lieutenant may change shifts, only when a permanent lieutenant vacates his position for any reason. This will be regulated by their seniority as of their date of their being promoted to Lieutenant.

E. All shift officers will be identified as Lieutenants. The uniform will reflect those of a FDNY Lieutenant. ~~The uniform will reflect those of a FDNY Lieutenant.~~

F. All position of Lieutenant will conform to New York State Civil Service job description and New York State General Municipal Law 10, Section 209x. The City agrees a First Line Supervisor (Lieutenant)



4. Emergency First Aid certification

B. Both parties agree that any necessary training required to perform these duties will be done during regularly scheduled tours of duty. If additional outside training is necessary, the provisions in ARTICLE V shall apply.

C. The City agrees that the In-Service Inspection program is to be administered by the Fire Inspector and/or the Commissioner of Public Works. The Middletown Professional Firefighters' Union shall assist in the administration of this program.

ARTICLE XXV - ACCUMULATION OF SICK LEAVE & HOSPITALIZATION

Firefighters on leave, pursuant to General Municipal Law 207A, shall continue to accumulate sick leave and receive hospitalization benefits in addition to those benefits guaranteed by the statute.

ARTICLE XXVI - TESTING FOR ILLEGAL DRUGS

The Drug and Alcohol Testing Policy and Procedure attached hereto as Appendix A shall be effective June 24, 2009. The City shall be allowed to have pre-employment drug testing for all prospective firefighters.

ARTICLE XXVII - FUND FOR FIRE PREVENTION PROGRAMS

The City shall establish a fund, in the amount of \$1000 per year, to be used by the professional firefighters to effect and maintain fire prevention programs. Funds not used in one year shall revert to the general fund. Should any of said additional monies be needed for the next year, the City will re-appropriate that amount. The firefighters will receive a copy at the end of the year of any money that is being reverted back to the general fund.

ARTICLE XXVIII - EXTRA FIREFIGHTERS

A. The Chief or his designee shall have the authority to move a Relief Firefighter or Vacation Firefighter to another position on his/her own group. For extended absences, relief firefighters assigned to

ARTICLE XXX – RESIDENCY

All firefighters shall be entitled to reside anywhere in Orange County, State of New York, or within a twenty-five (25) mile radius of the City of Middletown, New York, within the State of New York.

ARTICLE XXXI – INITIAL MANDATORY PHYSICAL EXAMINATIONS

For the purpose of initial mandatory physicals only, the following guidelines shall be used:

1. Should a firefighter fail the required physical, he shall be referred to the EAP for rehabilitation, under Doctor's supervision.
2. Should Doctor find firefighter unable to be rehabilitated, firefighter may get a second opinion with the city paying all out of pocket expenses.
3. Should firefighter be able to be rehabilitated within one (1) year, he shall have the option of using accrued leave and swap time OR work five (5) day eight (8) hour shifts at Central Fire Station or Fire Inspector Dept. at Chief's discretion.
4. Relief persons will fill affected positions, by seniority. Vacation persons, by seniority, shall be used if necessary after relief persons.
5. Nothing in this article shall be considered to diminish any rights of the firefighter under any agreement or law.
6. After twelve (12) months, firefighter must use accrued leave.

ARTICLE XXXII - NOTICE REQUIRED BY SECTION 204-a CIVIL SERVICE LAW

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

ARTICLE XXXIII - DURATION

CITY OF MIDDLETOWN AND MIDDLETOWN
 PROFESSIONAL FIRE FIGHTERS
 SALARY SCHEDULE
 CONTRACT YEARS 2009 - 2012

FIREFIGHTER

	1/1/2009	1/1/2010	1/1/2011	1/1/2012
1st	44,983	46,332	47,792	49,393
2nd	52,668	54,248	55,957	57,831
3rd	54,414	56,046	57,812	59,749
4th	56,178	57,863	59,686	61,686
5th	57,942	59,680	61,560	63,622
6th	58,796	60,560	62,468	64,560
7th	60,236	62,043	63,997	66,141
10th	61,596	63,444	65,442	67,635
15th	63,186	65,082	67,132	69,381
18th	64,284	66,213	68,298	70,586

FIRE LIEUTENANT

	1/1/2009	1/1/2010	1/1/2011	1/1/2012
1st	52,527	54,103	55,807	57,677
2nd	60,218	62,025	63,978	66,122
3rd	61,959	63,818	65,828	68,033
4th	63,722	65,634	67,701	69,969
5th	65,487	67,452	69,576	71,907
6th	66,338	68,328	70,480	72,842
7th	68,023	70,064	72,271	74,692
10th	69,389	71,471	73,722	76,192
15th	70,979	73,108	75,411	77,938
18th	72,075	74,237	76,576	79,141

FIRE INSPECTOR

	1/1/2009	1/1/2010	1/1/2011	1/1/2012
3rd	63,308	65,207	67,261	69,515
4th	65,070	67,022	69,133	71,449
5th	66,837	68,842	71,011	73,389
6th	67,688	69,719	71,915	74,324
7th	69,418	71,501	73,753	76,224
10th	70,778	72,901	75,198	77,717
15th	72,368	74,539	76,887	79,463
18th	73,469	75,673	78,057	80,672

APPENDIX A

MIDDLETOWN FIRE DEPARTMENT ALCOHOL AND DRUG POLICY

Introduction It is the policy of the City of Middletown to eliminate the use of alcohol, use and possession of illegal drugs and abuse of prescription drugs in the workplace and to provide rehabilitation and treatment services to those employees who recognize and seek assistance with problems related to the use of drugs or alcohol. Absenteeism, disciplinary problems, high utilization of health insurance and accidents have all been shown to be adversely affected by substance abuse. It is purpose of this policy to eliminate the use of alcohol and drugs in the workplace with the goal of creating a safer, healthier and more efficient workplace while providing support and assistance to employees who affirmatively act to treat problems with drugs or alcohol.

Section 1 Alcohol/Drug Testing

Upon reasonable suspicion to believe an employee is under the influence of alcohol or drugs, the City may require such employee to submit to an alcohol test, as set forth in Section 2.A below, or a drug test as set forth in Section 2.B below. The test shall not be administered until thirty (30) minutes after notification to submit to a test. Reasonable suspicion to believe an employee is under the influence of alcohol or drugs exists when objective facts and observations are brought to the attention of the department head/supervisor, as hereinafter defined, and based upon the reliability and weight of such information, he/she can reasonably infer or suspect that the employee is under the influence of alcohol or drugs. Reasonable suspicion must be supported by specific articulable facts and a written report of the findings and facts provided to the employee.

Section 2 Testing Procedures

A. Tests for Alcohol:

1. Tests for alcohol shall only be conducted by a breath alcohol technician using a Datamaster breath-testing device, or its designated successor. Such device shall be approved by the National Highway Traffic Safety Administration and placed on the Conforming Products List of Evidential Breath Measurement Devices.
2. Alcohol screening shall be conducted by a certified breath alcohol technician in conformance with the provisions of the Federal Motor Carrier Safety Administration, Department of Transportation regulations codified at 49 Code of Federal Regulations section 40 et seq. For purposes of reasonable suspicion testing, the individual who performs the breath alcohol screening shall not be the same person who observed the employee for purposes of formulation of reasonable suspicion.
3. The person designated to make the determination of reasonable suspicion shall not administer the test.
4. An employee shall be paid for all time pertaining to an alcohol test including providing a breath sample and travel time to and from the test site. Such time shall be considered as time worked for the purpose of computing overtime and employee benefits.
5. Tests for alcohol shall only be conducted during an employee's regularly scheduled work hours or an overtime shift. Every effort will be made to maintain employee confidentiality.

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GC/MS tests are reported as such. Testing of both specimens will be paid for by the City.

- a) If the test of the first bottle is positive, the employee may request that the Medical Review Officer (MRO), as hereinafter defined, direct that the second bottle be tested. Follow up testing of the sample in the second bottle for presence of drug(s) after a positive result was obtained in the test of the first bottle, shall also be by GC/MS. If the result of the second test is negative, no further action shall be taken against the employee.
7. An employee shall be paid for all time pertaining to a drug test including providing a urine sample and travel time to and from the collection site in the event the test is negative. Such time shall be considered as time worked for the purpose of calculating overtime and employee benefits. If an employee tests positive for prohibited drugs following a reasonable suspicion test, the City shall not be obligated to pay the employee beyond the regular hours of work.
8. All drug testing shall be conducted during an employee's regularly scheduled work hours or the two (2) hours immediately preceding, or subsequent to, a regularly scheduled tour of duty. The payment of overtime shall be as set forth in Section 2.2.7 above. The City reserves the right to have the drug test conducted at a certified hospital emergency room in the event the laboratory used is not open for business.
9. Each drug test shall be reviewed by the MRO to ensure compliance with all procedures, as well as all Federal Regulations, including the validity of the test.

Section 3 Random Drug Testing

1. Random Drug Tests: The City shall not administer random drug testing to more than one third of the employees annually covered by the collective bargaining agreement.
2. MPFA Observation: During random tests, the Middletown Professional Firefighters Association, Inc. ("MPFA") shall be afforded an opportunity to be present to observe the testing, subject to the consent of the individual to be tested. Reasonable efforts shall be made to contact the MPFA representative of the employee being tested and to give such representative the opportunity to accompany an employee throughout the testing process if requested by the employee. The MPFA representative shall have thirty (30) minutes to respond to the testing location from the time contacted, at which time the testing shall begin.
3. Selection of Employees: The City shall select employees for testing only through a computer-based random number generator utilizing an appropriate employee identification number. Upon request, the City shall provide the MPFA with a list of all employees tested, as well as the computer-generated list, so the MPFA can verify the randomness.
4. Limitations: No employee shall be subject to random drug testing more than two (2) times in any twelve (12) month period.

Section 4 Reasonable Suspicion Testing

1. Determination of Reasonable Suspicion: The persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol or drug

APPENDIX A

7. Statement of Charges and Facts: When a decision is made to test, and to the extent practicable without unduly delaying the testing process, the employee shall be given a verbal explanation of the charges and the factual basis for the reasonable suspicion which shall include a description of the conduct leading to the formation of a reasonable suspicion and the relevant dates, places and times thereof and source of information. If the employee has requested the opportunity to consult with a MPFA representative, this explanation shall be made in the presence of a MFPA representative. A written memorandum setting forth the basis of the reasonable suspicion shall be provided to the affected employee within twenty-four (24) hours of the test decision. If this cannot be done prior to the test, then it shall be done as soon as practicable thereafter.

Section 5 Consequences of Positive Test

1. Disciplinary Action: If an employee tests positive for use of alcohol or illegal controlled drugs as provided by this policy and procedure and the City determines that formal disciplinary action is warranted, it shall be processed through the applicable disciplinary procedure.
2. If an employee tests positive for alcohol at a level of .02 or below, and the positive is the first positive for alcohol, and the employee seeks evaluation and treatment pursuant to Section 6.1 of this procedure, the employee shall receive a permanent letter in his file in lieu of discipline. The Department will make reasonable efforts to accommodate the employee's attendance in the treatment program including scheduling changes in consultation with the employee and the Union.
3. Leave Pending Disciplinary Actions: If the employee who test positive is not under suspension, the employee shall be entitled to utilize available leave time unless the employee takes a leave of absence in accordance with Section 6.7.
4. Other Alcohol-related Conduct: Whenever an employee is found to have an alcohol concentration above 0.0%, the employee shall be relieved of his/her work assignment for that day. The relieved employee shall have the option to credit that day to any leave time to which he/she is entitled.

Section 6 Referral, Evaluation and Treatment

1. Employees with an alcohol and/or drug abuse/misuse problem, who wish to avail themselves of rehabilitative services or other means of rehabilitation, should pursue help before they are required to undergo either random or reasonable suspicion testing. Prior to being notified that he/she will be tested for drugs or alcohol, an employee may notify the Fire Chief or Mayor that he/she has an alcohol and/or drug abuse/misuse problem. An employee who indicates having an alcohol and/or drug abuse/misuse problem shall be permitted to enter a treatment and/or a rehabilitation program for treatment recommended by a "Substance Abuse Professional", as specified below; however, nothing in this section shall be construed to restrict the City from utilizing the applicable disciplinary procedure for conduct other than the reported alcohol and/or drug abuse/misuse problem. The time required to be absent from work for such rehabilitation shall be subject to the terms of Section 6.7 of this procedure. An employee who admits to such a problem and enters and successfully completes treatment and/or a rehabilitation program shall not be

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may pursue all available legal remedies against the employee, including, without limitation, termination of employment pursuant to the New York State Civil Service Law.

10. Return to Work: The City shall consider an employee for reinstatement to the employee's position or an equivalent position after completion of a treatment and/or rehabilitation program upon certification from the program that the employee has satisfactorily participated in the program and the program recommends return to regular duty assignment. The City's final decision as to whether to permit an employee to return to full duties in the employee's position or an equivalent position shall be made after consultation with the SAP.
11. An employee who enters a treatment and/or rehabilitation program shall not be entitled to enter such a program under this policy if he/she should again tests positive, unless the City shall agree. Such permission shall not be unreasonably withheld. Employees who are arrested for a crime, including drugs or whose use of drugs or alcohol, or who become known to the City through the employee's involvement in an accident that resulted in physical injury or property damage, shall be able to enter a rehabilitation program only with the consent of the City. No employee shall be considered for treatment and/or rehabilitation more than two times.
12. Follow-up Testing-Frequency: The City can direct an employee to submit to follow up tests for a period of twenty-four months after the date of the employee's return to duty.

Section 7 Medical Review Officer

1. The Medical Review Officer (MRO) is a physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The MRO's primary responsibility is to review and interpret positive test results. In fulfilling these responsibilities, the MRO is to be guided by the U.S. Department of Health and Human Services (DHHS) Mandatory Guidelines. The City and the affected employee shall agree on the appointment of an MRO. The employee's consent to the appointment shall not be unreasonably withheld.
2. If any question arises as to the accuracy or validity of a positive test result, the MRO should, in collaboration with the laboratory director and consultants, review the laboratory records to determine whether the required procedures were followed. The MRO then makes a determination as to whether the result is scientifically sufficient to take further action. If records from collection sites or laboratories raise doubts about the handling of samples, the MRO may deem the urinary evidence insufficient and no further action relative to the subject employee will be taken.
3. The MRO must also assess and determine whether alternate medical explanations could account for any positive test result. In reviewing the laboratory results, the MRO shall conduct a medical interview with the employee, review the employee's medical history, and review any other biomedical factors relevant in the judgment of the MRO. The MRO shall also review any information provided by an employee attempting to show legitimate use of a drug.
4. The MRO must ultimately determine whether or not some reason other than illegal drug use explains a drug-positive urine. If the MRO verifies illegal drug use, the information

