

**Contract Between**

**THE CITY OF TONAWANDA, N.Y.  
AND  
THE UNIFORMED PROFESSIONAL  
FIREFIGHTERS ASSOCIATION  
LOCAL 859, I.A.F.F.  
AFL-CIO  
TONAWANDA, N.Y.**

(January 1, 2012 – December 31, 2016)

**CONTRACT BETWEEN THE  
CITY OF TONAWANDA AND  
TONAWANDA FIREFIGHTERS  
LOCAL 859, I.A.F.F.**

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This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between the CITY OF TONAWANDA, NY (hereinafter referred to as the CITY) and the UNIFORMED PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 859 I.A.F.F., AFL-CIO, TONAWANDA, NY (hereinafter referred to as the UNION).

ARTICLE I - UNION RECOGNITION AND CHECKOFF

A. The City recognizes that Local 859 I.A.F.F., Uniformed Professional Firefighters Association, AFL-CIO as the bargaining agent for all City employees in the above unit from and after April 1, 1991. These employees shall include uniformed members of the fire fighting force in the ranks of Firefighter (including all specializations), Captains (including all specializations), and Assistant Chiefs (including all specializations).

B. The City recognizes the obligation of those employees who are, or who may become, members of the Union to pay their union dues, and the City agrees to deduct union dues from the wages of all Union members who appear on the City payroll, and forward such dues together with a list of employees for whom dues deductions are made, to the union. Dues deductions are to be made biweekly.

C. Effective with the signing of this agreement, the City agrees that any present or future employee, who is not a Union member and who does not make application for membership, shall have deducted from their paychecks a service fee in an amount equal to the regular amount of dues of the Union for the duration of this agreement. This deduction shall be made on a biweekly basis and shall be transmitted at the same time as member's dues to the Union. The Union agrees to hold the City safe and harmless because of said deduction.

ARTICLE II - MANAGEMENT RIGHTS

A. Without limitations upon the exercise of its statutory powers, duties and responsibilities, except as herein specifically provided to the contrary, the City Council, Mayor and Department Heads have the right to exercise all normally accepted management prerogatives including but not limited to:

1. To appoint such employees as it may require for the performance of its duties, fix and determine their qualifications, duties, job titles and compensation, to suspend, discharge, promote, demote or transfer or release employees because of lack of work or for other proper or legitimate reasons, subject to the provisions of the Civil Service Law of the State of New York.

2. The right to fix operating and personnel schedules, determine work loads, arrange transfer, order new work assignments, and issue any other order or directive intended to carry out the managerial responsibilities and duties imposed upon the City Officials by law.

ARTICLE III - SALARIES AND OTHER ECONOMIC BENEFITS

A. PAY SCHEDULE

Effective January 1, 2012, there shall be, as scheduled, increases in the biweekly salary of all ranks covered by the Collective Bargaining Unit, as per the following schedules:

- 1.25% salary increment retroactive to January 1, 2012
- 1.25% salary increment July 1, 2012
- 1.25% salary increment January 1, 2013
- 1.25% salary increment July 1, 2013
- 1.50% salary increment January 1, 2014
- 1.50% salary increment July 1, 2014
- 1.50% salary increment January 1, 2015
- 1.50% salary increment July 1, 2015
- 1.50% salary increment January 1, 2016
- 1.50% salary increment July 1, 2016

The pay schedules for 2012, 2013, 2014, 2015 and 2016 are as follows:

1. Pay schedules 1/1/2012

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$38,516.42	\$1,481.40	\$148.14	\$18.52
Second Year	\$41,401.23	\$1,592.36	\$159.24	\$19.90
Third Year	\$44,599.19	\$1,715.35	\$171.54	\$21.44
Fourth Year	\$48,835.53	\$1,878.29	\$187.83	\$23.48
Fifth Year	\$57,136.77	\$2,197.57	\$219.76	\$27.47
Captain	\$63,178.83	\$2,429.96	\$243.00	\$30.37
Assistant Chief	\$68,332.07	\$2,628.18	\$262.82	\$32.85

2. Pay schedules 7/1/2012

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$38,997.88	\$1,499.92	\$149.99	\$18.75
Second Year	\$41,918.74	\$1,612.26	\$161.23	\$20.15
Third Year	\$45,156.68	\$1,736.80	\$173.68	\$21.71
Fourth Year	\$49,445.97	\$1,901.77	\$190.18	\$23.77
Fifth Year	\$57,850.98	\$2,225.04	\$222.50	\$27.81
Captain	\$63,968.56	\$2,460.33	\$246.03	\$30.75
Assistant Chief	\$69,186.22	\$2,661.01	\$266.10	\$33.26

3. Pay schedules 1/1/2013

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$40,815.38	\$1,569.82	\$156.98	\$19.62
Second Year	\$44,324.47	\$1,704.79	\$170.48	\$21.31
Third Year	\$47,998.91	\$1,846.11	\$184.61	\$23.08
Fourth Year	\$52,218.77	\$2,008.41	\$200.84	\$25.11
Fifth Year	\$58,574.12	\$2,252.85	\$225.29	\$28.16
Captain	\$64,768.17	\$2,491.08	\$249.11	\$31.14
Assistant Chief	\$70,051.05	\$2,694.27	\$269.43	\$33.67

4. Pay schedules 7/1/2013

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$41,325.57	\$1,589.45	\$158.94	\$19.87
Second Year	\$44,878.52	\$1,726.10	\$172.61	\$21.58
Third Year	\$48,598.89	\$1,869.19	\$186.92	\$23.36
Fourth Year	\$52,871.50	\$2,033.52	\$203.35	\$25.42
Fifth Year	\$59,306.30	\$2,281.01	\$228.10	\$28.51
Captain	\$65,577.77	\$2,522.22	\$252.22	\$31.53
Assistant Chief	\$70,926.69	\$2,727.95	\$272.79	\$34.09

## 5. Pay schedules 1/1/2014

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$43,278.77	\$1,664.57	\$166.46	\$20.81
Second Year	\$47,438.09	\$1,824.54	\$182.45	\$22.81
Third Year	\$51,824.62	\$1,993.25	\$199.33	\$24.92
Fourth Year	\$55,824.62	\$2,147.10	\$214.71	\$26.84
Fifth Year	\$60,195.89	\$2,315.23	\$231.52	\$28.94
Captain	\$66,561.44	\$2,560.06	\$256.01	\$32.00
Assistant Chief	\$71,990.59	\$2,768.87	\$276.89	\$34.61

## 6. Pay schedules 7/1/2014

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$43,927.95	\$1,689.54	\$168.95	\$21.12
Second Year	\$48,149.66	\$1,851.91	\$185.19	\$23.15
Third Year	\$52,385.44	\$2,014.82	\$201.48	\$25.19
Fourth Year	\$56,661.99	\$2,179.31	\$217.93	\$27.24
Fifth Year	\$61,098.83	\$2,349.96	\$235.00	\$29.37
Captain	\$67,559.86	\$2,598.46	\$259.85	\$32.48
Assistant Chief	\$73,070.45	\$2,810.40	\$281.04	\$35.13

## 7. Pay schedules 1/1/2015

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$44,586.87	\$1,714.88	\$171.49	\$21.44
Second Year	\$48,871.90	\$1,879.69	\$187.97	\$23.50
Third Year	\$53,171.22	\$2,045.05	\$204.50	\$25.56
Fourth Year	\$57,511.92	\$2,212.00	\$221.20	\$27.65
Fifth Year	\$62,015.31	\$2,385.20	\$238.52	\$29.82
Captain	\$68,573.26	\$2,637.43	\$263.74	\$32.97
Assistant Chief	\$74,166.50	\$2,852.56	\$285.26	\$35.65

## 8. Pay schedules 7/1/2015

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$45,255.67	\$1,740.60	\$174.06	\$21.76
Second Year	\$49,604.98	\$1,907.88	\$190.79	\$23.85
Third Year	\$53,968.79	\$2,075.72	\$207.57	\$25.95
Fourth Year	\$58,374.59	\$2,245.18	\$224.52	\$28.06
Fifth Year	\$62,945.54	\$2,420.98	\$242.10	\$30.26
Captain	\$69,601.85	\$2,676.99	\$267.70	\$33.46
Assistant Chief	\$75,279.00	\$2,895.35	\$289.53	\$36.19

## 9. Pay schedules 1/1/2016

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$45,934.51	\$1,766.71	\$176.67	\$22.08
Second Year	\$50,349.06	\$1,936.50	\$193.65	\$24.21
Third Year	\$54,778.32	\$2,106.86	\$210.69	\$26.34
Fourth Year	\$59,250.21	\$2,278.85	\$227.89	\$28.49
Fifth Year	\$63,889.72	\$2,457.30	\$245.73	\$30.72
Captain	\$70,645.88	\$2,717.15	\$271.71	\$33.96
Assistant Chief	\$76,408.19	\$2,938.78	\$293.88	\$36.73

## 10. Pay schedules 7/1/2016

Position	Yearly	Bi-Weekly	Daily	Hourly
First Year	\$46,623.53	\$1,793.21	\$179.32	\$22.42
Second Year	\$51,104.29	\$1,965.55	\$196.55	\$24.57
Third Year	\$55,600.00	\$2,138.46	\$213.85	\$26.73
Fourth Year	\$60,138.97	\$2,313.04	\$231.30	\$28.91
Fifth Year	\$64,848.07	\$2,494.16	\$249.42	\$31.18
Captain	\$71,705.57	\$2,757.91	\$275.79	\$34.47
Assistant Chief	\$77,554.31	\$2,982.86	\$298.29	\$37.28

## 11. Fire Prevention and Inspection Office

If this office is filled with a Firefighter, then the annual salary will be calculated equally between that of a fifth (5) year Firefighter and a Captain's salary.

B. LONGEVITY

1. Longevity payments shall be paid to members of the Union on the first pay period in June in each contract year. Any member who reaches their longevity at any time during said contract year shall be entitled to longevity payment on the first pay period in June.

Effective January 1, 2004:

<u>YEARS</u>	<u>AMOUNT</u>
Five	\$1,175.00
Ten	\$1,375.00
Fifteen	\$1,475.00
Twenty	\$1,575.00
Twenty-five	\$1,700.00

### C. SEPARATE CHECKS AND RETROACTIVE COMPENSATIONS

1. All personnel who are eligible for Longevity, Holiday Pay, Retroactive Pay and any other pay so deemed by this agreement, shall be paid by the City in a separate check in addition to the regular biweekly check normally issued.

2. Any retroactive compensation shall be paid within thirty (30) days of the ratification of this agreement.

### D. VACATION ALLOWANCE

1. Vacation allowance shall be governed by the existing laws of the State of New York and the existing work schedule. The vacation allowance shall be as follows:

	8 hr day/5 day week	10 hr day/4 day week	10 hr day/14 hr nights
One (1) Year	10 days	9 days	9 days
Five (5) Years	15 days	12 days	12 days
Eight (8) Years	16 days	13 days	13 days
Eleven (11) Years	17 Days	14 days	14 days
Fourteen (14) Years	18 days	15 Days	15 days
Fifteen (15) Years	20 days	18 days	18 days
Twenty (20) Years	25 days	21 days	21 days

2. Vacation may not be accumulated from year to year except in the following limited circumstances that preclude an employee from scheduling or using their vacation in the usual manner:

- a. Sick leave of an employee on an extended basis.
- b. Absence due to workers' compensation injury.
- c. Needs of the department, as determined by the Fire Chief, which preclude the taking of vacation.

d. If the employee was unable to take and use their vacation due to the circumstances noted in sub-paragraph a, b, or c above, the employee shall be paid for such unused vacation by the first pay period after the end of the vacation year.

3. The employee may request that a portion of their vacation be paid in cash rather than be taken as days off. The determination as to the disposition of all requests shall be at the discretion of the Mayor's Office, Fire Chief, and the employee as per this agreement.

4. All vacation requests must be submitted by the employees to the Fire Chief prior to December 15<sup>th</sup> for the following vacation year. All vacation schedules shall be presented to personnel no later than January 1<sup>st</sup> of the vacation year. All vacations shall start in accordance with a schedule agreed upon between the Fire Chief and the Union.

#### E. OUT OF TITLE WORK

1. When any Firefighter is assigned by competent authority, to work out of title for a full day or night at a higher rank, he/she shall be compensated for working in that position on a per diem basis which shall reflect the difference between their regular salary and the salary that would be received if they were promoted to that position.

2. "Out of Title" assignments shall be determined by reference to the rankings of the top three (3) members on the Civil Service list. If the list cannot be followed, then seniority and suitability shall be used to fill the position.

3. If any position of the rank of officer is vacant, and remains so for more than thirty (30) days, the member who is temporarily filling that position shall be compensated at the salary for that position.

4. If the Fire Chief is out of town on City business or vacation, or is incapacitated on extended sick leave, then the Chief or the Mayor shall appoint an Assistant Chief to act in his place. The Assistant Chief will be paid the Chief's pay while acting in his absence. If the Fire Chief is in town and available for emergencies, no Assistant Chief will receive Chief's pay.

#### F. PROMOTIONS

1. Permanent promotions to any rank within the department shall be made from those members certified on an eligible list, after taking a written examination, pursuant to the applicable provisions of the Civil Service Law and Rules and Regulations adopted

pursuant thereto. The employer shall request, and to the extent that it lies in the employer's power, shall require that the appropriate Civil Service Authority takes the necessary steps to ensure that eligible lists for all ranks are maintained at all times.

#### G. CLOTHING ALLOWANCE

1. A uniform allowance payment equivalent to eight hundred dollars (\$800.00) per employee per year shall be made to the Union, by the City, as the clothing allowance responsibility of the City.

2. This payment shall be made on the first pay period in February of each year. In the case of the newly hired Firefighter, the payment will be made within one (1) week of their appointment date.

3. It will be the sole responsibility of the Union to ensure that all member's uniforms are purchased and maintained within the guidelines of the department's Rules and Regulations as established by the Fire Chief.

4. A class "A" uniform will be issued to members, upon promotion to an Officers grade, at the City's expense.

5. Members retiring before July 1st will be ineligible for the five hundred dollar (\$800.00) allowance for that year.

6. Four hundred dollars (\$400.00) of the clothing allowance shall be for the maintenance, cleaning and repair of a member's uniform.

#### H. OTHER ECONOMIC BENEFITS

##### 1. Pension Plan

a. The City agrees to assume and make payments for the contributions of all members of the bargaining unit of the Union who are now, and/or shall become in the future, members of the New York State Policemen's and Firemen's Retirement System, Section 384, twenty-five (25) year plan.

b. It is further agreed that Sections F, G, and H providing for the 1/60th of final average salary for each completed year of credited service in excess of twenty-five (25) years, shall be provided. Also, Section 302-9-D providing for the final average

salary based upon earnings during the past twelve (12) months of employment, shall be provided.

c. An employee shall be permitted to elect retirement under Section 375-I if he/she so desires, and deselect coverage under Section 384, as permitted by law.

d. The City agrees to assume and make the payments for the contributions of all members of the bargaining unit of the Union who are now, or shall become in the future, members of the New York State Policemen's and Firemen's Retirement System, Section 384D, twenty (20) year retirement plan, effective April 1, 1989.

e. The City agrees to assume and make payments for the contributions of all members of the bargaining unit of the Union who are now, or shall become in the future, members of the New York State Policemen's and Firemen's Retirement System, Section 384E, twenty (20) year retirement plan with additional 1/60th, effective April 1, 1990.

2. Holidays

a. All holidays, enumerated below and occurring during the term of this contract, shall be paid time-off to all Fire Department personnel regardless of the number of holidays worked. The City shall, in the first pay period in November, pay each member of the Fire Department the sum of money equal to the number of paid holidays multiplied by the daily rate. The daily rate is 1/10th of the biweekly salary. The above pay for holidays is in lieu of compensatory time off.

FULL DAY HOLIDAYS

New Years Day	Columbus Day
Martin Luther King	Election Day
Presidents Day	Veterans Day
Good Friday	Thanksgiving Day
Memorial Day	December 24
Independence Day	Christmas Day
Labor Day	December 31

b. If a member is employed for less than the full holiday period, he/she shall be paid for only the number of holidays occurring during his/her period of employment.

c. All members shall be paid the following rate for the contract years as indicated:

<u>POSITION</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Firefighter					
• First Year	2,099.86	2,225.16	2,365.30	2,436.84	2,510.48
• Second Year	2,257.22	2,416.54	2,592.66	2,671.06	2,751.70
• Third Year	2,431.52	2,616.88	2,820.72	2,905.98	2,993.90
• Fourth Year	2,662.52	2,846.90	3,051.02	3,143.28	3,238.20
• Fifth Year	3,115.00	3,193.40	3,290.00	3,389.40	3,491.88
Captain	3,444.42	3,531.08	3,637.90	3,747.80	3,861.06
Assistant Chief	3,725.40	3,819.06	3,934.56	4,053.42	4,176.06

#### I. CALCULATION OF ECONOMIC BENEFITS

1. Holiday pay, vacation pay, sick leave pay, assignment pay and absence pay or loss of pay, shall be calculated at the rate of 1/10th of the biweekly salary for each day thereof.

#### J. BEREAVEMENT

1. Full time employees in the bargaining unit shall be allowed three (3) working days off from the date of death of a spouse, parent, child (to include both step and foster children), brother, sister, grandparent, grandchild, foster or step parent, father-in-law or mother-in-law. Two (2) working days off for the death of a member's brother-in-law or sister-in-law shall be provided.

2. The bereavement leave may be extended by the request of the employee and by the approval of the Department Head, and such approval shall not be unreasonably withheld.

#### K. PERSONAL LEAVE

1. Effective January 1, 2012, each employee shall be allowed four (4) personal leave days off per year, one (1) of which is a restricted use personal leave day which will be approved only upon the condition that the employee's shift will have adequate staffing so that no overtime is necessary on the shift. The Department Head must be

notified 48 hours in advance. (Personal leave days are subject to the approval of the Fire Chief or his designee.) January 1, 2016 will have five (5) personal leave days off per year, two (2) of which are restricted use personal leave.

2. Personal leave days may not be accumulated. If the employee was unable to take and use their one (1) restricted use personal day due to the circumstances noted in a, b or c below, the employee shall be paid for such unused restricted use personal day by the first pay period after the end of the calendar year. Effective January 1, 2016, delete "one (1)" in this paragraph and replace with "two (2)".

a. Sick leave of an employee on an extended basis.

b. Absence due to workers' compensation injury.

c. Needs of the department, as determined by the Fire Chief, which preclude the taking of the restricted use personal leave day.

#### L. HOSPITAL AND SURGICAL INSURANCE

1. Effective May 1, 2010, or as soon as possible thereafter, the Union agrees to accept, and the City agrees to provide current employees and future retirees the Blue Cross/Blue Shield HMO 202 medical insurance plan, along with an additional "buy back" on drug prescription co-payments to a \$3.00 per prescription level, and co-payment reimbursement for doctor visits to \$5.00, as attached and made part of this MOU. In addition, the City will provide, as part of the medical insurance plan, the "Dependent" rider, providing the same medical insurance plan for dependents of the covered employee to age twenty-five (25), whether the dependent is a full-time student or not.

Effective March 1, 2012 the prescription drug co-payment for members and future retirees will be: \$0 for generic, \$15 for brand (no generic available) and \$30 for specialty drug prescriptions (generic and brand name available, but brand is chosen). Members who have gone through a generic prescription trial and need to take brand name prescriptions will not be required to go through the generic trial again when this plan is implemented. The Union and City further agree the City is authorized to offer formulary drug prescription benefits through a plan and vendor mutually selected by

the City and Union for all active employees represented by the Union. This shall not be unreasonably withheld by either party.

c. The Union agrees to meet with the City at any time to discuss health care provider issues that may arise and the City agrees that both the City and Union must mutually agree upon any changes to address these health care provider issues during the term of the contract (1/1/2012 through 12/31/2016).

2. Retirees who do not live in the region of Blue Cross / Blue Shield will have the option of purchasing their own insurance, the cost of this insurance will be paid by the City, not to exceed the current price of Blue Cross/Blue Shield HMO 202 and applicable riders as stated in Article III-Section L-1-a and appendix "d" of this agreement. If this cost exceeds the current price, the retirees shall pay the difference.

All references to the term spouse, as contained in all subsections of Article III Subsection L. Hospital and Surgical Insurance of the collective bargaining agreement between the City and Union, means without exception, the individual married to the retiree at the time the former employee/retiree separated from City service. Individuals who marry the retiree after the former employee retires are not eligible for City paid medical/health coverage. Only children by birth to the retiree and dependants of the retiree, and meeting all the conditions controlling eligibility for the City paid medical coverage, who were eligible at the time the former employee retired are eligible for City paid medical insurance coverage.

3. Effective January 1, 2012, the City shall provide all newly hired members with single coverage of Blue Cross/Blue Shield HMO 202 and applicable riders for the member's first two (2) years of employment. The member(s) may add family coverage at their own expense during that time. After two (2) years of employment, the City agrees to split the cost difference between single coverage and family coverage Blue Cross/Blue Shield HMO 202 or a less expensive plan, with the member(s). After three (3) years of employment, the City agrees to provide the member(s) with family coverage at no expense to the member, not to exceed the cost of Blue Cross/Blue Shield HMO 202

Effective January 1, 2012, newly hired members have the option of adding family coverage at their expense as specified above, or during the first twenty (20)

years of employment the employee shall pay ten percent (10%) of the cost of the premium for family health insurance coverage, the City will be responsible for the remaining 90% of insurance premium costs. Following twenty (20) years of employment, the city will pay 100% of said costs, until the member retires from City service.

4a. All present and future retirees, who were hired by the City and were members prior to June 1, 2004, and who have twenty (20) years continuous service with the City immediately preceding retirement and who are then eligible for a New York State pension, will be covered, as provided in 1a and 1b above, provided such retirees are presently covered under a Medical and Hospitalization plan.

4b. Future retirees who were hired on or after June 1, 2004, who have a minimum of twenty (20) years continuous service with the City immediately preceding retirement and who are then eligible for a New York State pension, may continue any health insurance plan under which they are covered at the time of retirement, but the employee is responsible for 100% of the cost of the insurance plan premium. The dollar value of a future retiree's unused accumulated sick leave, as identified in Article VI.A. - Sick Leave and Substance Abuse, will be applied towards the cost of providing health coverage under the City's health plan to the employee after his retirement. The charge for the cost of insurance against the sick leave credit will be based on the insurance carrier's actual charge to the City for the cost of the health insurance. The City Treasurer's Office will be responsible for providing the retirees with an annual statement that identifies the remaining value of the retiree's sick leave credit. After exhausting his accumulated sick leave credit, the retiree may elect to continue coverage at his own expense under the City's healthcare plan by submitting to the City Treasurer prior to the exhaustion of the health credit a written request to continue coverage. Retirees' payments to the City for health insurance coverage must be kept current in order for the retiree to maintain enrollment in the City's health plan.

4c. If a retiree dies, Medical and Hospitalization shall be continued for the widow(er), as provided in a, b or c above, provided she/he was covered on the retiree's contract at the time of retirement.

4d. The Health Insurance Plan for retirees and/or their spouse who are eligible for Medicare Part B under all sections of paragraphs 2, 4a, 4b and 4c shall be Blue Cross / Blue Shield Medicare PPO 799 as identified as Appendix D of this agreement. If this plan is no longer available or if the health insurance company unilaterally imposes significant changes to the benefits in the plan then the parties agree to meet and discuss all options available to maintain coverage as provided in Appendix D.

5. Effective April 1, 1996, any future retiree and/or their spouse who are eligible for Medicare, Part B, must sign up for this coverage through the Social Security Administration in order to continue to be eligible for health insurance coverage through the City. The City must notify the retiree and/or their spouse within six (6) months of their eligibility for Medicare, Part B, for this paragraph to be valid.

6. In the event of an active member's death in the line of duty, the City shall provide Hospital and Surgical insurance, as defined in this section, for the member's spouse and children. All coverage would cease at such time as the spouse would remarry.

7. Should any member die while an employee, the City shall continue to provide their family with Medical and Hospitalization insurance for a period of six (6) months for up to five (5) years of service. After five (5) years of service an additional one (1) year of coverage will be provided for the family for every five (5) full years of service by the deceased member. Coverage will terminate upon remarriage of the widow(er) or employment by an employer who provides Hospital and Medical insurance.

8. Should any member die while an employee of the City who was eligible for retirement, the City shall provide Hospital and Medical insurance for the surviving spouse and dependent children until such time as the spouse may remarry or become employed by an employer who provides Medical and Hospital insurance.

9. Consistent with the provisions of the United States Affordable Care Act of 2010, dependants of the employee are covered under the employees' medical insurance benefits until the age of 26.

10. The City shall tender every first pay in February an amount of \$15,000.00 for every year thereafter to IAFF, Local 859, to be used toward the payment of dental

bills and optical bills and extraordinary medical expenses. An excess remaining in said account shall be applied toward the payment of dental and optical bills as set forth herein, in future years pursuant to the continuing administration of this plan.

11. Administration of the plan shall take place the January following each year for the dental and optical bills submitted for the prior calendar year. The total administration of this plan shall be performed by IAFF, Local 859, subject to the following conditions:

a. IAFF, Local 859, shall establish a separate account for the sole purpose of receipt and disbursement of such funds.

b. IAFF, Local 859, hereby waives the right to request further increases in the annual appropriation of \$15,000.00 until such time as any surplus in this fund has been totally depleted at the expiration of the term of this agreement.

c. Any bills covered under another plan will not be covered under this plan.

d. The City shall be provided a copy of all rules and regulations under which the dental and optical plans shall be governed upon request. The Union also agrees to notify the City whenever these rules are revised.

e. IAFF, Local 859 retains the right to add, delete, or modify any or all rules and regulations governing the dental and optical plans.

12. Effective January 1, 2012 the City and Union agree that an alternate medical plan(s) to the current self-insured plan may be offered and made available to members. If a member voluntarily chose to accept coverage under such alternate plan, The City and member shall mutually share the annual savings on a 50%/50% basis. At the option of the member, their share of the annual savings may be received as annual one-time payment or in a Flexible Spending Account. Should member exercise this option, they may choose to return to the Base plan on an annual, one time per year basis, on a date mutually agreed to by the parties.

#### M. WAIVER OF MEDICAL INSURANCE

1. Regular, full time employees who are eligible to receive Medical and Hospital Insurance and related riders under negotiated contract provisions, may elect to waive such employee benefits because they are currently covered by adequate Health and

Hospital Insurance through their spouse's plan, or because they deem they do not require such coverage.

2. FAMILY PLAN PARTICIPANTS - As compensation for the waiving of the rights to such coverage, the City agrees to pay the employee \$2,000.00 for the period January 1st through December 31st in their paycheck on the first pay period in December as a modification to wages (subject to taxes). This compensation would be pro-rated over the year from the time an employee elected such waiver, is hired or terminated, or if the employee requires immediate reinstatement of coverage due to loss of coverage through the employee's spouse's plan.

3. SINGLE MEMBER PARTICIPATION - As compensation for the waiving of the right to such coverage, the City agrees to pay the employee \$350.00 for the period January 1st through December 31st in their paycheck on the first pay period in December as a modification to wages (subject to taxes). This compensation would be pro-rated over the year from the time the employee elected such waiver, is hired or terminated, or if the employee requests immediate reinstatement of coverage. Member must show proof of other medical coverage prior to waiver being granted.

4. Either single or married employees desiring to waive this coverage shall be required to sign Appendix form A. Any employee who desires to reinstate coverage shall be required to sign Appendix form B at least 30 days prior to reinstatement of coverage.

5. A married employee who desires to reinstate family plan coverage shall be required to provide verification that their spouse's insurance coverage is no longer available or has been reduced substantially.

6. In the event both spouses are employed by the City of Tonawanda, the provisions of this section shall not be applicable, as only one may be eligible for joint coverage of both parties.

#### N. OVERTIME AND OVERTIME COMPENSATION

1. Effective January 1, 2000, all overtime due to hours actually worked beyond the normal work schedule, when authorized by the Fire Chief or by designated

authority, shall be compensated at the rate of time and one half (1 ½) the employees hourly rate for the overtime hours.

**O. COMPENSATION FOR ATTENDANCE AT EMERGENCIES**

1. Any member of the bargaining unit, not on duty, who responds to an emergency to which the Fire Department has been summoned, shall be given compensatory time. Compensatory time will be paid one hour for hour or fraction thereof.

**P. COMPENSATION FOR ATTENDANCE AT TRAINING SESSIONS**

1. Release time shall be granted for Fire Department approved or mandated training. Mandated training shall be defined as approved EMS or Fire related training school, training tower sessions and N.Y.S. schools with Mayor's Office approval.

2. Off-shift personnel who attend local mandatory training sessions shall be paid time and one-half for their attendance, subject to a maximum of sixteen (16) hours per year. Members who attend mandatory training in excess of sixteen (16) hours per year shall receive compensatory time at a rate of one hour for each hour or fraction thereof.

3. Off-shift personnel who attend approved training sessions but are not mandated to attend shall receive compensatory time at a rate of one hour for each hour or fraction thereof.

4. Off-shift personnel who are called into work in the place of those who attend approved EMS or Fire related training schools, shall be compensated at the rate of one and one-half times the hourly rate. Selection of replacement personnel shall be through a separate call-in list established to designate rotation for partial day substitution.

5. Unit members attending such schools shall be compensated at the U.S. Internal Revenue standard mileage rate for reimbursing employees for use of their personal vehicles plus tolls when using their own car.

6. Compensation or Compensatory Time, as provided above, shall only be awarded after successful completion of the approved course or where the member

has made a conscientious effort to complete the course. Any additional time needed to pass a course will not be compensated for pay or compensatory time, until successful completion of said course.

7. Effective April 1, 1996, notwithstanding the above, no compensatory time will be granted for off duty training in the Certification and/or Re-Certification for EMT, AEMT, CCT, Paramedic, and Continued Medical Education hours for members.

**Q. COMPENSATION FOR COURT APPEARANCES**

1. Any member who is required to be present at court appearances, hearings or meetings with the City Attorney or other legal council, shall be paid at the rate of time and one-half of his/her normal hourly rate when such meetings are required off-shift.

**R. COMPENSATION FOR CALL-IN**

1. When authorized by proper authority, or upon direction by the Fire Chief, members called in for duties outside of normal fire related functions shall be compensated hour for hour or a fraction thereof, at their normal rate of pay.

**S. DEATH BENEFIT FOR BENEFICIARY**

1. In the event of an active member's death, his/her beneficiary shall receive compensation from the City for unused vacation, unused compensatory time, unused sick leave days (maximum being 185 days), longevity, paid holidays worked, and unused personal leave days.

**T. EDUCATIONAL INCENTIVE**

To encourage employees to obtain further education in their career field, the City agrees to pay the following incentives:

1. For each member who obtains an Associates Degree in Fire Prevention or Fire Fighting field, the City shall pay \$100.00 per year on their successful completion of the course.

2. For each member who obtains a Masters or Bachelors Degree in the Fire Prevention or Fire Fighting field, the City shall pay \$200.00 per year on their successful completion of the course.

3. The City shall pay the following for each member with a current EMS Certificate:

EMT Certificate	\$1,000.00
AEMT Certificate	\$2,200.00
CCT Certificate	\$2,500.00
Paramedic Certificate	\$3,000.00

a. If the City makes an EMT Certification a mandatory requirement for employment then the \$1,000.00 incentive for the EMT certification shall be eliminated.

b. Members will be paid for a Paramedic Certificate only if the City were to activate paramedic service in the department and bring the program on line for the City. In the absence of an on line paramedic program, the City will pay members with a Paramedic Certificate at the AEMT Certificate rate.

4. The City shall pay no more than one education degree incentive and one EMS certificate incentive to an employee.

5. Education incentive payments shall be paid on the first pay period in April of each year. Any member attaining a new or higher certification during a contract year will receive 1/12<sup>th</sup> of the incentive for each month remaining in the contract year. "Any member hired after March 1, 2009, and who posses an EMS or college degree that qualifies for incentive payments, shall receive 1/12<sup>th</sup> of the incentive payment for each month remaining in the contract year (January 1 – December 31) for the year in which they are hired by the city".

6. "Employees who qualify, and are eligible to receive a pension from the New York State retirement System, and who direct retire from city service, are eligible and shall by paid for the following contract benefits, in the following manner:

**Longevity** – paid in full regardless of the employees' retirement date.

**Education Incentive** – paid in full regardless of retirement date. Only one payment shall be made per calendar year.

**Holiday Pay** – paid in full for all holidays through the date of retirement.

**Compensatory Time** – paid in full for the balance of all time earned and not used.

**Clothing Allowance** – paid in full if retirement date occurs after July 1 of any calendar year.

**Sick Leave Payout** – members can request up to two days per pay, up to the amount of days allowed by contract for cash out purposes.

**Vacation Time** – member to be paid at full, current daily rate for the balance of any unused vacation time available at the time of retirement.

**Personal Leave Days** – member to be paid at the full, current daily rate for the balance of any unused personal leave time available at the time of retirement”.

All members of the Union are entitled to the above referenced payments only once per calendar year, if qualified as defined in the collective bargaining agreement. The language in this section, Article 111, T, 6, is intended by the parties to be used along with the attached benefits statement worksheet in calculating all retirement payments. (Appendix F)

#### U. COMPENSATORY TIME

1a. A member may cash not less than one (1) hour and not more than ten (10) hours of accrued compensatory time per pay period. Payment shall be made in the first pay period after the request is made provided the request was made prior to the commencement of said pay period.

1b. The City agrees to pay in full all compensation time earned the previous year (January 1<sup>st</sup> to December 31<sup>st</sup>). At the member's request, the member shall be allowed to keep on the books, up to eighty (80) hours of compensatory time so long as the member notifies the Fire Chief, when asked by the Fire Chief, the number of hours said member would like to keep on the books. Failure to notify the Fire Chief will automatically keep eighty (80) hours of compensatory time on the books for that

member. Compensatory time earned during the previous year will be paid by the second pay period in January of each year at the regular rate the member was earning on December 31. Effective January 1, 2000, members who choose to use compensatory time off for a scheduled work day, in lieu of working their scheduled shift, shall have the actual number of hours in the scheduled work shift deducted from their accrued compensatory time.

2. Upon termination of services (retirement, etc.), each member shall be paid all accumulated compensatory time due him or her, at the rate the member was earning at the time of termination.

3. All members may be required by the City to take up to four (4) days off per year. These days shall be mutually agreed upon between the Fire Chief and the member(s) using accumulated compensatory time, so long as it does not drop the shift on duty below the required number of personnel needed to safely and effectively run the shift.

4. If a member does not take off the required number of days, as set in Article III Section U3 above (to a maximum of four days), then the Fire Chief can assign the member(s) additional days off whether or not the days are mutually agreed upon, so long as it does not drop the shift below the required number of personnel needed to safely and effectively run the shift.

5. If the member's accumulated compensatory time (for both accounts, as stated in paragraph 1 of this section) does not exceed eighty (80) hours, then paragraphs 3 and 4 above do not apply.

6. Use of compensatory time off is subject to the approval of the Fire Chief. All requests for compensatory time off shall be submitted in writing by the employee to the Fire Chief.

## V. FAMILY LEAVE

Leaves of absence for child rearing, adoption, family medical and personal medical will be in compliance with the Family Medical Leave Act of 1993.

ARTICLE IV – RELEASE TIME FOR UNION BUSINESS  
AND CITY BULLETIN BOARDS

A. BULLETIN BOARDS

1. It is agreed that the Union may use City bulletin boards for the purpose of posting Union notices to members, provided that such notices are clearly identified as Union notices.

B. UNION BUSINESS

1. The City shall release time, with no loss of pay, to not more than two delegates designated by the Union, to attend the New York State Professional Fire Fighters convention.

2. The City shall give release time with no loss of pay, but with a limit of two men per shift, to those members designated by the Union to participate in contract negotiations. Off-shift personnel who are called into work in place of those who participate in contract negotiations shall be compensated at the rate of one and one-half times the hourly rate. Selection of replacement personnel shall be through a separate call-in list established to designate rotation for partial day substitution.

3. The President of the Union or his designee shall be allowed 180 hours off per year for Union business, 60 of these hours shall be restricted use and not create overtime, such as attendance at meetings of the N.Y.S.P.F.F.A. which are held for the pursuance of his career or profession as firefighters This time off shall be granted without loss of time or pay.

ARTICLE V - WORKING CONDITIONS

A. WORK SCHEDULES

1. The work schedule shall be four (4) groups, working a forty-two (42) hour per week schedule. Two (2) groups shall work each day. The day shift shall be ten (10) hours long and run from 7:30 A.M. until 5:30 P.M. The night shift shall be fourteen (14) hours long and run from 5:30 P.M. until 7:30 A.M. The schedule cycles every twelve (12) days and there are 30.4 cycles per year. The schedule rotates every December.

2a. The Fire Chief may assign the Training Officer and Fire Prevention Officer to either an 8 hour day/5 day work week, Monday through Friday, or a 10 hour day/4 day work week, Monday through Thursday or Tuesday through Friday. The Chief may also assign the training Officer and Fire Prevention Officer to any other temporary work schedule not specified in Article V.A.1 above so long as the assignment is mutually agreed to by the Fire Chief and the affected Training Officer and/or Fire Prevention Officer.

2b. The Training Officer and Fire Prevention Officer may be used to cover shift vacancies that last no longer than twenty (20) working days. This section cannot be used to avoid addressing permanent staffing problems that arise within the Department.

## B. SENIORITY

1. The Chief of the City of Tonawanda Fire Department is authorized to maintain a department wide seniority system in assigning all firefighters, excluding Officer positions.

2. Seniority for Firefighters shall be determined according to the date and order of appointment.

3. Firefighters, having petitioned for a position, shall remain in that position for at least two (2) years, or until a vacancy exists.

4. Members having petitioned in writing for a position, shall be placed in said position within twenty (20) days, and shall remain in that position for at least two (2) years or until a vacancy exists.

5. A member who is moved because of the above mentioned paragraph, may move to a position of their choice within their seniority rights. The member shall have ten (10) days to make a selection. The Chief shall award the position within twenty (20) days. The member shall not be locked in for two (2) years.

6. Seniority shall pertain only to positions, and shall not be extended to vacations or other areas pertaining to the department.

7. A new member of the department shall not be included in the seniority system until they have completed one (1) year of service.

8. If at any time the Fire Chief and the Union shall determine that the seniority system cannot be followed in an individual instance the matter shall be resolved by the Mayor, the Union, and the Fire Chief.

9. Any full time job opening shall be posted within ten (10) days and remain posted for ten (10) days. The Chief shall award the permanent position within twenty (20) days after the posting period.

### C. EQUIPMENT

1. If for reasons such as, but not limited to staffing, the Mayor deems it necessary to permit anyone other than a unit member to drive, operate, or assist in the operation of Tonawanda Fire Department vehicles or radios, the Mayor will meet with the Union, except in extreme emergencies, as defined by the Fire Chief, Mayor or the Duty Officer.

2. Employees operating Tonawanda Fire Department vehicles shall not be held responsible for persons boarding or riding the vehicles who are under the influence of drugs or alcohol.

## ARTICLE VI - SICK LEAVE AND SUBSTANCE ABUSE

### A. SICK LEAVE

1. Sick leave with pay may be granted by a department head to an employee when incapacitated and unable to perform their duties by reason of sickness, injury, or quarantine regulations. No such leave shall be granted on account of injury sustained while engaged in other gainful occupation, and no sick leave shall be granted for time during which an employee is entitled to receive Workers' Compensation.

2a. A credit for purposes of sick leave, with pay, at the rate of fifteen (15) days a year, shall accrue annually, such leave as is not used shall accumulate. Sick leave will accumulate at 1 ¼ days per month starting with the first month of employment.

2b. All employees who were hired by the City and were members prior to June 1, 2004, may accumulate sick days to a maximum of two hundred and forty (300) days. Effective June 1, 2007, these employees shall be paid for all accumulated sick days to a maximum of one hundred and eighty five (185) days upon retirement.

2c. Employees hired on or after June 1, 2004, shall not receive cash payment for accumulated sick days upon retirement. These employees may accumulate a maximum of four hundred fifty (450) sick days which are to be converted to a sick leave credit upon retirement. The value of the sick leave credit shall be calculated by multiplying the daily rate of the employee's regular job position at the time of his retirement, by the number of sick days the employee has actually accumulated. The value of the sick leave credit is to be applied toward the cost of providing health coverage to the employee under the City's health plan upon retirement, in accordance with Article III.L.4.b - Salaries and Other Economic Benefits, Hospital and Surgical Insurance.

Each sick day used by these employees, between June 1, 2004, and the date of retirement that contributes to the need for overtime in the Fire Department will result in the permanent deduction of one (1) day from the employee's 450 day maximum sick leave accumulation. The deduction lowers the maximum number of sick days that an employee can convert to a sick leave credit to be applied to the cost of his health insurance upon his retirement.

In the case of a catastrophic illness, the maximum sick leave accumulation will not be reduced for an employee who uses sick days during the catastrophic illness. A catastrophic illness is defined as an employee absence from work for more than 30 calendar days due to an illness or injury.

Upon the death of the retiree, his remaining health insurance credit shall accrue to his surviving spouse if any. The credit shall not accrue to the retiree's estate.

3. Employees shall notify department heads of absence on account of sickness, within twenty four (24) hours, or in such less time as shall be prescribed by the Fire Chief.

4. A certificate or an affidavit, showing incapacity and inability to perform their duty, issued by the attending physician or other medical practitioner, and containing a

diagnosis of the illness must be filed in case of three (3) or more consecutive days, or at the request of the Fire Chief in any absence. The Fire Chief may, however, check further on illness regardless of certificate or affidavit.

5. When an employee has completely exhausted their accumulated sick leave and a need still exists for further sick leave, said employee may present his appeal for same, to the Mayor's Office.

6. An employee may use their sick leave allotment in the event of illness, sickness or injury sustained by a member of the employee's family residing in the same household as the employee. For purposes of this paragraph, "family" shall include spouse, parent, child (to include both step and foster children), brother, sister, grandparent, grandchild, foster or step- parent, father-in-law or mother-in-law. The Fire Chief may check the validity of sick leave used for this purpose.

7. Beginning on January 1, 2007 sick leave may be taken in less than full day increments. The use of less than an entire day and entire shift of sick leave shall be limited to: a two (2) hour increment, which shall equal  $\frac{1}{4}$  sick day (for payroll purposes all shifts equal eight [8] hours) OR one half ( $\frac{1}{2}$ ) day sick leave. In those instances when a  $\frac{1}{2}$  day increment of sick leave is used, corresponding hours shall be determined as follows: an eight (8) hour per day/forty hour per week shift, four (4) hours of sick leave; day shift of ten (10) hours, five (5) hours of sick leave and night shift of fourteen (14) hours, seven (7) hours of sick leave.

8. Beginning on January 1, 2007, members shall accumulate two (2) hours of compensatory time for each calendar month in which the member does not use sick leave. Any member, who is off on 207A or workers compensation, will not be eligible for this incentive while on 207A or Workers Compensation. The City and Union, to assure that this sick leave incentive is a cost savings measure, shall review this policy on a yearly basis. It shall be the responsibility of the City to call the review meeting. If the City finds that this incentive is not saving the City money, then the City can eliminate the incentive.

**B. SUBSTANCE ABUSE**

The Union and the City are aware of the devastating effects that substance abuse may have on an individual and his/her relationship to their family, associates and employer. The Union and the City have developed and agreed to implement a Drug and Alcohol Testing Policy as specified in Appendix E that includes random and reasonable suspicion testing.

**C. Discipline and Discharge**

The City and Union agree to add mutually agreed upon discipline policy and any required forms to this agreement once completed.

**D. 207 A POLICY**

The City and Union agree to add mutually agreed upon 207A policy and any required forms to this agreement once completed.

**ARTICLE VII - GENERAL PROVISIONS**

**A. GRIEVENCE PROCEDURES**

Resolved, that pursuant to the provisions of Article 16 of the General Municipal Law, the following grievance procedure is hereby established for the employees of the City of Tonawanda.

1. Declaration of Policy: The purpose of this grievance procedure is to provide an orderly process whereby employees of the City of Tonawanda may equitably and expeditiously settle any difference or grievances that may arise in the course of their employment, free from coercion, restraint, interference, discrimination or reprisal. The provisions contained in this proceeding shall be liberally construed in order to accomplish these objectives.

2. Definitions: As herein used, the following terms shall have the following meanings:

a. "Employer" shall mean the City of Tonawanda.

b. "Employee" shall mean any person directly employed and compensated by the City of Tonawanda, except person employed in the Legislative or Judicial branch, thereof.

c. "Grievance" shall mean any claimed violations, misinterpretation or inequitable-application of the existing law, rules, procedures, regulations, administrative orders or work rules of the City of Tonawanda or a department thereof, which relate to or involve employee health or safety, physical facilities, materials or equipment furnished to employees, or supervision of employees; provided, however, that such term shall not include any matter involving an employee's rate of compensation, retirement benefits, disciplinary proceeding or any other matter which is otherwise reviewable pursuant to law or any rule or regulation having force and effect of law.

d. "Department" shall mean any office, department, board, commission or other agency of the Government of the City of Tonawanda.

e. "Immediate Supervisor" shall mean the employee or officer on the next level of authority above the employee in the department wherein the grievance exists, and who normally assigns and supervises the employee's work and approves their time or evaluated their work performance.

f. "Department Head" shall mean the person so designated pursuant to charter, local law, administrative code, rule or resolution of the Common Council as Head of a Department as defined in sub-paragraph "d" hereof.

g. "Decision" shall mean the ruling, determination or report of disposition made by an immediate supervisor, department head or grievance board after a grievance is heard or submitted as in this act provided.

h. "Day" shall mean all days other than Saturdays, Sundays and Legal Holidays. Saturdays, Sundays and Legal Holidays shall be excluded in computing the number of days with which action must be taken, or notice given, within the terms of the act.

## **B. SETTLEMENT OF GRIEVANCES**

### **1. Grievances**

Any misunderstanding that cannot be resolved verbally between the employee and their immediate supervisor may become the basis for a written grievance. The written grievance may arise between the parties because of the application, the

meaning or interpretation of this agreement and/or the rules and regulations of Civil Service Law and/or rules and regulations of the Tonawanda Fire Department.

STEP 1 - The Union Steward, with or without the employee, shall take up the grievance with the Fire Chief and/or designee who shall attempt to adjust the matter and shall respond to the steward, in writing, within three (3) working days.

STEP 2 - If the grievance has not been settled, it shall be presented, in writing, by the Union Steward, to the Fire Chief and/or designee within seven (7) working days after their response is due. They shall respond to the Union Steward, in writing, within three (3) working days.

STEP 3 - If the grievance still remains unadjusted, it shall be presented by the Union Representative, in writing within seven (7) work days after the response of the Fire Chief is due. The Mayor or designee shall respond, in writing, to the Union Representative with a copy of the response to the Local Union President within seven (7) work days. Work days as used in the grievance procedure shall mean Monday through Friday, which constitutes a work week.

STEP 4 - If the grievance is still unsettled, either party may, within thirty (30) days after the reply of the Mayor or designee or their representative is due, by written notice to the other, request arbitration.

## 2. Arbitration Procedure

The Arbitration proceedings shall be conducted as per current rules and regulations of the New York State Public Employment Relations Board (P.E.R.B.), New York Codes, Rules and Regulations, Title 4, Part 207, except for the selection of an arbitrator, which shall be as follows:

a. The arbitration proceeding shall be conducted by an arbitrator to be selected by the Employer and the Union within seven (7) work days after notice has been given. If the parties fail to select an arbitrator, the Public Employment Relations Board shall be requested by either or both parties to provide a panel of five (5) arbitrators. Both the Employer and the Union shall have the right to strike two (2) names from the panel. The party requesting arbitration shall strike the first name and the other party shall then strike one (1) name. The process will be repeated and the remaining person shall be the arbitrator.

b. The decision of the arbitrator shall be final and binding on the parties, and the arbitrator shall be requested to issue his decision within thirty (30) days after the conclusion of testimony and arguments.

c. No arbitrator functioning under this step of the grievance procedure shall have any power to amend, modify or delete any provisions of this Agreement.

d. Expenses for the Arbitrator's services and proceedings shall be borne equally by the Employer and the Union. However, such party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings it may cause such a record to be made, providing it pays for the record and makes copies available without charge to the other party and to the Arbitrator. Local 859 I.A.F.F. shall have the right to process grievances under existing City of Tonawanda, NY Grievance Procedures as to application and interpretation of the terms of this contract.

e. If either party desires to withdraw before the appointed Arbitrator conducts any proceedings, that party shall bear the full cost of the Arbitrator's services.

#### C. TERM OF CONTRACT AND BUDGET SUBMISSION DAY

1. This contract shall be for a term of five (5) years, commencing January 1, 2012 and ending December 31, 2016.

2. It is understood and agreed by both parties that the benefits conferred by this agreement are subject to the applicable provisions of law, and to the agreed appropriation of funds by the Common Council.

3. This agreement and all provisions herein are subject to all applicable laws, and in the event that any provision of this agreement does not bind either party, the remainder of this agreement shall remain in full force and effect, as if the invalid provision or the illegal provisions had not been a part of this agreement.

4. No amendment or alteration of this agreement shall be binding unless it is in writing and signed by the Mayor or designee and the President of the Union or his authorized representative.

5. The Mayor or designee and Local 859 shall discuss at mutually agreeable times, matters of Mutual concern, but not to include amendment of this agreement.

ARTICLE VIII - CITY OF TONAWANDA  
COMMON COUNCIL AND MAYOR

All powers and authority the Common Council and Mayor had prior to the signing of this agreement, except those specifically modified or delegated hereby are retained by the Common Council and Mayor.

ARTICLE IX - TERMINATION AND MODIFICATION

1. This agreement shall be effective as of the first day of January 2012 and shall remain in full force and effect until the 31st day of December 2016. It shall be automatically renewed from year to year, thereafter, unless either party shall notify the other in writing one hundred eighty (180) days prior to the termination date that it desires to modify this agreement. In the event that such notice is given, negotiations shall commence no later than one hundred twenty (120) days prior to the termination date, and this agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this agreement is provided to the other party in the manner set forth in the following paragraph.

2. In the event that either party desires to terminate this agreement, written notice must be given to the other party not less than ten (10) days prior to the desired termination date which shall not be before the anniversary date set forth in the preceding paragraph.

ARTICLE X - MISCELLANEOUS PROVISIONS

1. A word used in the masculine gender also applies in the female gender.
2. Each lettered APPENDIX referred to in this agreement (for example: "APPENDIX A") is part of this agreement and is incorporated into this agreement by reference.
3. This Memorandum of Agreement is made in full settlement of PERB Case No. M-95-196.

4. This Memorandum of Agreement is expressly subject to ratification by the Union Membership and by the Tonawanda City Council in accordance with the Taylor Law.

5. Upon ratification by both parties, the City of Tonawanda, New York, with consultation with the Union, shall prepare a written agreement for signature within thirty (30) days of ratification covering the period of Memorandum incorporating all the terms and conditions of the agreement contained herein, together with all continued terms and conditions of employment from prior agreements and arbitration decisions.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this \_\_\_\_\_ of \_\_\_\_\_, 2012 .

\_\_\_\_\_  
Ronald J. Pilozzi, Mayor  
City of Tonawanda

\_\_\_\_\_  
James Barber, President I.A.F.F. Local 859

\_\_\_\_\_  
Michael Young, Negotiating Committee

\_\_\_\_\_  
Michael Lamp, Negotiating Committee

\_\_\_\_\_  
Patrick McNulty, Negotiating Committee

\_\_\_\_\_  
John Moore, Negotiating Committee

\_\_\_\_\_  
Richard Schroeder, Negotiating  
Committee

\_\_\_\_\_  
John Graf, Negotiating  
Committee





APPENDIX "C"

MEMORANDUM OF UNDERSTANDING

The Uniformed Professional Firefighters, Local 859, agree to allow the City of Tonawanda to use either the Training Officer or the Fire Prevention Officer, Monday through Friday on the day shift, to fill vacancies created by a manpower shortage caused by extended sick leave of over two (2) weeks or worker's compensation of over two (2) weeks that would necessitate overtime in the Fire Department.

In the event of extended sick leave and/or worker's compensation exceeding six (6) months, the Union and the City will meet in good faith to resolve the issue on a case by case basis.

Agreement to this memorandum will not be used to avoid addressing permanent and/or semi-permanent staffing problems that arise within the department.

Signing of this agreement between Local 859 and the City of Tonawanda is being done as a good faith measure to help alleviate unforeseen overtime within the Fire Department.

This memorandum of Understanding will supersede the Memorandum of Understanding dated August 16, 1994.

This Memorandum shall take effect on the 16<sup>th</sup> day of April, 1996.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the

Day of April, 1996.

Carleton R. Zeisz  
President Common Council City of Tonawanda

Scott A. Winters  
President Local 859, IAFF

Gayle Syposs  
Labor Relations Chairperson

Bernard E. Stack  
Attorney

Kevin R. Hardwick  
Labor Relations

David M. Sereno  
Negotiator

Ronald J. Pillozzi  
Labor Relations

Michael R. Young  
Union Representative

Thomas D. Miller  
Fire Chief

EXHIBIT "A"  
PROCEDURE FOR DOT URINE DRUG COLLECTION

1. Upon arrival at the collection site the collector shall request the donor to present photo identification (ID). If no photo ID is available, a Company Representative must verify ID.
2. The donor will be asked to remove any unnecessary outer garments (e.g., coat, jacket) that might conceal items or substances that could be used to tamper with or adulterate his/her urine specimen. Also, all personal belongings (e.g. purse, briefcase) must remain with outer garments.
3. Each donor will be required to sign a USH Hospitals "Consent for Urine Drug Testing".
4. The donor will be instructed to wash and dry his/her hands prior to urination.
5. After washing hands, the donor will remain in the presence of the collector and not have access to water fountains faucets or cleaning agents.
6. After the collection site, toilet bluing agents will be placed in the toilet water so the reservoir of water is always blue. The water supply to the sink will be shut off prior to the collection.
7. The donor may provide specimen in the privacy of the bathroom.
8. Upon receipt of the specimen, the collector will determine the contents to be at least 45 milliliters to produce a split specimen.
9. Within four (4) minutes after collection, the collector will measure the temperature of the specimen and conduct an inspection to determine the specimen's color and signs of contaminants. Any unusual findings resulting from inspection must be included on the chain of custody form.

If the temperature of the specimen is outside the range of 32.5-37.5C/90.5-99.5F, the specimen may be re-collected under direct observation and both specimens sent to the laboratory. (A donor may volunteer to have an oral temperature taken to provide evidence of fever or abnormally low body temperature.) Under direct observation, the individual will have the right to request an observer of the same gender.

10. If a collection bottle was used, the collector, in the presence of the donor, will pour the urine into two specimen bottles. Thirty (30) milliliters shall be poured into one bottle, to be used as the primary specimen. At least 15 milliliters will be poured into a second bottle to be used as the split specimen.

11. Both bottles will be shipped in a single shipping container, together with copies 1, 2 and the split specimen copy of the chain of custody form, to a DHHS certified laboratory.
12. If the individual is unable to provide 45 milliliters of urine, the collector will instruct the donor to drink not more than 40 ounces of fluids and, after a period of up to three hours, again attempt to provide a complete sample in a fresh container. The original insufficient specimen will be discarded. If the donor is still unable to provide an adequate specimen, the testing will be discontinued and the employer notified.
13. The donor and the collector will keep the specimen in view at all times prior to sealing and labeling. If for any reason the specimen is transferred to a second container, the collector shall request the donor to observe the transfer of the specimen and placement of the tamper proof seal over the bottle cap and down the sides of the bottle. The donor must initial the tamper proof seal.
14. The specimen(s) will be identified by bar code and social security number.
15. The collector will enter the identification information on the chain of custody form. Both the collector and the donor will sign the form with the identifying information. The specimen will be placed in a locked box for storage until courier transport takes place. The collector copy of the chain of custody form will remain in the collection site.

EXHIBIT "B"  
PROCEDURES FOR BREATH ALCOHOL TESTING

B. Preparation for Testing

1. Alcohol testing will be conducted in a location that affords visual and aural privacy to the individual being tested. Unauthorized persons will not be permitted access to the testing location when a test is in progress
2. The individual is required to show photo identification or have a company representative verify identification. The Breath Alcohol Technician (BAT) will then explain the testing procedure to the individual.
3. The BAT will supervise only one individual's use of the Evidential Breath Tester (EBT) at a time. The BAT will not leave the testing site while the test is in progress.

Screening Test Procedure

1. The individual will be requested to complete steps 1 and 2 of the Breath Alcohol Testing Form. A refusal by an individual to sign the certification in Step 2 of the form shall be regarded as a refusal to take the test.
2. An individually sealed mouthpiece will be opened in view of the individual and attached to the EBT.
3. The BAT will instruct the individual to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
4. Depending on the type of EBT used, the BAT will do the following:
  - If the EBT does not print the results, the BAT will show the employee the result displayed on the EBT

The BAT shall record the display result, test number, testing device, serial number of the testing device, time and quantified result obtained in STEP 3.

The BAT will also record the test number, date of the test, name of the BAT, location and quantified test result in the log book. The employee shall also initial the log book entry.

- If the EBT prints results but not directly onto the form, the BAT will show the employee the result displayed on the EBT. The BAT will affix page 2

of the test result printout to the Breath Alcohol Test Form in the designated space.

- If the EBT prints the test results onto the form, the BAT will show the employee the result displayed on the EBT.
5. Depending on whether the result is less than 0.02 or 0.02 or greater, the following will be done.
- If the result is less than 0.02, the BAT will date the form and sign the certification in Step 3 of the form. The employee will sign the certification and fill in the date in Step 4 of the form. No further testing is authorized. The BAT will transmit the result of less than 0.02 to the employer in a confidential manner and the employer will receive and store the information so as to ensure that confidentiality is maintained. Copy two of the form goes to the employee.

Note: If the individual does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it will not be considered a refusal to be tested. However, the BAT will note the individual's failure to sign or initial in the "Remarks" section of the form.

Note: If a test result printed by the EBT does not match the displayed result, the BAT will note the disparity in the "Remarks" section of the form. Both the individual and the BAT will initial or sign the notation. The test is considered invalid and the employer and the individual will be so notified.

- If the result is 0.02 or greater, a confirmation test must be performed. If the confirmation test will be performed by a different BAT, the BAT who conducted the screening test will complete and sign the form and log book entry. The BAT is to give the employee Copy 2 of the form.

### Confirmation Testing Procedure

If a different BAT is conducting the confirmation test, the new BAT will require positive identification of the individual and explain the test procedure. For all confirmation tests, a new Breath Alcohol Testing Form will be initiated and steps 1 and 2 will be completed with the employee. In addition, the following instructions must be followed:

1. The BAT will instruct the individual not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test and shall not be less than 15 minutes. The BAT will explain to the individual the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high

reading) and the fact that it is for the individual's benefit. The BAT will also explain that the test will be conducted at the end of the waiting period, even if the individual has disregarded the instruction. If the BAT becomes aware that the individual has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.

2. The confirmation test shall be conducted within 20 minutes of the completion of the screening test.
3. A new mouthpiece will be opened and used for the confirmation test.
4. Before the confirmation test is administered for each individual, the BAT will ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.

Note: Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

5. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
6. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT will show the individual the result displayed on the EBT. The BAT will then affix the test result printout to the breath alcohol test form in the designated space, using the method that will provide clear evidence of removal (e.g., tamper-evident tape). If the EBT prints the test results directly onto the form, the BAT will show the individual the result displayed on the EBT.
7. Following the completion of the test, the BAT will date the form and sign the certification in Step 3 of the form. The individual shall sign the certification and fill in the date in Step 4 of the form.

Note: If the individual does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it will not be considered a refusal to be tested. However the BAT will note the individual's failure to sign or initial in the "Remarks" section of the form.

Note: If a test result printed by the EBT does not match the displayed result, the BAT will note the disparity in the "Remarks" section of the form. Both the individual and the BAT will initial or sign the notation. The test is considered invalid and the employer and individual shall be so notified.

8. The BAT will conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9. The BAT will transmit all results to the employer in a confidential manner. Such transmission may be in writing, in person, or by telephone or electronic means, but the BAT will ensure immediate transmission to the employer of results that require the employer to prevent the individual from performing a safety-sensitive function.
  - If the initial transmission is not in writing, (e.g., by telephone), the employer shall establish a mechanism to verify the identity of the BAT providing the information.
  - If the initial transmission is not in writing the BAT will follow the initial transmission by providing to the employer the employer's copy of the breath alcohol testing form. The employer shall store the information so as to ensure that confidentiality is maintained.

APPENDIX E  
DRUG AND ALCOHOL TESTING POLICY

1.1 Purpose

The purpose of this policy is to establish the City of Tonawanda's policy regarding rules governing drug and alcohol testing for firefighters in the Tonawanda Fire Department. As an employer, the City of Tonawanda maintains a strong commitment to provide a safe, efficient work environment for its firefighters and the public they serve. This policy is based upon the City's policy and practice of prohibiting the use of alcohol and drugs on the job, or prior to reporting to work.

PROGRAM REQUIREMENTS

2.1 Participation as a condition of employment.

All current Tonawanda Fire Department firefighters and firefighter applicants must participate in the drug and alcohol-testing program described herein. Failure to participate in, and comply with, any and all program requirements may result in disciplinary action by the City up to and including termination of employment.

2.2 Prohibited Behavior

It is the policy of the City of Tonawanda's Fire Department that:

A. No firefighter shall use, sell, distribute, dispense, possess, or manufacture any alcoholic beverages, illegal drugs or any other intoxicating or controlled substance on a job site or on City property while on duty or while in a City vehicle.

B. No firefighter shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch, or rest period as a result of consuming alcohol, illegal drugs, or any other intoxicant or controlled substance.

C. In some cases, the use of prescription or over-the-counter drugs may cause impairment that prohibits the firefighter from performing firefighter duties. It is the sole responsibility of the firefighter taking any prescription or over-the-counter medication(s) that may impair performance to consult with his/her physician or pharmacist regarding its effect and to inform his/her supervisor if he/she may be impaired. A firefighter may be required to have his/her physician certify that a given medication does/does not adversely affect the firefighter's fitness for duty.

D. Violation of any of these rules by a City firefighter may result in disciplinary action up to and including termination of employment.

### 2.3 Circumstances for Testing

This policy requires that drug and alcohol tests be given to City firefighters in the following circumstances:

A. Pre-employment Testing. Applicants for employment in the class of firefighter and any officer position not filled internally must be given a pre-employment drug test. Firefighter applicants may not be hired or assigned to duty unless they complete and pass the test. Prior to conducting the drug test, the City will inform the applicant of the testing requirements. Vacancy announcements and job postings must stipulate that passing a drug test is a condition of employment. Finally, applicants may be required to sign a document acknowledging that they know they are subject to testing.

B. Reasonable Suspicion Testing. Reasonable suspicion that a firefighter may be abusing drugs or alcohol exists when objective facts and observations are brought to the attention of a superior officer and, based upon the reliability and weight of such information, as well as the officer's own observations he can reasonably infer or suspect that a firefighter may be under the influence of alcohol or drugs. Reasonable suspicion must be supported by the purchase, sale or possession of alcohol or drugs; associations with known drug dealers or users; observation of the firefighter with known drug or drug-related locations; unexplained change in the firefighter's behavior or work performance; an observed impairment of the firefighter's ability to perform his duties; other objective criteria such as the odor of alcohol, slurred speech, staggering or impaired gait or other behavioral indicators as taught to supervision by a substance abuse professional from the City's EAP vendor.

C. Post-Accident Testing. In all cases of any on-duty City firefighter being in an accident involving the loss of human life or if a City firefighter is the driver of any vehicle involved in an accident during on-duty time and receives a citation under State or local law for a moving traffic violation arising from the accident, a post-accident drug and alcohol test will be administered to the City firefighter(s) driving the vehicle or operating equipment. In addition, it is the City's policy to require post-accident testing where significant property damage occurs as the result of an accident or where the firefighter's record of accidents would give cause for concern. Drug and alcohol testing must be performed immediately following the accident. If an alcohol test is not administered within two (2) hours following the accident, then the command officer on the scene must still attempt to administer the test and must also prepare and maintain a record stating the reason(s) the test was not promptly administered to the firefighter(s).

The requirement to test for alcohol and drugs following an accident shall in no way delay necessary medical attention for injured people or prohibit a firefighter from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. However, subject to the preceding sentence, a firefighter who is subject to post-accident testing shall remain readily available for such testing or he/she may be deemed to have refused to submit to testing.

D. Random Testing. The selection of firefighters for random drug testing, and effective June 1, 2007, random breath alcohol testing, shall be made by a scientifically valid random number selection method. The selection method shall assure that each firefighter shall have an equal chance of being tested each time selections are made. Selection shall be determined by the City's testing vendor contracted to administer the drug and alcohol-testing program.

Ten percent (10%) of the bargaining unit will be tested annually on a random basis for the purpose of detecting the presence of illegal drugs or alcohol or the abuse of legal drugs. The test dates shall be spread reasonably throughout the year with no established pattern. Testing will be unannounced, as well as random. Notification and test arrangements will be made by the Fire Chief or his designee.

Once a firefighter has been notified that he/she has been selected for random testing, the firefighter shall report immediately to the collection or breath alcohol-testing site. Firefighters shall be individually and discreetly notified to report to the collection or breath alcohol testing site, and they shall be assured that they have been selected for a random test. See Exhibit "A" attached for drug testing procedures.

E. Return-to-Duty Testing. Before any firefighter is allowed to return to duty following a verified positive drug test result, an alcohol result of 0.02 or greater or a refusal to submit to a test, that firefighter must undergo a return-to-duty test. Any return-to-duty alcohol test result must indicate an alcohol concentration of less than 0.02. Any return-to-duty drug test result must indicate a verified negative result for controlled substance abuse. In addition, before a return-to-duty alcohol or drug test is performed, the firefighter must be evaluated by a substance abuse professional (SAP) at the City's Employee Assistance Program (EAP) who shall determine what assistance, if any, the firefighter may need and shall determine whether the firefighter has subsequently followed all recommendations made by the SAP, including participation in any rehabilitation program.

Failure of a firefighter to follow counseling and/or rehabilitation program recommendations as determined by the substance abuse professional will subject the firefighter to the disciplinary provisions of this policy up to and including discharge. Nothing in this section shall be construed as required or obligating the City to allow any individual firefighter who tests positive for alcohol or drugs to return to duty. Each individual case will be evaluated on the circumstances and individual merits of the firefighter involved.

F. Follow-up Testing. If and when a firefighter is allowed to return to duty, such a firefighter shall be subject to unannounced follow-up testing for at least twelve (12) months but not more than sixty (60) months. The frequency and duration of the follow-up testing will be recommended by a substance abuse professional (SAP) as long as a minimum of six (6) tests are performed during the first twelve (12) months after the firefighter has returned to duty. Any subsequent verified positive alcohol or drug test involving that firefighter will result in disciplinary action up to, and including, termination of employment.

#### 2.4 Behavior that Constitutes a Refusal to Submit to a Test

The following actions or behaviors shall constitute a refusal to submit to a required test:

- A. Refusal to take the test;
- B. Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
- C. Tampering with or attempting to adulterate the specimen or collection procedure;
- D. Failure to report to the collection site in the time allotted; or
- E. Failure to remain readily available for post-accident testing;
- F. Failure to submit to a re-test drug test, if the firefighter's drug urine specimen is determined by the testing lab to be dilute;

#### 2.5 Testing Procedures

A. Drug Testing. Drug testing is conducted by analyzing the firefighter's urine specimen. Specimens are collected in an off-site or on-site facility that must meet the requirements of Exhibit "A" to assure privacy and the integrity of specimen collection. The firefighter provides a urine specimen, which is sealed and labeled by an authorized agent of the testing organization. A chain of custody document is completed and the specimen is shipped to a certified laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification and integrity are not compromised.

This policy expressly provides that collection protocol will include split specimen techniques. Each urine specimen is sub-divided into two containers labeled as primary and split specimens. Both specimens are forwarded to a laboratory certified by the U.S. Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless, and until, it is required for confirmation of a positive test.

An initial screening test is performed. If the test is positive for one or more drugs, then a confirmation test is performed for each identified drug using a gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications are not reported as positive results.

If the analysis of the primary specimen confirms the presence of controlled substances, then the firefighter has seventy-two (72) hours to request that the split specimen be sent to another DHHS certified laboratory for analysis. The split specimen procedures may provide the employee with an opportunity for a second opinion. All drug test results are reviewed and interpreted by a physician, Medical Review Officer (MRO), before they are reported to the City.

Any firefighter whose drug urine specimen is determined by the testing lab to be “dilute” shall be immediately subject to a re-test as recommended by MRO. Failure to submit to such a test in the event of a “dilute” specimen shall be grounds for discipline up to and including termination of employment.

If the laboratory reports a positive result to the MRO, then the MRO contacts the firefighter and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen. If the firefighter provides appropriate documentation and the MRO determines that there is a legitimate medical use of the prohibited drug, then the test result is reported to the City as a negative.

Urine specimens are analyzed for the following drugs:

- Marijuana (THC metabolite)
- Cocaine
- Amphetamines
- Opiates (including heroin)
- Phencyclidine (PCP)

B. Alcohol Testing Alcohol testing is conducted using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). A breath alcohol technician (BAT) trained in the operation of the EBT and in the alcohol testing procedure prescribed by the rules must perform the breath test. Two (2) breath tests are required to determine if a person has a prohibited alcohol concentration. Any result from the screening test is considered negative if the alcohol concentration is less than 0.02. If the alcohol concentration is 0.02 or greater, then a confirmation test must be conducted. The firefighter and the BAT complete the alcohol testing form to ensure that results are properly recorded.

The confirmation test must be conducted using an EBT that prints the results, date, time, in sequential test numbers, and the name and serial number of the EBT to ensure the reliability of the results. BAT’s shall conduct the EBT employed by drug and alcohol testing organization under contract with the City of Tonawanda. Agents of the City of Tonawanda or any of its departments shall not perform the breath alcohol test. Law enforcement officers will not conduct the tests as part of roadside inspections. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. See Exhibit “B” attached for alcohol testing procedures.

C. Confidentiality of Test Results. The City of Tonawanda, the drug-testing laboratory, the alcohol testing facility, and the medical review officer maintain firefighter alcohol and drug testing results and records under strict confidentiality. The results cannot be released to any other party, except a substance abuse professional, without the written consent of the firefighter. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or other administrative proceedings arising from a positive alcohol or drug test or other violation of these rules. Statistical

records and reports are maintained by the City of Tonawanda and the alcohol and drug-testing provider. This information is aggregate data and is used only to monitor the effectiveness of the program.

## 2.6 Consequences of the Use of Drugs and the Misuse of Alcohol

A. Consequences of Alcohol Misuse Firefighters who engage in prohibited alcohol conduct must be immediately relieved of duty. The following circumstances constitute prohibited behaviors:

1. The firefighter tested has an alcohol concentration of 0.02 or greater, but less than 0.04, as determined by EBT results, when tested just before, during, or just after being on-duty.
2. The firefighter has used alcohol while on-duty.
3. The firefighter refuses to submit to a required alcohol test (as defined in Section 2.3 and 2.4 above). or
4. The firefighter has an alcohol concentration of 0.04 or greater, as determined by EBT results, when tested just before, during, or just after being on-duty.

A firefighter found to have violated any provision of Section 2.6 A. 1-4 shall be immediately removed from duty for twenty-four (24) hours and will be charged a day of sick leave, if accrued. The incident shall be recorded.

No firefighter who has engaged in any prohibited alcohol conduct as defined in Section 2.6 A. 2-4, shall be allowed to perform duty until the firefighter has been evaluated by a substance abuse professional. Before any firefighter found to have violated Section 2.6 A. 1-4, returns to duty, the firefighter must undergo a return-to-duty alcohol test, with a result indicating an alcohol concentration of less than 0.02.

Failure of a firefighter to follow any counseling and/or rehabilitation program, as determined by the substance abuse professional, will be subject to the disciplinary provisions of this policy.

Any violation of Section 2.2 Prohibited Behavior will subject a firefighter to disciplinary action up to and including termination of employment.

B. Consequences of Use of Drugs. A firefighter who has a verified positive drug test result must be immediately removed from duty. The firefighter who has a verified positive drug test result shall not be allowed to return to duty until the firefighter has been evaluated by a substance abuse professional. Before a firefighter returns to duty, the firefighter must undergo and pass a return-to-duty substance test with a verified negative result.

A firefighter who has an initial verified positive drug test result and/or who is found to be in violation of Section 2.2 Prohibited Behavior will be subject to disciplinary action up to and including termination of employment.

Failure of a firefighter to follow any counseling and/or rehabilitation program, as determined by the substance abuse professional, will be subject to the disciplinary provisions of this policy.

Any subsequent verified positive drug test will result in disciplinary action up to and including termination of employment.

C. Refusal to submit to a required alcohol or drug test (as defined in Section 2.3 above) Refusal or failure to submit by a firefighter to a required alcohol or drug test constitutes a failed test, resulting in immediate removal from duty and appropriate disciplinary action up to and including termination of employment.

## 2.7 Training for Supervisors

The City of Tonawanda shall ensure that all supervisors and other persons designated to determine whether reasonable suspicion exists to require a firefighter to undergo testing must receive a minimum of sixty (60) minutes of training on alcohol misuse and a minimum of sixty (60) minutes on controlled substance use. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. The training shall include an overview of the program requirements, disciplinary procedures, confrontation and documentation procedures, and rehabilitation and treatment options which are available through the City of Tonawanda Employee Assistance Program (EAP).

## 2.8 Training for City Firefighters

The City of Tonawanda shall ensure that all firefighters shall have the opportunity to be trained for a minimum of sixty (60) minutes on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, as well as the manifestations and behavioral signs that may indicate prohibited use, as per the training materials (video and written) provided by the City's EAP.

## 2.9 Supervisory Responsibilities.

It is the policy of the City of Tonawanda that:

A. Supervisors are responsible for determining through direct observation whether a firefighter is capable of performing his or her assigned duties. Determinations shall be based on specific, contemporaneous, articulate, reliable observations concerning the appearance, behavior, speech, or body odor of the employee.

B. Firefighters who are suspected of being unfit for duty as a result of alcohol or drug use shall be required to undergo reasonable suspicion drug and/or alcohol testing in accordance with this policy. Supervisors must immediately bring their observations to the attention of their superiors in order that arrangements for testing can be implemented as soon as practicable.

C. Incidents and behavior described above must be witnessed and documented immediately. The supervisor's manager should be consulted and advised of the incident. A firefighter who is impaired should not be allowed to drive home from the work place or the test site. The supervisor should arrange to send the unfit firefighter home with a member of the employee's family or friend of the firefighter or in a taxi at the firefighter's expense. If all other alternatives are exhausted, a supervisor may allow a firefighter who is unfit for duty to then be driven home in a City vehicle.

D. The fact that an unfit firefighter engaged in prohibited behavior as defined in Section 2.2 above and was not allowed to remain at work or was tested is not considered a disciplinary suspension. After the employee is removed from the work place and tested, supervisors and managers should discuss the specifics of the situation with their department head to review appropriate disciplinary action. Each situation will be evaluated on a case-by-case basis, and

E. When a firefighter displays dangerous, aggressive or abusive behavior which clearly constitutes a danger to that firefighter or others and the firefighter resists voluntarily leaving the workplace, the supervisor may immediately suspend the firefighter and order the firefighter to leave the premises. The supervisor must take immediate steps to notify the department head of the situation including having the department head paged or called at home.

F. In cases where the firefighter does not comply with disciplinary suspension and the firefighter continues to display aggressive and/or abusive behavior that constitutes a danger in the workplace, the supervisor may have to contact local law enforcement authorities to remove the employee from the workplace. Law enforcement intervention should only be taken if it is believed an immediate danger to persons or property exists and the other measures described above were unsuccessful in controlling the situation.

## 2.10 Management Responsibilities.

It is the policy of the City of Tonawanda that:

A. A drug and alcohol free workplace shall be maintained through the efforts and personal example of management.

B. Subordinate managers and supervisors who fail to perform their duties and responsibilities as outlined in this policy will be subject to disciplinary action up to and including termination of employment.

C. Managers and supervisors are encouraged to discuss with firefighters any behavior or job performance factors that may indicate the use of drugs, alcohol or other violations of this policy and to suggest, when appropriate, that a firefighter seek assistance through the City's EAP.

D. Effective June 1, 2007, managers shall direct all firefighters under their direction and subject to this policy to comply with the provisions of this policy for pre-employment, reasonable suspicion, post-accident, return-to-duty, and follow-up testing.

E. Firefighters who make reasonable suspicion determinations must receive training on the physical, behavioral and performance indicators of probable drug use and alcohol misuse. Such training shall be conducted by staff from the City's EAP.

Appendix F

EMPLOYEE: \_\_\_\_\_ DATE: \_\_\_\_\_

Anticipated Date of Retirement: \_\_\_\_\_

**BENEFITS STATEMENT**

Accumulated Sick Leave:

\_\_\_\_\_ Sick Days x \$ \_\_\_\_\_ Daily Rate = \$ \_\_\_\_\_ Sick Leave Pay

Comp. Time:

\_\_\_\_\_ Comp. Time Hours x \$ \_\_\_\_\_ Hourly Rate = \$ \_\_\_\_\_ Comp. Time Pay

Vacation: (unused)

\_\_\_\_\_ Vacation Days x \$ \_\_\_\_\_ Daily Rate = \$ \_\_\_\_\_ Vacation Pay

Longevity:

\_\_\_\_\_ Longevity Rate x \_\_\_\_\_ % Entitlement = \$ \_\_\_\_\_ Longevity Pay

Personal Leave: (unused)

\_\_\_\_\_ Days x \$ \_\_\_\_\_ Daily Rate = \$ \_\_\_\_\_ Personal Leave Pay

Pay for Holidays: (if applicable)

\_\_\_\_\_ Holidays x \$ \_\_\_\_\_ Daily Rate = \$ \_\_\_\_\_ Holiday Pay

Health Insurance: The City pays 100% of Independent Health Encompass A Coverage For employee/retiree, current spouse and dependent children to age 23 (if any). Employee and spouse must enroll in Medicare Part B upon turning age 65.

Clothing Allowance \$ \_\_\_\_\_

Educational Incentive \$ \_\_\_\_\_

Briefing Pay \$ \_\_\_\_\_

Shooting Incentive \$ \_\_\_\_\_

Court Time \$ \_\_\_\_\_

**Total Cash Out: \$ \_\_\_\_\_**

Agreement Signatures: Treasurer \_\_\_\_\_

Dept. Head \_\_\_\_\_

Employee \_\_\_\_\_