

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN
THE MUTUAL AID ASSOCIATION OF THE PAID FIRE DEPARTMENT
OF THE CITY OF YONKERS, NEW YORK, INC.
LOCAL 628, I.A.F.F., AFL-CIO
AND
THE CITY OF YONKERS**

JULY 1, 2002 - JUNE 30, 2005

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**AGREEMENT BETWEEN
MUTUAL AID ASSOCIATION OF THE PAID FIRE DEPARTMENT
OF THE CITY OF YONKERS, NEW YORK, INC.,
LOCAL 628, I.A.F.F., AFL-CIO
AND
THE CITY OF YONKERS**

This AGREEMENT, made this 30th day of October, 2002, by and between the CITY OF YONKERS, NEW YORK (hereinafter referred to as the "City"), and MUTUAL AID ASSOCIATION OF THE PAID FIRE DEPARTMENT OF THE CITY OF YONKERS, NEW YORK, INC., LOCAL 628, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO (hereinafter referred to as the "Union").

ARTICLE 1:0

RECOGNITION

Section 1:0

The City recognizes the Union as the exclusive bargaining agent for all those employees holding the rank of Firefighter (hereinafter referred to as "members"), who are now on active duty and employed by the Fire Department of the City of Yonkers (hereinafter referred to as the "Department").

ARTICLE 2:0

CHECK-OFF AND AGENCY SHOP

Section 2:01 - Dues Check-Off

The City agrees to deduct membership dues and other present deductions from the members' bi-weekly paychecks when authorized in writing by members of the Union. The amounts deducted shall be transmitted to the treasurer within five (5) work days of such deductions, together with a list of Members from whom deductions were made. The Union shall notify the City in writing of the amount to be deducted and to whom it should be sent. The City shall not be responsible for the transmission, receipt and use of the funds when payment has been made. Payment shall be made through an Executive Board member who shall pick up the payment and sign for it.

Section 2:02 - Agency Shop

The City shall recognize the form of union security known as "agency shop". Present or future employees who are not members of the Union and who do not make application for membership within thirty (30) days after the execution of this Agreement, shall, as a condition of employment, have deducted from their bi-weekly wages, for payment to the Union by the City, an amount of money (to be called the "Agency Shop Fee") equal to the regular union bi-weekly dues, as a contribution toward the administration of this Agreement. The Union shall be solely responsible to account to such employees for the receipt and disbursement of all funds collected pursuant to this paragraph, and shall indemnify and hold the City harmless from all loss and liability, including without limitation, all costs of defense on account of any claim asserted by any person relating to the collection, disbursement or purpose for which such funds may or shall be used. Notwithstanding the foregoing, this section shall not be construed to prevent the Corporation Counsel from appearing or participating in any litigation to which the City is a party. This provision shall become effective with the signing of this Agreement, and upon the Union providing to the City a copy thereof, and maintaining a refund procedure as required by Section 208 3(b) of the Taylor Act. Deductions thereafter shall be made commencing on the thirty (30) day period for application for membership.

Section 2:03 - Deduction Plans

The City shall make reasonable attempts to accommodate requests for Union payroll deduction plans. Such requests shall be made in writing and shall include a description of the plan for which deductions are to be made.

ARTICLE 3:0

UNION ACTIVITIES

Section 3:01

Neither the City nor any of its agents, representatives, or employees shall discriminate against any member of the Union on account of his activities on behalf of the Union.

Section 3:02

3:02.01 - The City shall permit the elected members of the Executive Board, which excludes house shop stewards, release time with pay for union business. All requests for such release time off shall be made in writing on a form to be provided by the Department. Such form shall include a signature line for the President of Local 628 and a line for the general time of union business the release time off is being requested for (i.e. negotiations, contract administration, Local 628 office, seminar, legislative, and other matters pertaining to the welfare of the membership, etc.). Requests for time off shall be submitted to the Office of the Fire Commissioner at least three (3) days prior to the effective date thereof. The parties acknowledge that circumstances may arise which will not permit a full three (3) days notice. All requests shall be approved by the Deputy

Chief designated by the Commissioner for such purpose. Only those requests which have been signed by the President of Local 628 shall be processed by the Department. Any such requests which are not signed by the President of Local 628 shall be denied. The President shall designate in writing a member of the Executive Board who, in the absence of the President, shall be authorized to sign release time requests. Upon the President's return he shall co-sign all such requests.

3:02.02 Requests for release time made pursuant to this section shall be approved up to a maximum of one hundred and forty-five (145) full tours per calendar year. All requests for release time for union business shall be charged against this section except for attendance at formal grievance arbitration hearings and formal interest arbitration hearings and as further provided in sections 3:03 and 3:04 below. Release time requests submitted to the Department pursuant to procedures of this section shall be approved by the Department.

Section 3:03

3:03.01 The twelve (12) house shop stewards, the staff shop steward and the chief shop steward shall each be given appropriate time off with pay if necessary to attend the quarterly shop stewards meetings. Such time off shall only be approved in instances when the shop steward is working in his assigned squad during the time of such meeting. Such requests for time off shall be submitted with seventy-two (72) hours advance notice in the same manner as provided in section 3:02 above.

3:03.02 The twelve (12) house shop stewards, the staff shop steward and the chief shop steward shall each be given appropriate time off with pay to attend three (3) of the regularly scheduled monthly union meetings per calendar year. Such time off shall only be approved in instances when the shop steward is working in his assigned squad during the time of the meeting. Such requests for time off shall be submitted with seventy-two (72) hours advance notice in the same manner as provided in section 3:02 above. Such time off shall only be approved for the duration of the meeting and shop stewards shall be required to return to duty following the conclusion of such meeting.

Section 3:04

The President of the Union shall be assigned non-firefighting duties eight (8) hours per day, five (5) days per week, in a staff department; such assignment to be mutually agreeable between the President and the Commissioner of the Department, such special assignment being intended to permit the President to better perform his duties as Union President and to better service the members of the Union in their relations with the City and other government authorities. In the event of serious gas shortages, the President shall receive gas to enable him to carry out his duties.

Section 3:05

It is agreed that the Union may post Union notices to its members on City bulletin boards in all Fire Stations.

ARTICLE 4:0
COMPENSATION

Section 4:01 - Annual Salary

4:01.01 - Base Salary: The annual base salary for firefighters shall be as provided on the Appendix A annexed and made part of this Agreement and shall be in effect during the term of this Agreement. All newly appointed Firefighters shall be paid at the hiring rate as provided for on Appendix A regardless of prior service with the City.

4:01.02 - Longevity

4:01.021 - Members who have completed nine (9) years of service shall received three percent (3%) of their annual base salary, as provided in "4:01.01" above, as a longevity payment. Members who have completed fourteen (14) years of service shall receive six percent (6%) of their annual base salary, as provided in "4:01.01" above, as a longevity payment. Members who have completed eighteen (18) years of service shall receive nine percent (9%) of their annual base salary, as provided in "4:01.01" above, as longevity payment.

4:01.022 - Members whose service is terminated through retirement shall be entitled to the full annual longevity increment for the year in which the termination occurs. Any balance due for that year shall be paid in full upon retirement, and in the case of death, to the member's legal designated beneficiary or estate upon presentation of a death certificate.

4:01.023 - (i) The payment of longevity shall commence on the first day of the calendar quarterly period (i.e., January, April, July and October) following the date of entitlement and shall continue thereafter in four (4) equal quarterly payments in the first paycheck for each quarter. The member's daily and hourly rates resulting from the addition of longevity shall be effective the day of entitlement.

(ii) When the new payroll system is operational, longevity shall be paid in equal pro-rata amounts with each bi-weekly payroll check. The amount of the pro-rata longevity shall be indicated on the pay stub as a separate item. This modification of the longevity provision shall not affect a member's entitlement to longevity as the intent of this item is only to change the method of payment from a quarterly basis to a bi-weekly basis. This modification shall not be implemented prior to July 1, 1985.

4:01.03 - Arson Pay

Firefighters assigned to the Arson Squad by Order issued by the Commissioner shall receive an arson pay differential equal to ten percent (10%) of their annual base salary as provided in Section 4:01.01 above, which does not include longevity. The arson pay differential will, however, be included in computing the hourly and daily rates. The Commissioner retains the right to terminate this assignment at any time.

4:01.04 - Direct Deposit

The City shall make available to members the option for direct deposit of their bi-weekly paychecks. The City reserves the sole right to promulgate, amend or otherwise modify the rules and procedures of the direct deposit program. Direct deposit of bi-weekly paychecks shall become available to members by the payroll of July 13, 1995.

Section 4:02 - Rate of Pay

Whenever appropriate in this Agreement, a member's rate of pay per day shall be one and two hundred thirty-secondths ($1/232$ ths) of annual base salary plus longevity; a member's hourly rate of pay shall be one eighteen hundred fifty-sixths (1856 th) of annual base salary plus longevity. Members who are assigned to arson pursuant to 4:01.03 shall in addition, have their arson pay differential included in computing their hourly and daily rates.

Section 4:03 - Overtime and Overtime Pay

4:03.01 - Overtime is designated as all time worked in excess of the regularly scheduled work tour and shall be paid at the rate of time and one-half of members' hourly rate as set forth in 4:02 above. All overtime shall be paid in cash at the rate of pay in effect when such overtime is worked. Members shall not unnecessarily be held on duty. Overtime will be made on a current basis. Payment shall be made no later than the last pay day of the month following the month in which the overtime was worked.

4:03.02 - (i) A member who reports to work for an overtime assignment and is subsequently placed on sick leave (not related to the performance of his duties) shall receive overtime pay only for the period commencing from the start of his overtime assignment to the time the firefighter was placed on sick leave.

(ii) A member who reports to work for an overtime assignment and is subsequently placed on 207-a leave (related to the performance of his duties) shall receive overtime pay for the period commencing from the start of his overtime assignment to the time the member is placed on 207-a leave except as otherwise in (iii) below. In the event the firefighter is placed on 207-a leave prior to the end of his overtime assignment he shall receive two additional hours of overtime but in no event shall he be paid an amount greater than what he would have otherwise received had he worked the entire overtime assignment.

(iii) In the event the incident which caused the member to be placed on 207-a leave occurred once the member had vacated the fire station while responding to an alarm, at the scene of an alarm, or while returning from an alarm but prior to re-entering the fire station, such member shall be paid overtime pay for the greater of either, the entire overtime assignment, or the period commencing from the start of the overtime assignment to the time the member is placed on 207-a leave. In all other instances, a member who reports to work for an overtime assignment and is subsequently placed on 207-a leave shall be paid pursuant to paragraph (ii) above.

4:03.03 - The Commissioner, or his designee, shall be responsible for all overtime assignments and scheduling. Overtime assignments shall be made in accordance with an equitable schedule. The Commissioner shall assign a light duty member if available, to assist his staff in calling in off-duty firefighters for overtime assignments. Upon reasonable notice in writing to the Commissioner, the Union shall have the right to inspect all firefighter overtime records for the sole purpose of ensuring that an equitable schedule is being maintained.

4:03.04 - All firefighters returning from a fire, except in instances of false alarms, shall be allowed one-half (1/2) hour clean-up time commencing from the time of return to the fire station. Only that part of the one-half (1/2) hour clean-up time falling after the end of the regular work tour will be credited as overtime.

4:03.05 - Members who, after reporting for duty at a given fire station, are ordered to duty to another station for the remainder of their tour and who are not returned to their original station prior to the end of that tour shall receive twenty (20) minutes of overtime pay to permit them to return to the station to which they initially reported.

4:03.06 - In the event of a State of Emergency declared by the Mayor, all members shall report to duty one-half (1/2) hour prior to the commencement of their tours and remain on duty one-half (1/2) hour following the end of their tours without additional compensation. The one-half (1/2) hour before the beginning of a work tour includes the twelve (12) minutes early reporting time now existing. Therefore, members will be reporting in eighteen (18) minutes earlier than is now the case.

4:03.07 - Overtime Distribution: Article II, Section 3 of the contract dated December 17, 1973, as amended by Item 6 of the Arbitration Award (Overtime distribution) dated October 16, 1978 shall be eliminated effective January 1, 1982. This shall in no way affect the rights of the Union, if any, arising under the overtime distribution clause that was contained in the contract prior to January 1, 1982.

4:03.08 - All line firefighters who volunteer and work available overtime assignments on the tours listed below shall receive a no count for purposes of the equal distribution of overtime procedure.

| | |
|--------------------|-----------------|
| New Years Eve | 6 p.m. - 8 a.m. |
| New Years Day | 8 a.m. - 6 p.m. |
| Easter Day | 8 a.m. - 6 p.m. |
| Easter Night | 6 p.m. - 8 a.m. |
| Independence Day | 8 a.m. - 6 p.m. |
| Independence Day | 6 p.m. - 8 a.m. |
| Labor Day | 8 a.m. - 6 p.m. |
| Labor Day | 6 p.m. - 8 a.m. |
| Thanksgiving Eve | 6 p.m. - 8 a.m. |
| Thanksgiving Day | 8 a.m. - 6 p.m. |
| Thanksgiving Night | 6 p.m. - 8 a.m. |
| Christmas Eve | 6 p.m. - 8 a.m. |
| Christmas Day | 8 a.m. - 6 p.m. |
| Christmas Night | 6 p.m. - 8 a.m. |

Requests for holiday overtime volunteers for the tours listed above shall be initiated by the Department not less than twenty-one (21) days prior to the listed holidays. Seniority shall control for purposes of determining which volunteers shall work overtime for all members who have volunteered up to seven (7) days prior to the holiday. thereafter, overtime on the tours listed above shall be assigned to volunteers on a first come first serve basis until the list of all overtime volunteers has been exhausted.

4:03.09 - Probationary firefighters shall receive overtime assignments during their initial three month period to an engine or ladder company, only when such overtime assignment does not result in a twenty-four hour tour for such probationary firefighters, or result in two probationary firefighters working the same tour in the same engine or ladder company.

4:03.10 - At the conclusion of a probationary firefighter's initial three (3) month period on the line, the restrictions set forth in sections 4:03.09 shall no longer apply.

Section 4:04 - Minimum Recall Pay

A minimum of four (4) hours' pay at time and one-half (1-1/2) shall be paid for recalls.

Section 4:05 - Night Differential

4:05.01 - Night differential shall be paid at the rate of 3.33% of the firefighter's annual base salary plus longevity. This differential shall be paid only to firefighters who are regularly scheduled to work rotating tours that include the 6:00 p.m. to 8:00 a.m. night tour, and only to firefighters actually working that night tour.

4:05.02 - Payments shall be made in February and August of each year for the preceding thirteen (13) pay periods. Firefighters who qualify for night differential pursuant to "4:05.01" above, for any part of a bi-weekly pay period, shall receive the night differential payment for that entire bi-weekly pay period.

4:05.03 - Night differential payments shall continue to be paid in accordance with the conditions as provided above during periods of paid absence such as: vacation, sick leave and personal leave days. During absence due to non-job-related illness or accident, night differential shall be included only at the discretion of the Commissioner of the Department, subject to review by the Mayor. During non-paid leave of absence firefighters shall not receive night differential payment.

Section 4:06 - Check-In Pay

Each firefighter shall be present for duty at his assigned command twelve (12) minutes prior to the commencement of his tour of duty for receipt of instruction, equipment and/or uniform inspection. Each firefighter shall receive an additional five and one-half (5-1/2) days per year at the rate of pay as set forth in section 4:02 above. This payment shall be earned as of the first day of

each year. Payment shall be on a semi-annual basis and made in May and November for the preceding six (6) month period.

Section 4:07 - Holiday Pay

4:07.01 - Members shall be paid for twelve (12) legal holidays, whether worked or not, at the daily rate established in section 4:02 above. Newly appointed employees to the department shall be paid during the calendar year of their appointment, one day at the daily rate for each month worked from the date of appointment to December 31 of the year of appointment. Payment for said legal holidays shall be made as follows: six (6) days in the first pay period in June and six (6) days in the first pay period in December. A retiring member is to be paid at the rate of one day at the daily rate for each month worked from the last regular payment period for holidays provided above to the date of his retirement, payable at the time of retirement.

4:07.02 - Veterans working on memorial Day and/or Veterans Day, who are called or scheduled to work, shall receive two and one-half (2-1/2) times their hourly rate or thirty (30) hours compensatory time at the member's sole option.

ARTICLE 5:0

MEAL ALLOWANCE

Section 5:01

The maximum meal allowance during emergencies is as follows:

| | |
|-----------------|-------------|
| Breakfast..... | \$ 2.00 |
| Lunch..... | \$ 2.50 |
| Dinner..... | \$ 3.00 |
| TOTAL | \$ 7.50 |

All claims must be accompanied by invoices and will be paid within thirty (30) days.

ARTICLE 6:0

ACTING-OUT-OF-TITLE PAY

Section 6:01

Members shall be paid a day's pay (1/260, 1/261), when they have worked an out-of-title assignment for more than four (4) hours during one regular tour, at the daily salary rate of pay of the higher position they temporarily occupy. A member shall be deemed to "act out-of-title"

whenever such member shall be required to perform duties in excess of or in addition to those required of his rank and appropriate to the next higher rank.

Section 6:02

For the purpose of determining the rate of pay for acting out-of-title, a member shall be paid at the annual salary rate of the higher position (1/260, 1/261), which the member temporarily occupies; however, members earning longevity shall continue to have their longevity payment based on their own position and not that of the higher position.

Section 6:03

Consideration will be given to seniority and the exigencies of the situation in designation of out-of-title assignments. If a certified civil service list is established, members shall be first selected for out-of-title assignments based on such a list if operating conditions permit. Each company on duty shall have an officer or an acting officer in charge at all times. For the purpose of computing a "days" out-of-title assignment, a member shall be deemed to have earned a "day" when he shall serve out-of-title for more than four (4) hours during one (1) regular tour. Payment will be made at the same time that overtime is paid.

ARTICLE 7:0

UNIFORMS AND UNIFORM ALLOWANCE

Section 7:01

The City shall supply all newly appointed firefighters with a complete issue of uniform, such issue to be sufficient under normal conditions of wear to last two (2) years as set forth in Appendix "B"; and the City shall also supply to all members an initial complete issue of any uniform changes and shall supply all incidental and necessary equipment to all members regardless of length of service.

Section 7:02

Members shall become entitled to an annual uniform allowance of eight hundred dollars (\$800.00) per year following the completion of twenty (20) consecutive months of work. The uniform allowance shall be made in two (2) equal payments of four hundred dollars (\$400.00); the first payment to be made no later than March 15 and the second payment to be made no later than September 15 of each year. Newly appointed members shall begin receiving their uniform allowance with the first payment date specified above that follows the completion of twenty (20) consecutive months of work.

Section 7:03

The City shall supply replacement of clothing damages in the line of duty with a charge to the member pro-rated according to the useful life of the garment or equipment replaced. There will be no change in the Department's present policy permitting members to travel to and from duty stations out of uniform with suitable civilian attire, except in the event of emergencies requiring temporary change of policy.

ARTICLE 8:0

INSURANCE

Section 8:01 - Life Insurance

The City shall maintain group life insurance at no cost to the member in the sum of Five Thousand Dollars (\$5,000) for each member which shall be payable to a beneficiary to be designated by the member. If said member of the Union is killed in the line of duty or dies from injuries or illness received in the line of duty, said payment will be Fifteen Thousand Dollars (\$15,000).

Section 8:02 - Medical Insurance

8:02.01 The City shall continue to offer member participation in the New York State Empire Plan providing the level of benefits at the core plus enhancement level.

8:02.02

- (a) Firefighters hired on or after January 1, 1978 shall contribute to the City thirty-five percent (35%) of the cost of a family medical insurance plan and fifty percent (50%) of the cost of an individual medical insurance plan.
- (b) Effective July 1, 1999, the contribution rates toward the cost of medical insurance for firefighters hired after January 1, 1978, set forth in Article 8:02.02(a), shall be modified as follows:
 - 1. For the first 36 consecutive months of employment by the Yonkers Fire Department, the member shall contribute 35% of the cost of a family medical insurance plan or 50% of the cost of an individual medical insurance plan.
 - 2. Upon completion of 36 consecutive months of employment by the Yonkers Fire Department, the member's contribution shall be reduced to 30% of the cost of a family medical plan or 45% of the cost of an individual medical insurance plan.
 - 3. Upon completion of 48 consecutive months of employment by the Yonkers Fire Department, the member's contribution shall be reduced to 25% of the

cost of a family medical insurance plan or 35% of the cost of an individual medical insurance plan.

4. Upon completion of 60 consecutive months of employment by the Yonkers Fire Department, the member's contribution shall be reduced to 20% of the cost of a family medical insurance plan or 30% of the cost of an individual medical insurance plan.
 5. Upon completion of 72 consecutive months of employment by the Yonkers Fire Department, the member's contribution shall be reduced to 10% of the cost of a family medical insurance plan or 20% of the cost of an individual medical insurance plan.
- (c) Contributions for medical insurance shall be deducted from the member's pay in equal monthly installments pursuant to the City's IRC §125 plan.
- (d) For the purpose of calculating consecutive months of employment, all service as a City of Yonkers employee shall be considered as time worked in the Yonkers Fire Department.

8:02.03 The City agrees to make available to members the premium conversion option for the member's health insurance contributions pursuant to sections 105 and 125 of the Internal Revenue Code.

8:02.04 Optional Coverage:

Each firefighter may elect to opt out of participation in the City medical insurance plan upon a showing that the firefighter is covered by an alternative medical insurance plan. The City will pay \$1,000 per year to the firefighter in equal \$500 installments on or about April 1 and October 1 for each year that the member opts out of coverage. A firefighter may elect to resume coverage upon notice to the City. In the event a firefighter resumes coverage, the firefighter will refund the pro rata portion of any advance payment already received from the City for opting out of coverage.

Section 8:03 - Insurance Carriers

The City shall have the right to change its insurance carrier including but not limited to the adoption of a self-insured fund. The City shall consult with Local 628 prior to the change in carrier or the adoption of a self-insured fund. A change in carrier or the adoption of a self-insured fund shall afford the employees with the same or better level of benefits that existed immediately prior to such change. Once the City elects to make a change in carrier or adopt a self-insured fund it shall provide Local 628 with a minimum of 120 days notice prior to the effective date of such change. Any disputes between the parties as to this section 8:03 may be filed directly to binding arbitration pursuant to the rules of the American Arbitration Association. In the event Local 628 files for arbitration the City shall not implement a change in carrier or a self-insured fund pending the issuance of an arbitration award.

Section 8:04 - Retiree Health Insurance

8:04.01 - The City shall continue to provide individual and family health insurance benefits to members who retire from the Department with the same employee contribution rates as the member had on the date of retirement. The retirees will have the same health benefit plan options as the active members offered by the City.

Survivor Health Insurance

8:04.02 - For employees who die in the line of duty, or while still in active duty, the City will contribute 100% of the cost of the coverage under the City medical and insurance plan for the deceased member's spouse and children, until the deceased member's spouse dies or remarries.

ARTICLE 9:0

VARIABLE BENEFITS FUND

Section 9:01 - Contributions

9:01.01 - The City and the Union have agreed to establish a Benefits Fund which shall be controlled by the Union. The City shall contribute annually, 3% of top rated firefighter's base salary per year, as provided in Article 4:0, Section 4:01.01, to the Benefits Fund, for each member of the bargaining unit. This contribution shall be paid bi-weekly in equal amounts over the course of the year on behalf of each member listed on the bi-weekly payroll. The total sum contributed bi-weekly shall be forwarded to the Variable Benefits Fund, or as otherwise indicated in writing by the Fund's Trustees. The President and Secretary of the Union shall sign a certification of any vote taken to expend funds for benefits as determined by the Fund's Trustees and shall present to the City such certifications and an annual audited account of funds spent. Payments shall be supported by a duly executed claim submitted by the President or his agent.

9:01.02 - The City shall make an annual contribution to the variable benefits fund in the amount of \$14,280 in addition to the contribution provided for in section 9:01.01 above. The annual contribution shall be paid in equal monthly installments of \$1,190 with the regular bi-weekly City contribution.

Section 9:02

The Benefits Fund shall be used for the benefit of all bargaining unit members covered by this Agreement. The Trustees of the Fund shall determine the nature and extent of the benefits to be provided from said Fund.

Section 9:03

9:03.01 - The City shall have the right to conduct an annual audit of the Variable Benefits fund. The Union shall make available to City auditors, for their examination, all books, records and

supporting documents reflecting the receipt of payments from the City to the Variable Benefits Fund and all expenditures made by said Fund.

9:03.02 - Written notice shall be provided to the Fund by the City notifying the Fund that an audit is being scheduled and requesting a mutually agreeable date to conduct such audit. The Union may have present at the audit its Trustees, Accountants and/or Counsel.

9:03.03 - Nothing contained in this section 9:03 shall be construed to modify the rights of the Union, as provided in this Agreement, to exclusively control and administer the Variable Benefits Fund nor to relinquish any control or administration of the Fund's books and records.

Section 9:04

If a member is killed in the line of duty the City shall continue to make contributions to the variable benefits fund, as such is provided in this Article of the collective bargaining agreement until such time as the member's youngest child, who was covered by said fund at the time of death, reaches his or her twenty-second birthday at which time such contributions shall terminate. Local 628 and the Variable Benefits Fund shall certify to the City, in writing, the names and birthdays of the deceased member's children covered at the time of death.

ARTICLE 10:0

VACATION LEAVE

Section 10:01

10:01.01 - Members of the bargaining unit who have completed in excess of one (1) year of service shall be entitled to nineteen (19) working days of vacation per year. Members who have completed six (6) months of service in one (1) calendar year shall be entitled to sixteen (16) working days vacation in the following calendar year. Members who have completed less than six (6) months of service in one (1) calendar year shall be entitled to eight (8) working days vacation in the following calendar year. Members shall be entitled to split their vacations in two (2) working day periods of ten (10) or nine (9) days; and also shall be entitled to take personal leave in conjunction with vacation.

10:01.02 - The Fire Commissioner shall establish the vacation periods, which shall commence either after a day tour or after a night tour, as he shall determine to be in the best interests of the Department. Members shall return to work on the next regularly scheduled working day in accordance with their normal cycle following the completion of their vacation. The number of vacation picks permitted members during any one (1) vacation period shall be determined in a manner so as to provide an equal distribution of member manpower during any vacation period as possible, which shall be defined as an average of not less than 1.5 members per company without the mutual consent of the member and the Commissioner. Once selections have been made, they shall not be changed. Said minimum may be lowered by mutual consent of the member and the

Fire Commissioner so as to provide greater prime time selections consistent with the availability of manpower.

Section 10:02

10:02.01 - If a member becomes ill or disabled prior to the start of a scheduled vacation, the vacation shall be cancelled if requested by the member. Upon such a request, a member's vacation shall be re-scheduled during the remainder of the calendar year in accordance with the operating needs of the Fire Department. If said vacation is not rescheduled during the remainder of the calendar year in which it was first scheduled, then it shall be carried over into the next succeeding calendar year but not beyond. The rescheduled vacation shall be in addition to the member's earned vacation for the succeeding year.

10:02.02 - Members who, while on vacation, are recalled to duty and are injured in the line of duty and put on the sick list shall be entitled to carry over the balance of their unused scheduled vacation in the same manner as set forth in 10:02.01 above.

10:02.03 - If a member shall become ill or disabled after a vacation period has begun, the following shall be required:

10:02.031 - The vacation period in which the illness or disability occurs shall be of at least ten (10) or nine (9) working days duration.

10:02.032 - The illness or disability referred to herein shall be of three (3) or more days duration.

10:02.033 - The employee shall report the illness or disability to the Officer in Charge and provide sufficient information so that the Fire Surgeon may verify same or contact the physician or hospital which provided treatment to the injured or ill employee.

10:02.034 - Upon confirmation of the time lost due to the reported illness or disability, the member shall be entitled to have such time lost rescheduled as vacation time during the same or succeeding year, as set forth in paragraph 10:02.01 above.

Section 10:04 - Vacation Pay

10:04.01 - Members shall be entitled to receive their regular bi-weekly pay for the bi-weekly payroll periods that they are on vacation in the bi-weekly paycheck immediately preceding the start of such vacation period provided the member submits a written request to the Fire Commissioner's office three (3) weeks in advance of the date of the said bi-weekly paycheck.

10:04.02 - The written request shall include the dates of the vacation period, the date of the bi-weekly payroll that the advance is being requested for, and the date of the payroll immediately preceding the start of the vacation period in which the advanced pay shall be made. Each request shall be signed and dated by the requesting member.

Section 10:05 – Payment for earned vacation upon termination of service.

In the event that a firefighter retires or resigns during a calendar year, the firefighter will have included in his final paycheck the dollar value of the unused vacation pay earned during the preceding calendar year but not taken in the year of resignation or retirement. In addition, the firefighter will have included in his final paycheck the dollar value of the vacation pay earned during the calendar year of retirement or resignation based on a pro rata calculation of 19.2 hours per month pay for each month worked during the calendar year of retirement or resignation.

ARTICLE 11:0

PERSONAL LEAVE

Section 11:01

11.01.01 - Members hired prior to January 1, 1979 shall be entitled to four (4) personal leave days per year.

11.01.02 - Upon the execution of this Agreement, members hired on or after January 1, 1979 shall be entitled to two (2) personal leave days per year. Effective January 1, 2001 members hired after January 1, 1979 shall be entitled to one (1) additional personal leave day. Effective July 1, 2001 members hired after January 1, 1979 shall be entitled to one (1) additional personal leave day for a total of four (4) personal leave days per year.

Section 11:02

Members may carry over into the following calendar year one unused personal leave day. In no event shall members who receive four (4) personal leave days per year have an accumulated unused balance in excess of five (5) days total and in no event shall members who receive two (2) personal leave days per year have an accumulated balance in excess of three (3) days total.

ARTICLE 12:0

SICK LEAVE AND PRODUCTIVITY PLAN

Section 12:01 - Sick Leave

The past practice of granting unlimited sick leave to all members is hereby continued. Members will comply with General Order No. 02-99, which is attached as Appendix J.

Section 12:02 - General Municipal Law Section 207-a Procedure

12:02.01 The parties agree that Section 207-a of the General Municipal Law applies to all members. The procedure annexed hereto as Appendix C concerning the statutory benefits provided by General Municipal Law Section 207-a shall be effective November 20, 1989.

12:02.02 The City agrees to respond within a reasonable period of time to inquiries made by or on behalf of a bargaining unit member concerning the period or periods of time during a calendar year said member was on GML 207-a leave as recorded in Fire Department records. The City's response will set forth the time period by date or dates the member is recorded as being on GML 207-a leave.

12:02.03 Members who become sick on duty and who do not wish to be examined immediately by a physician shall complete the medical release form FD-043 as a condition of being released from work.

Section 12:03 - Productivity Incentive Plan

It is agreed that a Productivity Incentive Plan will remain in effect with the support of the Union, which will attempt to increase and maintain a higher attendance rate so as to provide greater health and safety to fellow firefighters, and to increase manpower to the Fire Department Payment, as provided herein, shall be made on an annual basis based on the average annual absenteeism rate of the bargaining unit using the following schedule:

12:03.01 - For each calendar year, the parties agree that the following incentive payments will apply. The average number of days used in a year will be subtracted from 13.04 days. That sum, rounded to the nearest tenth, will equal the number of days' pay for each firefighter.

12:03.02 - Payment shall be calculated by multiplying the number of days' pay times 1/232 of a top grade firefighter's annual salary times the average number of firefighters in the bargaining unit during the year.

12:03.03 - The parties agree that the Union shall be given access to all records necessary to verify the annual average absenteeism rate per member. The City shall maintain productivity incentive plan records which shall be available to the Union for inspection to ascertain the annual average absenteeism rate. If a firefighter serves less than a full year, his actual service and sick leave shall be extrapolated as if he had served a full year for both service and sick days.

12:03.04 - In the event any firefighter is on sick leave for twelve (12) months or more, then the entire period of continuous sick leave shall not be counted in the average of the calendar year being measured and credit shall be given for the calendar year being measured.

12:03.05 - It is further understood and agreed that twenty-five percent (25%) of any payments made under this Productivity Incentive Plan shall be paid to the Variable Benefits Fund, as provided for in Article 9:0 of this Agreement for the benefit of the members of the bargaining unit. The other seventy-five percent (75%) of the payments made under this Plan shall be divided equally and shall be paid by the City directly to the individual firefighters. Incentive payments provided herein shall be paid no later than during the first full March payroll period.

12:03.06 - Absences related to a firefighter's GML §207-a line-of-duty injury or illness shall not be counted in the productivity plan average for the calendar year.

ARTICLE 13:0

FUNERAL LEAVE

Section 13:01

Funeral leave of four (4) consecutive calendar days with no loss of pay, will be granted for death in the immediate family or personal household, provided the member attends the funeral. Such leave shall run from the date of notice of death, and includes vacation time, compensatory time, personal leave or days off. In any event, no member shall have to return to work on the day of burial.

Section 13:02

Immediate family shall be defined as spouse, child, parent, parent-in-law, daughters-in-law, son-in law, brother, sister, grandparent, or grandchildren.

ARTICLE 14:0

TERMINAL LEAVE

Section 14:01

Terminal leave shall be granted to each member who completes twenty (20) years of service equivalent to thirty (30) work days pay to be paid in cash, plus one and one-half (1-1/2) additional work days pay for each year or part thereof completed in excess of the aforesaid twenty (20) years.

ARTICLE 15:0

PENSIONS

Section 15:01

Members shall be entitled, pursuant to existing State law and as heretofore granted by the City Council of the City of Yonkers, alternate optional retirement plans as follows:

15:01.01 - Twenty (20) year retirement plan as authorized by law with the City payment the complete cost of said pension plan, and granting an option for additional contributions thereto by the members who select this plan; and

15:01.02 - Twenty-five (25) year retirement plan with the commonly referred to 1/60th provision added thereto and to be paid for in full by the City and granting an option to the member who selects this pension plan to make additional contributions thereto.

15:01.03 - Final Average Salary

The City shall adopt appropriate legislation to enact and maintain the one-year Final Average Salary Benefit pursuant to Retirement and Social Security Law sections 302(9) and 443(f) for all members in the Department.

Section 15:02

Members who file for retirement (ordinary, accident and line of duty) shall be required to simultaneously file a written notice with the Fire Commissioner which notice shall include the date of service retirement.

Section 15:03

Deferred Compensation Plan: Bargaining unit members shall have the option of participating in the City's deferred compensation plan at no cost to the City. Such deferred compensation will be designated and administered by the City, which reserves the right to make changes in such plan upon prior notice to Local 628.

ARTICLE 16:0

WIDOWS' BENEFITS

Section 16:01 - Widows' Benefits

There was passed, several years ago by the City, an amendment to the City Pension Plan, which granted to the widows of members of the Union a benefit payable to said widows in the sum of Two Hundred (\$200) Dollars per month or Two Thousand Four Hundred (\$2,400) Dollars per year. The City feels that the said benefit is illegal and in the event that an action is brought in a court of competent jurisdiction in which said benefit is ruled illegal, then the City agrees that it will negotiate a new comparable benefit with the Union, which benefit shall commence immediately after a court of competent jurisdiction rules said benefit illegal. The Union agrees that in any such action brought attacking said benefit, the Union will not raise a defense that this was a negotiable item and could have been negotiated in this contract.

ARTICLE 17:0

SCHEDULING

Section 17:0 - Work Schedule

The work schedule attached to this Agreement as Appendix "D" shall be implemented and maintained.

Section 17:02 - Training Schedule

17:02.01 - The Commissioner may schedule three (3) days per calendar year for each member to be used exclusively for the purpose of training. A training day shall be scheduled to take place in addition to the normal work schedule. (See Appendix 17:01 [Appendix D].) A training day shall be scheduled by the Fire Commission with a minimum of forty-eight (48) hours notice. Once a training day has been scheduled, the Department may not cancel the training session without providing the member with a minimum of forty-eight (48) hours notice. The Commissioner or his designee will make all training schedule assignments. For the purpose of this section only, the Department, in its discretion, may conduct training despite the provision of Article 18:01.

In no event shall the replacement of a regularly scheduled line or staff member be considered training for the purposes of this Article.

Members will not be scheduled to attend a training session during their scheduled vacation periods or on the twelve (12) City holidays.

17:02.02 Newly hired firefighters who have completed their initial training and have been assigned to a fire station shall be scheduled for one training day during the balance of the calendar year if they are assigned to a fire station prior to July 1. A newly hired firefighter initially assigned to a fire station on July 1 or later will not be scheduled for any training days during the remainder of the calendar year.

Section 17:03 - Mutual Swaps

17:03.01 - Members shall be permitted to request an unlimited number of mutual swaps. Request for mutual swaps shall be made in writing and shall be submitted through a procedure to be established by the fire Commissioner's Office for approval. Such written request shall be submitted at least seventy-two (72) hours in advance of the start of the tour for which the mutual swap is being requested.

17:03.02 - All mutual swaps shall be reciprocated within twelve (12) months from the date of the swap.

17:03.03 - The written request shall be initiated by the member scheduled to work and shall include his name, the date and tour to be swapped for, the name of the member who will actually

work the tour, and whether the request is for a swap of the first instance or a reciprocated swap. If the request is for a reciprocated swap, it shall also include the date of the swap of the first instance. Both the member scheduled to work and the member who will actually work shall sign and date the request.

17:03.04 - It is understood and agreed that no request for mutual swaps shall be approved if such approval would result in any additional cost to the City or it will cause the employee to work more than twenty-four (24) consecutive hours. Decisions by the Fire Commissioner on the requests shall be final, but approval shall not be unreasonably withheld.

17:03.05 - Probationary firefighters, during their initial 30 days assigned to a line company, will be permitted mutual swaps only in the event of an extreme personal need and only when approved in advanced by the Commissioner or his designee. In no event shall a probationary firefighter work a twenty-four (24) hour tour during their initial 30 days assigned to a line company. Probationary firefighters during their initial 90 days assigned to a line company, shall not be granted a mutual swap if such mutual swap would result in two probationary firefighters assigned to the same tour in the same company.

Section 17:04 - Transfer Policy

17:04.01 (i) When the Fire Commissioner determines that a vacancy(s) shall be filled by a voluntary transfer(s), the voluntary transfer policy procedure set forth below shall be followed. It is expressly understood and agreed that this voluntary transfer policy relates only to work location and is not intended to affect the City's right to establish manpower requirements. Further, the parties agree that there are circumstances where involuntary transfers are necessary to maintain minimum company manpower requirements as such requirements are determined by the Department. In the event it becomes necessary to involuntarily transfer a firefighter to maintain minimum company manpower requirements, the least senior permanent firefighter assigned to a company whose manpower is in excess of that determined by the Department shall be involuntarily transferred to the company requiring the additional manpower. A firefighter who is involuntarily transferred for such purpose may make a written request to return to his original company pursuant to the transfer policy procedure provided below in section 17:04.02.

(ii) Probationary firefighters, during their initial three months assigned to a line company, shall not be entitled to request a transfer from the company assigned unless an emergency is declared by the Commissioner or a request is issued by the Commissioner for voluntary transfers for the purpose of opening assignments for newly appointed probationary firefighters.

(iii) Probationary firefighters, upon graduation from the Fire Academy, shall be assigned to existing vacancies not to exceed four probationary firefighters in any engine or ladder company.

17:04.02 - Transfer Procedure (i) The Fire Commissioner shall forward to each fire station a written notice listing all vacant assignments as follows: on a calendar quarterly basis; prior to the graduation of a probationary firefighter class; and at other times at the Commissioner's discretion. Such notice shall provide for an open period not to exceed twenty-one (21) calendar days during which

transfer requests shall be accepted. Eligible firefighters may request a transfer to one of the listed vacancies or to other units which a vacancy may occur as a result of such voluntary transfer.

(ii) All requests for transfers shall be submitted to the Fire Commissioner in writing on a form to be provided by the Department. Transfer requests received by the Fire Commissioner following the end of the open period will not be considered.

(iii) The Fire Commissioner shall act on the transfer requests no later than ten (10) calendar days following the end of the open period. The following criteria shall be considered by the Fire Commissioner in approving the transfer requests:

- the firefighter is eligible to submit a transfer request;
- departmental operational needs;
- performance of the firefighter;
- all other factor being equal, the seniority of the firefighter shall be given preference.

17:04.03 - Eligibility: All firefighters are eligible to request a transfer pursuant to this procedure except for firefighters who fall into one of the following categories:

- Probationary firefighters during their initial three (3) months assigned to an engine or ladder company.
- At the discretion of the Commissioner, firefighters who have filed an application for disability retirement or on whose behalf such application has been filed with the Retirement System.
- At the discretion of the Commissioner, firefighters who are permanently unable to perform line firefighting duties for medical reasons as determined by the Fire Surgeon or the Department's medical surgeon.

17:04.04 - Arson Transfer: The Fire Commissioner shall act on the request no later than ten (10) calendar days following the close of the open period. The Commissioner shall use seniority in rank to determine which requests are to be approved. As pertains only to the Fire Investigation Unit, the Department will at its earliest convenience send the newly transferred firefighter for training as a Fire Investigator. In order to maintain his/her status in the Fire Investigation Unit, the firefighter must successfully complete training. Failure to successfully complete training may result in the immediate reassignment of the firefighter. The Fire Commissioner shall make this determination. If the firefighter is reassigned he/she may not request transfer to the Fire Investigation Unit for a period of eighteen (18) months beginning from the date of his/her failing certification.

ARTICLE 18:0

WORKING CONDITIONS - WEATHER

Section 18:01

There will be no outside activity, including both training and field inspections, when the outside temperature exceeds 85° or when the temperature is lower than 32°, or when the wind chill factor is below 25°. Such calculation for wind chill shall be achieved by subtracting the average wind speed from the outside temperature. Outside training and drills will also be cancelled in the event of rain, snow or other inclement weather.

All field inspections and training will take place between the hours of 9:00 a.m. and 12:00 noon. All parties agree that exceptions to the A.M. scheduling shall be for special inspections or training that due to unusual circumstances cannot be conducted in the A.M. period.

Section 18:02

Outside activity shall include Multi-Company Drills, Field Apparatus Inspections, and Company Training and Evolutions, but shall not include building inspections, public assemblies or other inspections of a similar nature.

ARTICLE 19:0

SENIORITY LIST

Section 19:01

The Commissioner's office will promulgate a seniority list of all firefighters. Such list shall be posted in each fire station by January 1 of each year.

ARTICLE 20:0

GENERAL AND VERBAL ORDERS

Section 20:01

General Order No. 44, dated August 31, 1970, shall be amended to include the right of members to have Union representation and/or counsel present.

Section 20:02

The Commissioner, with the approval of the Mayor, shall designate by General Order certain maintenance functions which are more appropriately performed by contract or other City agencies than professional firefighters.

Section 20:03

Verbal orders issued by the Commissioner of the Department concerning policy matters involving all personnel of the Fire Department will be confirmed in writing within a reasonable period of time and filed to become part of the permanent record.

Section 20:04

The parties recognize and agree that Personnel order No. 39-89 is not intended to apply to litigation between the Union and the City involving labor relations issues (PERB proceedings, grievance arbitration and Article 78 proceedings) in which the Union may call a member to testify on its behalf.

ARTICLE 21:0

INDIVIDUAL RIGHTS

Section 21:02 - Personnel Employee Record File

Members shall have the right to review their personnel employee record file. The City agrees to maintain a single Fire Department Personnel Employee Record File.

Section 21:02 - Disciplinary Action

All member discipline shall be pursuant to the disciplinary procedure annexed to this Agreement as Appendix "E". The provisions of this Disciplinary Procedure shall be the sole and exclusive procedure for review of disciplinary action taken against bargaining unit members who are defined in Section 2 of such procedure. This procedure and its terms shall be the sole and exclusive procedure and remedy for employee disciplinary matters and shall constitute a waiver of rights bargaining unit members have or may have under Civil Service Law Section 75 and Section 76 and under the Yonkers City Charter.

Section 21:03 - Immunity

21:03.01 - The City agrees that it will save and hold harmless any member of the bargaining unit from civil liability, and defend him in any civil or criminal proceeding for any act or acts committed by him within the scope of his employment whether he is on or off duty, provided, however, that if he is off duty, the act or acts committed would have been within the scope of his employment had he been on duty. Further, provided that, because of an obvious conflict of interest, the City will not defend him in a criminal case where there is a civil case pending against the City arising out of the same act or acts.

21:03.02 - The City agrees that in the event any member of the bargaining unit is assaulted, injured or harmed in any way as a result of doing any act or acts within the cope of his

employment, whether he is on duty or off, provided, however, that if he is off duty, the act or acts committed would have been within the scope of his employment had he been on duty, and which assault, injury or harm would be actionable civilly, the member may ask the Corporation counsel to bring a civil action on his behalf.

21:03.03 - In the event any member of the bargaining unit institutes a lawsuit under circumstances outlined in paragraph 20:03.02 above, or has such an action instituted against him, he shall, within five (5) days thereafter, forward all papers and the facts pertaining thereto, to the Fire Commissioner through channels.

ARTICLE 22:0

SPECIAL PAYMENTS

Section 22:01

All special payments to members which are to be made on other than regularly scheduled bi-weekly pay days will be combined with payments made on regular bi-weekly pay days. Such payments shall be combined with the regular paycheck closest in time to the date of the special payment, and the gross amount of the special payment shall be designated separately as such and will be issued, and taxes will be calculated and deducted as if two (2) separate paychecks were being issued.

ARTICLE 23:0

NO DISCRIMINATION

Section 23:01

Neither the City nor the Union shall discriminate against any employee in the bargaining unit in applying the provisions of this Agreement in a manner which would violate any applicable laws as to age, sex, marital status, race, color, creed, national origin, union participation or political affiliation.

ARTICLE 24:0

RULES, PROCEDURES AND POLICIES

Section 24:01

Proposed changes in departmental rules, procedures and policies will be made up only after prior reasonable notice to the Union and an opportunity to the Union to be heard in connection with

such proposed changes (except in emergency situations). This Article shall in no way limit the right of the City to make such changes in rules, procedures and regulations it deems necessary.

ARTICLE 25:0

LABOR MANAGEMENT COMMITTEE

Section 25:01

A Labor Management Committee shall be established for the purpose of discussing, at a mutually agreeable time, matters of mutual interest, but not to include amendment of this Agreement. This Committee shall be limited to no more than four (4) labor and four (4) management members and meet no less than once every two (2) months at the call of the Mayor or the President of the Union, except by mutual waiver in writing. Expenses of the meeting shall be borne equally by the parties to this Agreement.

Section 25:02

The City recognizes the concern of the Union with respect to management decisions relating to the civilianization of functions within the Fire Department that are presently either fully or partly performed by firefighters. In an effort to allow the opinions and advice of the Union to be fully considered by the City before steps at civilianization occur, the City shall call a Labor Management Committee meeting to inform the Union of any such proposals to be included in the next succeeding budget, prior to the filing of said budget.

ARTICLE 26:0

HEALTH AND SAFETY

Section 26:01 - Joint Labor Management Health and Safety Committee

A joint Labor-Management Health and Safety Committee is hereby established to include Local 628, I.A.F.F.; Uniformed Fire Officers, and representatives of the City and Fire Department. The purpose of the Committee shall be to provide a forum to discuss items of employee health and safety which are of mutual concern to the participants and to make recommendations for the resolution of same. The Committee shall have the responsibility to review written safety complaints made by uniformed employees of the Fire Department.

The Committee shall consist of two representatives from each participants. Meetings shall be held on a bi-monthly basis with a specific agenda for discussion to be distributed ten (10) work days prior to the meeting. Special meetings of the Committee may be held in response to a written request by any one of the participants. Agenda items shall concern employee health and safety issues and may include but not be limited to the following:

- Employee safety rules and procedures;
- Apparatus and equipment safety;
- Employee health and safety education and training;
- Review of written employee health and safety complaints.

Recommendations of the Committee shall be made in writing and signed by a representative(s) of each participant. Such recommendations shall be forwarded to the Mayor and Fire Commissioner for appropriate actions and/or response. In the event representatives of one or more of the parties cannot agree with a recommendation of the Committee they may submit a report indicating their reasons why they could not agree with the Committee's recommendation which may include an alternative recommendation. Such report and/or recommendation shall be forwarded to the Fire Commissioner and Mayor along with the committee's recommendation. The Mayor and/or Fire Commissioner as appropriate, shall respond in writing to the Committee's recommendations indicating what action(s), if any, are to be taken. If no action is warranted, the Mayor and/or Fire Commissioner shall indicate such in his response to the Committee and the reasons therefor. In either event, the response from the Mayor and/or Fire Commissioner shall be made within twenty (20) work days from the date the Committee's report is received.

Participation on the Committee by the representatives of Local 628, I.A.F.F.; Uniformed Fire Officers Association; and the City, including any agreements reached on specific recommendation, shall not constitute a waiver of any existing rights a participant may have under their respective collective bargaining agreements or under law. Any agreements reached by the Committee shall not constitute a modification or amendment to the participants' respective collective bargaining agreement unless specifically agreed to by the parties to each collective bargaining agreement.

Section 26:02 - OSHA Standards CFR 1910.120, 1910.134 and 1910.156

The Department has agreed to provide to all members while on duty the required examinations and respirator fit test at no cost to the member. It is agreed that the respiratory examination shall consist of the following procedures: electrocardiogram, pulmonary function test, mask fit test, blood pressure, pulse, weight, and a physical examination of lungs, chest and heart. Members will be offered on a voluntary basis the option of a physical examination of their eyes, ears, nose and throat. The medical provider shall complete and forward to the Department the certification annexed to this Agreement as Appendix "F". All members who are required to wear a respirator shall be required to submit to a mask fit test as directed by the Department.

A blood and urine test will be offered on a voluntary basis to members who are assigned to the hazmat unit. Such blood and urine test shall be offered on a periodic basis consistent with OSHA recommendations and shall consist of the following: complete blood count, routine blood chemistry analysis and routine urine analysis. There will be no alcohol or drug test performed on the blood and urine samples.

A member, during off duty hours, may use a qualified medical provider of their choosing to perform the respiratory examination and complete the certification annexed to this Agreement.

Members who elect to use their own medical provider for the respiratory examination shall provide the Department with prior notice of such decision and shall complete the examination and provide the Department with the complete certification no later than the last date such examinations are scheduled by the Department for the calendar year. In the event the member uses a participating Empire Plan provider for such purpose and is charged a co-pay, the Department will reimburse the member the co-pay (currently \$8.00). The Department will reimburse the member for the cost of the respiratory examination.

Members who are directed by the Department to undergo a respiratory physical examination and as a result of such examination are found to be physically unable to perform tasks requiring the use of a respirator shall be initially placed on light duty unless otherwise placed on sick leave by a medical officer designated by the Department. The Department will make a reasonable effort at its expense to offer physical rehabilitation, which is prescribed by a medical officer designated by the Department, to such member for the purpose of qualifying the member to perform tasks requiring the use of a respirator. This placement on light duty and provision of physical rehabilitation treatment shall not constitute a determination for any purpose as to the member's entitlement to statutory or contractual benefits except as expressly provided otherwise herein.

A member who is placed on sick leave as a direct result of the respiratory physical examination shall have the sick leave incurred, during the fifteen consecutive calendar day period from the date the member was placed on sick leave, excluded from calculation of the sick incentive benefit. The member shall be required to submit a written application to the Commissioner to have such sick leave excluded from his sick incentive benefit.

Nothing contained herein shall reduce, diminish, modify or otherwise restrict any rights or obligations the City or bargaining unit member may have pursuant to statute, rule, or regulation except as expressly provided for herein.

ARTICLE 27:0

MANAGEMENT RIGHTS

Section 27:01

The City, as public employer, reserves to itself all rights not specifically granted to the employee organization under the provisions of the Public Employee's Fair Employment Act (as presently or hereinafter amended) or in this Agreement and not inconsistent with Civil Service Laws or other laws. the rights so reserved to the City include the control of its facilities and the maintenance of order and efficiency, but such rights are subject to such conditions requirements and limitations, as may be applicable under law, and must be exercised consistently with the other provisions of this Agreement. These rights include the following:

27:01.01 - To determine the missions and policies of the City.

27:01.02 - To determine the facilities, methods, means and number of personnel; to designate the members needed to carry out the City's mission; to introduce new or improved methods or facilities.

27:01.03 - To administer to the classification, examination, selection, hiring, retention, promotion, assignment or transfer of members pursuant to law and in accordance with the Rules and Regulations of the Fire Department.

27:01.04 - To discipline or discharge in accordance with the terms of the Disciplinary Procedure annexed to this collective bargaining agreement as Appendix E.

27:01.05 - To direct the work of its members.

27:01.06 - To make rules, regulations and policies concerning personnel procedures and practices, subject, however, to the procedure described in the following:

The Fire Commissioner will consult and confer with the Union prior to promulgation of all changes in the Rules and Regulations of the Fire Department affecting the terms and conditions of employment, other than those provided herein.

27:01.07 - To determine the work to be performed within the Department, maintenance and repair, necessary supervision, machinery and tools, methods, schedules of work not inconsistent with law, together with the selection, procurement, designing, engineering and the control of equipment and materials, purchase services of others, contract or otherwise, and to make reasonable and binding rules which shall not be inconsistent with this Agreement.

27:01.08 - To organize or otherwise create additional units within the Fire Department to improve efficiency, establish manpower levels and performance levels, all as may be described further in this Agreement and except as limited by this Agreement.

ARTICLE 28:0

GRIEVANCE BOARD

Section 28:01

In all grievances filed by members of this bargaining unit pursuant to Chapter 14, Article I of the code of Ordinances of the City of Yonkers, a representative of the Union shall replace the one (1) member of the Grievance Board that is designated for the CSEA of Yonkers, Inc.

ARTICLE 29:0

GRIEVANCE PROCEDURE

In the event of a dispute between the parties to this Agreement involving the interpretation or application of any provision of this Agreement, either party shall have the right to solve the dispute in the following manner:

Step 1: The dispute shall be presented in writing within twenty (20) calendar days of its occurrence to the Fire Commissioner. The written grievance shall include the contract provision(s) alleged violated, the date or dates of the alleged violation, and the name or names of the employees involved. The Fire Commissioner or his designated representative shall meet with representatives of the Union in an attempt to resolve the grievance within ten (10) calendar days from the receipt of the written grievance. If the grievance is not resolved within fourteen (14) calendar days thereafter, the Union may pursue the grievance pursuant to Step 2.

Step 2: Within five (5) calendar days following the expiration of the period of time to resolve the grievance at Step 1, the Union may present the grievance in writing to the Mayor or his designated representative. The Mayor or his designated representative shall meet with representatives of the Union within ten (10) calendar days of receipt of the written grievance in an attempt to resolve the grievance. If the grievance is not resolved within fourteen (14) calendar days thereafter, the Union may pursue the grievance pursuant to Step 3.

Step 3: Within twenty (20) calendar days following the expiration of the period of time to resolve the grievance at Step 2, the Union may submit the grievance to arbitration in accordance with the Rules and Regulations of the American Arbitration Association or a court of competent jurisdiction. Submissions under this subsection shall be initiated within the period provided above by service of a written notice to the City simultaneously with the Demand for Arbitration sent to the American Arbitration Association; otherwise, the right to submit the dispute to arbitration shall be deemed waived.

All costs billed by the arbitrator and administrative fees of American Arbitration Association shall be borne equally by the Union and the City. All other costs shall be paid by the party incurring such costs, i.e.: witnesses, exhibits, transcripts, etc.

All time periods provided herein may be extended by mutual consent in writing by both parties.

In grievances in which there is a named grievant, such grievant shall be given the time off necessary to be present at such arbitration hearing. Upon conclusion of the arbitration the grievant shall be required to return to duty.

ARTICLE 30:0

EMPLOYEE SUBSTANCE ABUSE SCREENING, TREATMENT AND DISCIPLINE/EAP

Section 30:01 - Statement of Policy

The City and the Union recognize that the use and possession of intoxicants and controlled substances in the workplace constitute a serious threat to the health and safety of all employees and to members of the public. The City and the Union are further aware of the special obligation of all members of the Fire Department to refrain from the illegal use of controlled substances and the absolute right of the public to have employees perform their duties and responsibilities free from the effects of alcohol and drugs. The Fire Department and the Union are desirous of maintaining a safe, health and productive work environment for all employees and for the integrity of the Department.

Section 30:02 - Treatment/Employee Assistance Program

The City and the Union recognize that an effective employee assistance program is a crucial component of the substance abuse policy. Accordingly, the City and the Union have developed a Fire Department Employee Assistance Program (hereafter referred to as "FDEAP"). Employees with substance abuse problems are strongly encouraged to voluntarily seek self help through the FDEAP. Employees with substance abuse problems who do not voluntarily seek the assistance of the FDEAP in accordance with the terms of this Agreement and are found in violation of the City's policy, shall be subject to discipline. Employees with substance abuse problems who voluntarily participate in the program or are referred to the program through the disciplinary procedure shall be subject to the conditions as set forth below.

The City recognizes that an Employee Assistance Program handles many problems in addition to that of substance abuse and that the FDEAP provides information, guidance and treatment for problems and illness on a confidential basis. The relationship between the employee and the FDEAP is and continues to be of a confidential nature except as specifically provided herein.

Section 30:03 - Voluntary Referral

30.03.01 - Fire Department Employee Assistance Program

Employees who voluntarily seek treatment for substance abuse under the auspices of the Fire Department Employee Assistance Program shall notify the FDEAP of their desire to participate in a program. The employee and a representative of the FDEAP shall meet as soon as possible for purposes of discussion and agreement on the following items.

30.03.01.1 - Conditions

The employee and the FDEAP shall sign an agreement accepting the terms and conditions under which the employee may participate in a treatment program. The agreement shall state the length and type of treatment and the employee's obligations to follow the requirements of the program. In addition, the employee shall indicate his understanding and agreement to release of information to the FDEAP regarding his participation in the program. The agreement and information concerning the employee's participation in the FDEAP shall be confidential and maintained in a manner to restrict access only to the FDEAP, except under the limited circumstances described herein. Annexed to this Agreement as Appendix "G" is a Form Agreement which contains a Part A and a Part B and which shall be used for this purpose.

30.03.01.2 - Civil Service Status

Employees who are in their probationary period and who have successfully completed the basic fire training program may be permitted to participate in a voluntary treatment program for substance abuse under the auspices of the FDEAP as provided herein. The probationary employee shall agree in writing to hold in abeyance the remainder of such probationary period until the employee returns to full duty. For employees who are serving in their probationary period the Form Agreement annexed to this Agreement as Appendix "H" shall apply which contains a Part A and a Part B. Conditions for leave and continued tenure with the Fire Department may vary depending on the civil service status of the employee.

30.03.01.3 - Duty Status

The matter of whether an employee who voluntarily seeks treatment for substance abuse as provided herein is placed on a leave of absence for purposes of attending an inpatient treatment program shall be decided by the employee and the FDEAP. In the event the employee is not required to take a leave of absence from service while attending a treatment or counselling program, the FDEAP shall refer the employee to the Fire Surgeon for purposes of consultation on the employee's medical and psychological condition and appropriate duty status during the time of attendance in a treatment or counselling program. The Fire Surgeon's examination of the employee and any information obtained regarding the employee's condition or treatment shall be held confidential between the Fire Surgeon and the FDEAP.

30.03.01.4 - Pay Status

During the time of attendance in an inpatient treatment program, the employee may use contractual paid sick leave for a maximum period of six (6) months; and upon exhaustion of this six (6) month period, the employee may use accumulated personal and vacation leave. Upon exhaustion of time balances the employee may have, the employee shall be placed on unpaid leave for the duration of the treatment program. If the employee is placed on unpaid leave, the employee shall make application to the State Health Insurance Plan, pursuant to that agency's rules and procedures, for a waiver of payment of health insurance premium. In the event such application is denied, the City shall continue payment of its portion of the health insurance premium of the

remainder of the employee's attendance in an inpatient treatment program, but such payment shall be discontinued after one year of unpaid leave.

The period of time that an employee attends, pursuant to a voluntary referral, an inpatient treatment program on sick leave shall be excluded from the productivity incentive plan for that calendar year.

30:03.02 - Conditions Upon Return to Work Following Completion of Treatment Program

Upon the employee's return to work, the treatment program shall provide the FDEAP with information concerning the nature of the employee's outpatient treatment or after care program including date, time and location of required attendance in an outpatient treatment or after care program. Upon receipt of such information, the FDEAP shall refer the employee to the Fire Surgeon for purposes of consultation on the employee's medical and psychological condition and appropriate duty status during the time of attendance in a treatment or after care program. The Fire Surgeon's examination of the employee and any information obtained regarding the employee's condition or treatment shall be held confidential between the Fire Surgeon and the FDEAP.

In the event the employee violates the rules and procedures of a treatment or after care program, including by way of example but not limitation, test positive in a drug screening conducted pursuant to procedures of the outpatient or after care program, the program shall immediately notify the FDEAP and the Fire Commissioner of such violation. thereafter the FDEAP, the Fire Commissioner, the employee, and the employee's designated representative, if any, shall discuss and agree on additional treatment for the employee or if other action, such as discipline, may be required. The Fire Commissioner may require that the employee undergo a fitness for duty medical evaluation by the Fire Surgeon.

Section 30:04 - Discipline

30:04.01 - Performance Problems/Misconduct

An employee who commits an act of misconduct or incompetence is subject to discipline as provided in disciplinary procedure annexed to the Agreement as Appendix "E". For matters other than a voluntary referral as provided in Section 3 above, employee participation in the FDEAP or a treatment program does not preclude the imposition of a disciplinary penalty, if appropriate.

30:04.02 - Employee Who Admits Problem with Substance Abuse

If during the disciplinary process prior to imposition of penalty the employee voluntarily admits to a substance abuse problem and to the misconduct or incompetency alleged, the employee shall be referred to the FDEAP for treatment. The disciplinary penalty for the misconduct or incompetency may be held in abeyance pending completion of the treatment program or, if appropriate, the disciplinary penalty may be imposed. If the employee does not admit to the alleged misconduct or incompetency, the disciplinary matter shall be decided pursuant to the contractual disciplinary procedure and the disciplinary penalty, if any, shall be imposed.

The rights of the employee, the City, the Fire Department and the Union with regard to disciplinary action shall be as provided in the contractual disciplinary procedure and nothing contained in this Agreement shall be construed to affect those rights.

30:04.02.1: Referral to FDEAP

Upon referral to the FDEAP, the employee and the FDEAP shall sign an agreement accepting the terms and conditions of the treatment program. The agreement shall state the length and type of treatment, the employee's obligation to follow the requirements of the program, and that the employee may be subject to disciplinary action for failure to adhere to the program. The agreement and information concerning the employee's participation in the FDEAP shall be confidential and maintained in a manner to restrict access only to the FDEAP, except under the limited circumstances described herein. Annexed to this Agreement as Appendix "I", is a Form Agreement which contains a Part A and a Part B and which shall be used for this purpose.

30:04.02.2: Duty Status

The matter of whether an employee who seeks treatment for substance abuse in the context of a disciplinary proceeding as provided herein is placed on a leave of absence for purposes of attending an inpatient treatment program shall be decided by the employee and the FDEAP. In the event the employee is not required to take a leave of absence from service while attending a treatment or counselling program, the FDEAP shall refer the employee to the Fire Surgeon for purposes of consultation on the employee's medical and psychological condition and appropriate duty status during the time of attendance in a treatment or counselling program. The Fire Surgeon's examination of the employee and any information obtained regarding the employee's condition or treatment shall be held confidential between the Fire Surgeon and the FDEAP.

30:04.02.3: Pay Status

During the time of attendance in an inpatient treatment program, the employee shall utilize, in the first instance, available unused annual contractual vacation leave. In the event there is insufficient vacation leave available in the current year to cover the period of attendance in an inpatient treatment program, the employee shall deduct vacation time from his next year's annual contractual vacation entitlement sufficient to cover the remaining period of attendance in the inpatient treatment program. In the event the employee also exhausts the next year's annual vacation entitlement or purposes of attendance in the treatment program, the employee shall be placed on paid sick leave for the period of attendance in the treatment program which continues beyond exhaustion of the two annual vacation leaves and which paid sick leave ends at the point in time six (6) months after the employee left active service to enter the inpatient treatment program. Upon exhaustion of this six month period, the employee may use remaining accumulated paid leave time which may be available. Upon exhaustion of time balances the employee may have, the employee shall be placed on unpaid leave for the duration of the treatment program. If the employee is placed on unpaid leave, the employee shall make application to the State health Insurance Plan, pursuant to that agency's rules and procedures, for a waiver of payment of health insurance premium. In the event such application is denied, the City shall continue payment of its

portion of the health insurance premium for the remainder of the employee's attendance in an inpatient treatment program, but such payment shall be discontinued after six months of unpaid leave.

30:04.02.4: Conditions Upon Return to Work Following Completion of Treatment Program

Upon the employee's return to work, the treatment program shall provide the FDEAP with information concerning the nature of the employee's outpatient treatment or after care program including date, time and location of required attendance in an outpatient treatment or after care program. Upon receipt of such information, the FDEAP shall refer the employee to the Fire Surgeon for purposes of consultation on the employee's medical and psychological condition and appropriate duty status during the time of attendance in a treatment or after care program. The Fire Surgeon's examination of the employee and any information obtained regarding the employee's condition or treatment shall be held confidential between the Fire Surgeon and the FDEAP.

In the event the employee violates the rules and procedures of any such program, including by way of example but not limitation, test positive in a drug screening conducted pursuant to the procedures of the outpatient or after care program, the program shall immediately notify the FDEAP and the Fire Commissioner of such violation. Thereafter the FDEAP, the Fire Commissioner, the employee, and the employee's designated representative, if any, shall discuss and agree on additional treatment for the employee or if other action may be required which may include imposition of the disciplinary penalty for the prior acts of the employee. The Fire Commissioner may require that the employee undergo a fitness for duty medical evaluation by the Fire Surgeon.

30:04.03 - Drug Testing

If an employee while on duty exhibits a physical condition, conduct or pattern of erratic behavior which indicates that the employee is under the influence of an intoxicating substance, and the employee's supervisor (a person other than the FDEAP officer) has reasonable cause to believe, based on direct observation of use or based on observation of the employee's conduct, performance or behavior which indicates that the employee is under the influence of an intoxicating substance, or if the supervisor is provided with information from a reliable and credible source which is independently corroborated that the employee is engaging in use of or is under the influence of intoxicating substances while on duty or that the employee is engaging in illegal use, possession, distribution, or sale of a controlled substance or drug on duty, the supervisor shall make an oral report to the Fire Commissioner. The supervisor's oral communication shall be subsequently memorialized in a written report to the Fire Commissioner.

The Fire Commissioner shall decide whether there is reason to investigate for purposes of ascertaining if available facts objectively indicate reasonable suspicion exists to pursue the inquiry, which may include meeting with the employee for purposes of providing the employee an opportunity to explain the conduct, performance or behavior. In the event such a meeting is held, the employee may request that a union representative and/or legal counsel attend the meeting, but in no event shall the meeting be delayed for more than one (1) hour to accommodate the request. The

investigation of the employee's behavior shall be confidential with due consideration for the dignity and privacy of the employee.

Where reasonable suspicion is based on observations by a confidential informant, defined as an employee or agent of a governmental law enforcement or fire agency, the identity of the source shall not be disclosed, except for the name of the governmental agency involved. The Fire Department shall not be required to reveal the identify of a confidential informant in any proceeding nor can evidence supplied by a confidential informant be suppressed because of refusal to identify the name of the source.

If the Fire Commissioner decides that the employee should be referred for drug or alcohol testing, the following procedure shall be followed.

a) The employee shall be ordered to submit to a drug and/or alcohol test and, at the same time, the employee shall be given a brief verbal statement of the basis for reasonable suspicion. Refusal to submit to the test or to cooperate during the testing procedure shall constitute grounds for disciplinary action.

b) If no prior meeting is held with the Fire Commissioner, and the employee is ordered to submit to a test based on reasonable suspicion, the employee will be advised of the right to have a Union representative present for collection of the sample, but in no event shall collection be delayed for more than two hours to accommodate the presence of a Union official.

c) Disputes concerning the matter of reasonable suspicion to order a test will be referred to the contractual disciplinary review procedure in connection with charges preferred against the employee.

d) The sample given by the employee shall be collected under the supervision of an agent designated by the Department and the supervision of a representative of the Department. Where practicable, the sample shall be collected at the designated agent's office or facility, or if said office/facility is not available, at a location in the Department's Headquarters designated by the Commissioner for such purpose. The sample collection process shall be confidential with due regard for the dignity and privacy of the employee, and shall be performed in accordance with standards promulgated by the NIDA. During the course of the collection process, the employee shall cooperate with requests for information concerning use of medications and acknowledgement of giving of the specimen.

e) The employee shall provide a urine sample for purposes of testing for drugs or controlled substances other than alcohol. The employee shall provide a sufficient amount of the sample to allow for an initial screening, a confirmatory test, and for later testing if requested by the employee. In the event an insufficient sample is provided, the employee's ability to have second test performed may be adversely impacted.

f) In the event the employee is ordered to submit to a test for the presence of alcohol, the employee shall submit to a breathalyzer test to be administered by an agent designated by the

Department. In the event the breathalyzer tests positive for the presence of alcohol, the employee shall provide a blood sample for the confirmatory test as herein provided.

g) There shall be no direct observation of giving of a urine sample unless there is reason to believe that the sample may be tampered with, in which event direct observation shall be made by a person of the same gender as the employee giving the sample.

h) In the case of urine or blood test, the sample given shall be divided into two aliquots. The sample will be given to a monitor who will mark and seal each sample to preserve the chain of custody of the samples. Thereafter, the samples shall be transported to the testing laboratory in a manner which shall insure the integrity and chain of custody of each samples.

i) Both samples shall be delivered to a laboratory selected by the Fire Department which shall be duly licensed or certified for drug testing purposes by State or federal agencies having authority to generally license or certify drug testing facilities. One sample shall be used for purposes of testing by the laboratory and the second sample shall be maintained by the laboratory in accordance with recognized procedures for purposes hereafter described.

j) The designated laboratory shall initially perform the enzyme multiplied immunoassay test (EMIT) on the sample for the presence of drugs or controlled substances. A sample which test positive shall be retested by the laboratory using the gas chromatography mass spectroscopy test (GC-MS). The laboratory shall perform an appropriate test for the presence of alcohol on the blood sample. A test shall be deemed positive for the presence of drugs and/or alcohol in accordance with standards utilized by the certified laboratory.

The parties may negotiate other standards to be used for determining the presence of intoxicating substances. In addition, the parties may discuss and agree on, subsequent to the date of the execution of this Agreement, the use of tests scientifically equivalent to those stated in this Agreement.

k) In the event the confirmatory GC-MS test result is negative, then the sample shall be deemed negative for the presence of intoxicating substances and no report shall be made to the Fire Commissioner or to the employee on the test results and the existence of test or its results shall not be used in any manner in any proceeding between the Department and the employee. If the confirmatory GC-MS test result is positive, the laboratory shall provide copies of the test results to the Fire Commissioner, the employee and the employee's representative.

30:04.03.1: Employee Request for Retesting

a) After collection and testing, both samples shall be maintained by Department's designated laboratory in accordance with appropriate procedures for a period of time to be agreed to by the parties.

b) After the employee receives notice of a confirmed positive test from the Department's laboratory, the employee may make written request within five calendar days to the Department's designated laboratory for a test of the second sample. The employee may request that

the second sample be sent to a duly licensed laboratory selected by the employee. the selected laboratory shall be responsible for pick-up and transport of the sample, and it shall insure chain of custody. The employee shall be responsible for all costs associated with the second test and shall make arrangements for payment with the selected lab. The parties shall negotiate the standards to be used in the second test for confirmation of the first positive result for the presence of intoxicating substances. The results of the second test shall be sent to the Fire Commissioner, the employee and the employee's representative.

30:04.04 - Continuation of Disciplinary Procedure

a) If the results of the two tests administered, as provided above, are positive for the presence of intoxicants (as defined in the City's policy), the employee shall be suspended for 30 days without pay and this suspension shall not be subject to review in any contractual or statutory proceeding. The employee may also be subject to additional discipline for misconduct or poor work performance which may be imposed pursuant to the contractual procedure. Regardless of the test results, the employee may also be subject to disciplinary action for the misconduct or incompetency which formed the basis of the reasonable suspicion, if the tests were administered pursuant to section 30:04.03 above.

b) A probationary employee who tests positive for the presence of intoxicants while on duty shall be terminated.

c) Any employee who tests positive while on duty for the presence of intoxicants on two occasions within any 24 month period shall be terminated. Such termination shall be subject to review pursuant to the contractual disciplinary procedure which proceeding shall be limited to questions raised by the employee concerning the basis for the direction of the test and the validity of the drug or alcohol test administered on the second occasion.

d) An employee who tests positive pursuant to section 30:04.03 above for intoxicants on tests given based on reasonable suspicion or on tests given pursuant to section 30:05 of this procedure shall, in addition to any discipline which may be imposed, participate in a treatment program as recommended by the FDEAP.

Section 30:05 - Mandatory Testing

a) Any employee who is involved in a work place accident which results in personal injury to any individual and/or damage to equipment, machinery or facility may be required in the discretion of the Fire Commissioner to submit to a drug and/or alcohol test as provided in section 30:04.03 of this Agreement. For purposes of this Agreement, this provision shall not apply to personal injury to any individual and/or damage to equipment, machinery or facility which is incurred at the scene of a working fire. Refusal on the part of the employee to submit to the test shall be considered as misconduct and shall subject the employee to disciplinary action.

b) Probationary employees shall be subject to random testing in accordance with practices currently in effect. Refusal on the part of a probationary employee to submit to the test shall be grounds for termination of the employee.

Section 30:06 - Terms and Conditions Following Positive Test Results

30.06.01 - Conditions

An employee who tests positive for intoxicants pursuant to sections 30:04 and/or 30:05 of this procedure shall participate in a treatment program as recommended by the FDEAP, and successfully complete such treatment program prior to return to duty. The employee and the FDEAP shall sign an agreement accepting the terms and conditions of the treatment program. The agreement shall state the length and type of treatment, the employee's obligation to follow the requirements of the program, and that the employee shall be subject to disciplinary action for failure to adhere to the program. In addition, the employee shall indicate his understanding and agreement to release of information to the FDEAP regarding his participation in the program. The agreement and information concerning the employee's participation in the treatment program shall be confidential and maintained in a manner to restrict access only to the FDEAP. Annexed to this Agreement as Appendix "I" is a Form Agreement which contains a Part A and a Part B and which shall be used for this purpose.

30:06.02 - Pay Status

During the time of attendance in the treatment program, and after imposition of any penalty which may be imposed as the result of a positive test result, the employee shall utilize, in the first instance, available unused annual contractual vacation leave. In the event there is insufficient vacation leave available in the current year to cover the period of attendance in an inpatient treatment program, the employee shall deduct vacation time from his next year's annual contractual vacation entitlement sufficient to cover the remaining period of attendance in the inpatient treatment program. In the event the employee also exhausts the next year's annual vacation entitlement for purposes of attendance in the treatment program, the employee shall be placed on an unpaid sick leave of absence pursuant to section 72 of the Civil Service Law for the remaining period of attendance in the treatment program.

30.06.03 - Return to Duty

Prior to return duty, the employee must undergo a medical and psychological examination and evaluation of fitness for duty by the Fire Surgeon. The return to duty examination may include a drug and/or alcohol test.

Upon the employee's return to work, the treatment program shall provide the FDEAP with information concerning the nature of the employee's outpatient treatment and/or after care program including date, time and location of required attendance in an outpatient treatment or after care program. In the event the employee violates the rules and procedures of the treatment or after care program, including by way of example but not limitation, test positive in a drug screening conducted pursuant to the procedures of such treatment or program, the program shall immediately notify the FDEAP and the Fire Commission of such violation.

The employee shall execute the appropriate authorization for release of information by the treatment or after care program to the FDEAP which information shall be maintained in a confidential manner, except as otherwise provided herein.

Section 30:07 - Failure to Follow FDEAP Conditions

30:07.01 - Originally Voluntary Self-Referral

If the employee was voluntary self-referral pursuant to section 3 above and the employee violates any of the original or subsequent conditions set forth in the treatment and/or FDEAP agreement or if the employee tests positive in a drug screening conducted by the treatment program or FDEAP, or if the employee voluntarily admits a violation of the program conditions, the treatment program shall provide the FDEAP and the employee with recommendations for remedial treatment or other appropriate action. The remedial treatment may consist of additional outpatient or inpatient treatment.

The matter of whether an employee who on a second occasion voluntarily seeks treatment for substance abuse as provided herein is placed on a leave of absence for purposes of attending an inpatient treatment program shall be decided by the employee and the FDEAP. In the event the employee is not required to take a leave of absence from service while attending a treatment or counselling program, the FDEA; shall refer the employee to the Fire Surgeon for purposes of consultation on the employee's medical and psychological condition and appropriate duty status during the time of attendance in a treatment or counselling program. The First Surgeon's examination of the employee and any information obtained regarding the employee's condition or treatment shall be held confidential except under the limited circumstances described herein.

In the event the employee is required to undergo additional inpatient treatment, the employee shall utilize, in the first instance, available unused annual contractual vacation leave. In the event there is insufficient vacation leave available in the current year to cover the period of attendance in an inpatient treatment program, the employee shall deduct vacation time from his next year's annual contractual vacation entitlement sufficient to cover the remaining period of attendance in the inpatient treatment program. In the event the employee also exhausts the next year's annual vacation entitlement for purposes of attendance in the treatment program, the employee shall be placed on paid sick leave for the period of attendance in the treatment program which continues beyond exhaustion of the two annual vacation leaves and which paid sick leave ends at the point in time six (6) months after the employee left active service to enter the inpatient treatment program. Upon exhaustion of this six month period, the employee may use remaining accumulated paid leave time which may be available. Upon exhaustion of time balances the employee may have, the employee shall be placed on unpaid leave for the duration of the treatment program. If the employee is placed on unpaid leave, the employee shall make application to the State Health Insurance Plan, pursuant to that agency's rules and procedures, for a waiver of payment of health insurance premium. In the event such application is denied, the City shall continue payment of its portion of the health insurance premium for the remainder of the employee's attendance in an inpatient treatment program, but such payment shall be discontinued after six months of unpaid leave.

The Treatment Agreement originally signed by the employee shall be amended to include any modification of treatment and/or additional conditions placed on the employee.

30:07.02: Original Disciplinary Referral

30:07.02.1: Voluntarily Admits Violation of FDEAP Conditions

If the employee was originally referred to FDEAP as a result of a disciplinary action taken as provided in Section 4 above and the employee voluntarily admits to violation of any of the original or subsequent conditions set forth in the Treatment Agreement, the FDEAP shall provide the Department and the employee with recommendations for remedial treatment or other appropriate action. The remedial treatment may consist of additional outpatient or inpatient treatment. The Department shall review the disciplinary penalty being held in abeyance and may implement such penalty in full or in part, or take other action the Department deems necessary. If the employee is permitted to undergo additional inpatient treatment, the employee shall utilize, in the first instance, available unused annual contractual vacation leave. In the event there is insufficient vacation leave available in the current year to cover the period of attendance in an inpatient treatment program, the employee shall deduct vacation time from his next year's annual contractual vacation entitlement sufficient to cover the remaining period of attendance in the inpatient treatment program. In the event the employee also exhausts the next year's annual vacation entitlement for purposes of attendance in the treatment program the employee shall be placed on paid sick leave for the period of attendance in the treatment program which continues beyond exhaustion of the two annual vacation leaves and which paid sick leave ends at the point in time three (3) months after the employee left active service to enter the inpatient treatment program. Upon exhaustion of this three month period, the employee may use remaining accumulated paid leave time which may be available. Upon exhaustion of time balances the employee may have, the employee shall be placed on unpaid leave for the duration of the treatment program. If the employee is placed on unpaid leave, the employee shall make application to the State Health Insurance Plan, pursuant to that agency's rules and procedures, for a waiver of payment of health insurance premium. In the event such application is denied, the City shall continue payment of its portion of the health insurance premium for the remainder of the employee's attendance in an inpatient treatment program, but such payment shall be discontinued after three months of unpaid leave.

The Treatment Agreement originally signed by the employee shall be amended to include any modification of treatment and/or additional conditions placed on the employee.

30:07.02.2: Violation of Treatment Conditions Not Voluntarily Disclosed

If the employee was originally referred to the FDEAP as a result of a disciplinary action taken as provided in section 4 above and the employee violates any of the original or subsequent conditions set forth in the Treatment Agreement, or if the employee tests positive in a drug screening conducted by the treatment program or FDEAP, the FDEAP shall provide the Department with recommendations for remedial treatment or other appropriate action. The remedial treatment may consist of additional outpatient or inpatient treatment. The Department shall review the disciplinary penalty being held in abeyance and shall implement such penalty in

full or in part, or take other action the Department deems necessary. If the employee is permitted to undergo additional inpatient treatment, the employee shall be placed on an unpaid leave of absence pursuant to section 72 of the Civil Service Law for a minimum period of two (2) months.

The Treatment Agreement originally signed by the employee shall be amended to include any modification of treatment and/or additional conditions placed on the employee.

30:07.02.3: Discovery of Failure to Follow Treatment/FDEAP Conditions in a Subsequent Disciplinary Matter

Employees who are in a treatment program voluntarily or as the result of a disciplinary matter who engage in misconduct or poor work performance and/or are discovered to have violated treatment program or FDEAP conditions shall be subject to the disciplinary process for the misconduct or poor work performance and/or violation of treatment program or FDEAP conditions.

Section 30:08 Third Request for Treatment

An employee who is found by voluntary admission or testing, to be under the influence of an intoxicating substance while on duty after two prior opportunities for treatment may be subject to termination or be given an opportunity to resign his or her position. The determination by the Fire Department of whether to provide a third opportunity for treatment shall include consideration of the employee's length of service, his employment history and the interval of time since the employee last received treatment for substance abuse. There is no requirement that an employee be provided an opportunity to remain employed while undergoing treatment for substance abuse after two prior treatment opportunities. Notwithstanding anything to the contrary in this agreement, an employee who tests positive for the presence of intoxicants while on duty in violation of the Department's policy on substance abuse on two occasions within any 24 month period shall be terminated. Such termination shall be subject to review pursuant to the contractual disciplinary procedure. Such proceeding shall be limited to questions raised by the employee concerning the basis for the direction of the test and the validity of the drug or alcohol test administered on the second occasion.

Notwithstanding anything to the contrary above, no provision shall be made for continuation of treatment or of employment under any circumstance after the employee has been provided three (3) opportunities for treatment for substance abuse.

Section 30:09: Administrative Provisions

a) Time spent by an employee undergoing tests as provided in sections 4 and 5 herein shall be compensated pursuant to the terms of the collective bargaining agreement.

b) In the event the laboratory test requested by the employee (i.e., the second test) shows negative, as defined herein, for the presence of intoxicants, the Department shall reimburse the employee for the cost of such second test.

c) Any alteration, switching, substitution or tampering with a sample or test given under this agreement by any employee shall be grounds for termination, if established pursuant to the applicable disciplinary procedure.

d) Notwithstanding anything to the contrary above, this Article shall not abrogate nor in any way interfere with the City's right to hire employees, promote employees, layoff employees, appoint and evaluate employees, to select probationary employees for permanent appointment or to act pursuant to sections 72 and 73 of the Civil Service Law. Furthermore, this Article and procedure shall not in any way affect, interfere with or have any bearing on matters within the jurisdiction of the Civil Service Commission.

e) The City and the Union agree to meet periodically to review, and if appropriate agree to amend, this Article to insure that it remains consistent with current federal and state law.

f) Separability – If any clause or provision of this drug testing Article or any addition thereto is decided by a court or administrative agency of competent jurisdiction to be in violation of any federal, state or local law, the remaining clauses and provisions of this Article shall remain in full force and effect.

g) Disputes concerning the interpretation or application of this Article shall be subject to the contractual grievance procedure, except for disciplinary matters.

ARTICLE 31:0

MAINTENANCE AND CONTINUATION OF ALL OTHER BENEFITS

Section 31:01

The City and the Union agree that they will not alter or revoke any benefits or other provisions heretofore negotiated for or granted to the members not specifically referred to in this Agreement and which are in existence on the date of the signing of this Agreement and which are presently effective either by State laws, local laws, ordinances or resolutions or departmental rules and regulations or departmental orders or contained within the budget of the City of Yonkers, or which exist by reason of either usage or custom within the Department. This provision is for the benefit of both parties to this Agreement.

Section 31:02

RESERVATION OF RIGHTS – The omission herein of a statement of any established working practice shall not be construed as either a waiver of rights or denial of responsibility.

ARTICLE 32:0

PHYSICAL FITNESS STANDARDS

The parties agree to establish a labor management committee for purposes of working with a consultant retained by the City to establish physical fitness standards to apply as conditions of employment for employees hired in the Fire Department at a future time to be decided by the City. In agreeing to this labor management committee, neither the City nor the Union waives any rights each may have with respect to mandatory or non-mandatory subjects of negotiation.

ARTICLE 33:0

EMERGENCY MEDICAL SERVICES

Section 33:01

Both the City and Local 628 are committed to the purposes of the EMS Program and the delivering of these services at the highest levels of professional standards. As used herein the EMS Program shall mean the level of services provided as of the date of this Agreement.

Section 33:02

The City and Local 628 agree that in connection with and as an integral part of the EMS Program the City shall schedule no fewer than 57 line firefighters with the commencement of each tour. The City may from time to time review the services presently provided as of the date of this agreement including the number of firefighters required to provide such services. In the event the City believes that the number of firefighters required to perform these services should be altered or seeks to discontinue such services it shall first negotiate any such change with Local 628 prior to its implementation. The scheduling of no fewer than 54 line firefighters with the commencement of each tour shall only be required as long as the Fire Department is providing the EMS Program. Nothing contained herein shall affect the present practice regarding the replacement of firefighters who are sick or injured during a tour of duty.

Section 33:03

33:03.01 A firefighter who maintains New York State certification pursuant to the provisions of Article 30 and Article 30-a of the Public Health Law, and the rules and regulations issued pursuant thereto, as a certified first responder shall receive a \$800 stipend per annum. A firefighter who maintains New York state certification pursuant to the provisions of Article 30 and Article 30-a of the Public Health Law, and the rules and regulations issued pursuant thereto, as a certified emergency medical technician shall receive a \$1,500 stipend per annum. A firefighter who maintains New York State certification pursuant to the provisions of Article 30 and Article 30-a of the Public Health Law, and the rules and regulations issued pursuant thereto, as a certified advanced emergency medical technician level 4 shall receive a \$2,500 stipend per

annum. The stipend paid pursuant to this sub-section shall be paid in equal bi-weekly installments and shall be included in the member's hourly rate of pay.

33:03.02 The stipends provided in this section 33:03.01 above shall be paid only to those firefighters who maintain on file in the Fire Commissioner's office a currently valid New York State certification as a certified first responder, emergency medical technician or certified AEMT level 4. The stipend provided in this sub-section shall not be paid for any period of time that there is not on file in the Fire Commissioner's office a currently valid New York State certification as a certified first responder, emergency medical technician or AEMT level 4. Each firefighter receiving a stipend pursuant to this provision shall be responsible for providing the Commissioner's office with the applicable New York State certification.

Section 33:04

33:04.01 Firefighters who are certified as First Responder shall receive 20 hours of compensatory time, in addition to all other contractual compensatory time, upon certification or recertification as a First Responder. The firefighter may not accumulate more than 100 hours of this compensatory time. All compensatory time accumulated under this section must be taken prior to a firefighter's retirement or resignation.

33:04.02 A firefighter who certifies or recertifies as an EMT pursuant to the provisions of Article 30 and Article 30-a of the Public Health Law, and the rules and regulations issued pursuant hereto, shall receive forty (40) hours of compensatory time in the year in which they achieve certification in addition to all other contractual compensatory time except that a firefighter who recertified through a "challenge" pursuant to the provisions of Article 30 and Article 30-a of the Public Health Law, and the rules and regulations issued pursuant hereto, shall receive ten (10) hours of compensatory time in the year in which they achieve recertification. In no event shall a firefighter who is a certified EMT have a compensatory time balance in excess of one hundred (100) hours. All compensatory time accumulated under this section must be taken prior to a firefighter's retirement or resignation.

33:04.03 A firefighter who certifies or recertifies as a AEMT level 4 pursuant to the provisions of Article 30 and Article 30-a of the Public Health Law, and the rules and regulations issued pursuant hereto, shall receive sixty (60) hours of compensatory time in the year in which they achieve certification or recertification in addition to all other contractual compensatory time. In no event shall a firefighter who is a certified AEMT level 4 have a compensatory time balance in excess of one hundred (100) hours. All compensatory time accumulated under this section must be taken prior to a firefighter's retirement or resignation.

Section 33:05

The Department shall, on or about January 1 of each year, publish in each fire house a list showing the names of firefighters who have on file with the Fire Commissioner a valid New York State certification as a first responder, EMT or AEMT level 4 and the expiration dates of said certifications. Firefighters who choose to certify or recertify as a first responder, EMT or AEMT level 4 shall irrevocably notify the Fire Commissioner in writing within thirty (30) days

from the date the Department publishes its list of firefighter certifications of their intent to enroll in the appropriate course of instruction. Firefighters may attend a course of instruction and examination on their own for certified first responder and shall be reimbursed the reasonable costs incurred for such certification or recertification. To be eligible for such reimbursement the firefighter shall submit receipts identifying the expense and submit a valid New York State first responder certification. In the event the Department provides a course of instruction for first responder certification it shall be at no cost to the firefighter.

Section 33:06

Firefighters who certify or recertify as an EMT or AEMT level 4 shall do so on their own time. Upon submitting a valid EMT or AEMT level 4 New York State certification to the Fire Commissioner the firefighter shall be reimbursed for the reasonable cost of tuition fees, and books required to complete such course of instruction and examination. Firefighters shall submit a request for reimbursement and shall provide with such request all receipts indicating that such costs were incurred with the course of instruction or examination.

Section 33:07

Firefighters who are certified as a First Responder, EMT or AEMT level 4 shall receive 20 hours of compensatory time, in addition to all other contractual compensatory time, upon certification or recertification as a First Responder, EMT or AEMT level 4. The firefighter may not accumulate more than 100 hours of this compensatory time. All compensatory time accumulated under this section must be taken prior to a firefighter's retirement or resignation.

ARTICLE 34:0

JURY DUTY

Section 34:01

A firefighter who is called to jury duty shall be required to notify the Fire Commissioner within 48 hours from receiving a notice for jury duty by providing a copy of such notice to the Commissioner. Jury duty shall include either Grand Jury or Petit Jury both in Federal or State court. In the event the firefighter is placed on a jury standby schedule and not required to be present in court, the firefighter shall report to work as scheduled and if notified to report to court shall immediately notify the Commissioner's Office.

Section 34:02

In the event a firefighter is required to be present in court pursuant to the jury duty notice while his squad is scheduled to work, such firefighter shall be excused from work with no loss of pay or benefits. The excusal from work shall include tours for which his squad is scheduled to work any part of the calendar day that he is required to attend court. As a condition of eligibility

to the benefits provided herein, the firefighter shall provide to the Commissioner the certification of jury service indicating the dates the firefighter was present in court for jury service.

Section 34:03

The firefighter shall reimburse the city any per diem payment received from the court system for each day that they are excused from duty and paid by the City.

Section 34:04

In the event the Department schedules a replacement for a firefighter excused for jury duty, and attendance for jury duty for such day is cancelled, the Department shall have the right to cancel the overtime tour prior to the replacement firefighter commencing work at the scheduled start of the overtime tour.

Section 34:05

In the event the firefighter has the option to request an exemption from jury service and does not exercise such exemption, the benefits provided herein shall not apply. The City will provide appropriate leave time to the firefighter for this purpose without pay and benefits. Such unpaid leave time shall be provided to the extent conditioned in Section 34:02 above.

ARTICLE 35:0

DURATION

Section 35:01

The term of this Agreement shall be for the period commencing July 1, 2000 and ending June 30, 2002, unless effective dates are otherwise specified in this Agreement.

ARTICLE 36:0

AGREEMENT BY AND BETWEEN THE PARTIES

Section 36:01

ITS IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE LEGISLATIVE BODY HAS GIVEN APPROVAL.

Section 36:02

The City agrees to promptly submit any legislation required by section 36:01 above to the appropriate legislative body.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on

Dated: Yonkers, New York

For the City of Yonkers:

October 30, 2002

By: _____
John D. Spencer, Mayor

For the Mutual Aid Association of the Paid
Fire Department of the City of Yonkers,
New York, Inc., Local 628, IAFF, AFL-CIO

By: _____
John Garbowski, President

APPENDIX A

Local 628, IAFF --- Yonkers Firefighters

| | <u>7/2002</u> | <u>7/2003</u> | <u>7/2004</u> |
|--------------|---------------|---------------|---------------|
| Hire Rate | 56,615.47 | 59,116.07 | 61,716.70 |
| After 1 Yr. | 60,814.09 | 63,314.69 | 65,915.32 |
| After 2 Yrs. | 61,664.59 | 64,165.19 | 66,765.82 |
| After 3 Yrs. | 62,515.06 | 65,015.66 | 67,616.29 |

| <u>LONGEVITY</u> | <u>7/02-6/03</u> | <u>7/03-6/04</u> | <u>7/04-6/05</u> |
|------------------|------------------|------------------|------------------|
| 3% | 1,875.45 | 1,950.47 | 2,028.49 |
| 6% | 3,750.90 | 3,900.94 | 4,056.98 |
| 9% | 5,626.36 | 5,851.41 | 6,085.47 |

APPENDIX "B"

INITIAL UNIFORM ALLOCATION

| <u>PER MEMBER QUANTITY</u> | <u>DESCRIPTION</u> |
|----------------------------|---|
| 1 | Set of NFPA approved PPE |
| 1 | Uniform Hat |
| 1 | Uniform Blouse |
| 1 | Uniform Pants |
| 1 | Uniform Shirt (light blue) |
| 1 | White Gloves |
| 1 | Black Tie |
| 3 | Work Pants |
| 2 | Work Shorts |
| 2 | Work Shirt (golf style) |
| 2 | Work shirt (long sleeve, dark blue) |
| 1 | Work Sweatshirt |
| 1 | Work Shoes (Station wear, leather) |
| 1 | Hat Badge |
| 1 | Pocket badge |
| 1 | Field Jacket (winter) |
| 1 | Field Jacket (summer, baseball style) |
| 1 | PT clothes (sweatshirt, sweatpants, T-shirt, gym shorts, baseball hat) |

APPENDIX "C"

General Municipal Law Section 207-a Procedure

Section 1

This policy is intended to provide a procedure to regulate both the application for, and the award of, benefits under section 207-a of the General Municipal Law (hereafter referred to as "GML 207-a"). This policy is not intended to limit or eliminate any additional requirements or benefits regarding GML 207-a set forth in the statute or case law, or to modify any requirements set forth in the Yonkers Fire Department Book of Rules and/or Orders to the extent that such Rules and/or Orders are not inconsistent with this procedure.

Section 2

A member shall notify the Officer on Duty as soon as possible of any injury in the performance of his duties or sickness as a result of the performance of duties which necessitates medical or other lawful remedial treatment. Said injury or sickness shall hereafter be referred to for purposes of this procedure as a GML 207-a disability.

Section 3

Application for GML 207-a benefits for a member of the Department may be made by the member, the Commissioner, a Deputy Chief designated by the Commissioner, or some other person acting on behalf of such member.

Section 4

An application shall be deemed "untimely" unless it is received by the Commissioner within thirty (30) days after the date of the injury or sickness upon which the application is based or within thirty (30) days after the member discovers, or should have discovered, the injury or sickness upon which the application is based. The Commissioner may, in his discretion, excuse the failure to file the application within the thirty day period upon a showing of good cause.

Section 5

The application must be made in writing on the form attached to this procedure.

Section 6

After the filing of said application, the applicant shall submit to one or more medical examinations as provided by law.

Section 7

The Commissioner shall have exclusive authority to initially determine the applicant's eligibility for benefits under GML 207-a. The Commissioner shall have the authority to conduct a full investigation of the facts concerning the application.

Section 8

Pending the determination of an application, time off taken by the applicant after submission of said application and alleged to be attributable to the injury or sickness which gave rise to the claim for GML 207-a benefits shall be charged based on the determination.

Section 9

The Commissioner shall render a written decision on the application for benefits within thirty (30) days after receipt of all necessary information as indicated in section 7 above. A copy of the decision shall be mailed to the applicant at the address specified in the application.

Section 10

If the decision is that the applicant is eligible for GML 207-a benefits, then the applicant shall be so categorized and pursuant thereto any time off taken due to such injury or sickness shall be charged to GML 207-a leave. The member's GML 207-a benefits shall continue so long as the member remains eligible.

Section 11

If the decision of the Commissioner is that the applicant is not eligible for GML 207-a benefits, then at any time within thirty (30) days from receipt of such decision, the applicant may serve a written demand on the Mayor or his designated representative for further evaluation of the application. The demand shall contain a statement of the reasons why the applicant believes further evaluation of the application is needed.

Section 12

Upon receipt of a timely written demand for further evaluation of a GML 207-a claim, the Mayor or his designee shall obtain from the Fire Commissioner all information provided in the application and pursuant to Section 7 of this procedure. The applicant may submit additional written information concerning his GML 207-a claim to the Mayor or his designee. The Mayor or his designee may require the production of additional information concerning the claim and/or