

AGREEMENT

BETWEEN

THE CITY OF MIDDLETOWN

AND

THE MIDDLETOWN
PROFESSIONAL FIREFIGHTERS,
INC.

January 1, 2013 to December 31, 2020

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

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

ARTICLE I - RECOGNITION AND DUES DEDUCTION

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

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

ARTICLE II - EXISTING CONDITIONS

A. A past practice will be any practice rule relating to a condition of employment which is established by (1) its clarity, consistency, (2) longevity and repetition, (3)

acceptability and mutuality. There will be no change in such condition without first having obtained agreement and consent of the paid firefighters. Questions concerning the interpretation of this provision shall be determined through ordinary contract process provided herein. There shall be no layoff or furlough of any member. The city will not eliminate any occupied positions.

B. The City shall continue to maintain air-conditioning equipment, kitchen appliances, and furniture previously supplied by the firefighters for the life of this agreement. This shall include replacement of similar equipment when current apparatus becomes inoperative.

C. Seniority shall be determined by continuous service in the fire department calculated from the date of employment. Continuous service shall be broken by only resignation, discharge or retirement. Employees with the same employment date shall be assigned to the seniority list in order of their ranking on the Civil Service Eligibility List.

D. There shall be only two (2) official personal history files maintained for an employee (chief fiscal officer and fire chief). The personal history folders shall contain all memoranda and documents relating to such employee's job performance which contains criticisms, commendations, appraisals or rating of such employee's performance on the job. Copies of such memoranda and documents shall be sent to such employee simultaneously with their being placed in the personal history folder. An employee, or union representative designated by the employee, in writing, shall have an opportunity to review the official personal history folders in the presence of the chief fiscal officer or fire chief within five (5) working days' notice.

ARTICLE III - HEALTH INSURANCE

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

new employees hired after January 1, 2015 are to pay fifteen percent (15%) of medical insurance costs.

B. Effective July 1, 2009, new employees hired on or after January 1, 1995 up to and including December 31, 2014 ("new employee") shall pay a portion of the premium cost for health and hospital insurance coverage (hereafter "health insurance") in accordance with the following schedule.

i. Commencing the first day the new employee is covered by and the City makes premium payment on behalf of the employee for purposes of the health insurance plan, the new employee shall pay fifteen percent (15%) of the premium cost paid by the City for the health insurance coverage for no more than sixty consecutive (60) months. The premium cost payment shall be made by the new employee in accordance with existing arrangements for bargaining unit members to pay a portion of the cost of the health insurance premium.

ii. The fifteen percent (15%) premium cost payment as provided herein shall be made by the new employee for a total of sixty (60) months of premium cost payment by the employee for health insurance coverage provided to the new employee and/or the new employee's dependents.

iii. Commencing the sixty –first (61st) month of health insurance coverage for which the City makes premium cost payment, the new employee shall pay ten percent (10%) of the premium cost paid by the City for the health insurance coverage for no more than twelve months. The premium cost payment shall be made by the new employee in accordance with existing arrangements for bargaining unit members to pay a portion of the cost of the health insurance premium. The ten percent payment shall be made for a total of twelve months of health insurance coverage provided to the new employee and the employee's dependents.

iv. Commencing the seventy third (73rd) month of health insurance coverage for which the City makes premium cost payment, the new

employee shall not be required to pay a portion of the premium cost and the City shall thereafter, commencing in the seventy-third (73rd) month of health insurance coverage, pay the entire cost of the new employee's individual and/or family health insurance coverage.

Any period of time for which the employee waives health insurance coverage and receives a buyout payment as provided by the contract shall not count for purposes of the periods of time for which the employee is required to pay a portion of the health insurance premium as provided herein.

Employees who are currently paying a portion of the health insurance premium as of June 30, 2009 who will no longer be required to make such payment as of July 1, 2009 under the terms set forth above shall make the premium payment in the normal course in the month of June 2009 and thereafter the new employee premium contribution shall end.

C. Effective July 1, 2009 and with respect to employees who retire from the Fire Department after this date, the City shall PAY one hundred per cent (100%) of the premium cost of individual or family health and hospital insurance coverage provided to retirees and eligible dependents to the extent that such persons are currently eligible for health and hospital insurance coverage paid in whole or in part by the City. The City shall PAY one hundred per cent (100%) of the premium cost of the type of health and hospital insurance coverage provided to the employee at the time of retirement. (Examples to be incorporated in contract.)

“Notwithstanding the foregoing, new employees hired after January 1, 2015 who thereafter retire in accordance with the requirements of the New York State pension system shall pay fifteen percent (15%) of medical insurance costs and will be eligible for individual coverage only.

D. Effective January 1, 2015 the fund shall be increased to the rate of \$500 per participant. The fund will be used for dental or similar insurance plans. A welfare fund committee composed of three members of the union and three members designated by the city shall administer the welfare fund. The welfare committee shall prepare an annual statement of said welfare fund and distribute to all six welfare fund committee members

and upon request by either party an independent audit of the welfare funds financial records can be required and paid by the requesting party. "If the CSEA optical and/or dental plan is available to members of the Union, the Union must use the CSEA plan(s). All books and records associated with the use and administration of the welfare fund can be inspected, upon reasonable notice, by the City's Mayor and/or Treasurer or their designee."

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

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

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

Such payment will be made only if allowed under applicable rules or regulations of the New York State Department of Civil Service or similar state agency. Such payment will be \$3,000.00 for qualified firefighters hired after January 1, 2015 enrolled in the individual plan and \$6500.00 for qualified firefighters hired after January 1, 2015 enrolled in the family plan.

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

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

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

K. Upon the death of an employee while in service, the City shall continue family health insurance premiums for one year.

ARTICLE IV - RETIREMENT PLAN

No action will be taken which will decrease in any way the rights previously vested with respect to existing retirement plan.

ARTICLE V – EDUCATION

A. The City will make available to the paid firefighters only, the sum of \$10,000 per year for education purposes which will permit the paid members of the Middletown Fire Department to obtain additional training and education while in service. The Professional Firefighters Association will assist in the administration of these funds with the approval of the Fire Chief. If the entire amount of money allocated for education in one year is not used, the balance will revert to the general fund. Should any of said additional monies be needed the next year, the City will reappropriate that amount. The firefighters will receive a copy at the end of each year of any money that is being reverted back to the general fund.

B. Written material (books, handouts, etc.) received by an employee in a program paid in whole or in part by the Education Fund shall be the property of Middletown Fire Department and be made available to all members of the Department. In addition, an employee who attends a program paid in whole or in part by the Education Fund shall be required to share information obtained in the program with members of the Department during sessions scheduled for the employee's regular straight time tour of duty. The session shall be scheduled by the Chief of the Department or the Chief's designee in consultation with the member.

C. Approved courses shall include, but not limited to advanced study in topics covered under the In-Service Fire Training requirement for Non-Permanent firefighting personnel. These requirements are set forth in Part 426 minimum standards for firefighting personnel, State of New York, Chapter XII Office of Fire Prevention and Control executive law 159.d.

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

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

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

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

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

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

J. Training needed after promotion, or training mandated by the City of Middletown, State of New York or the Federal Government shall not be included in these

provisions. Lieutenants may attend training and education courses, paid for by the city, with the approval of the Chief and subject to budgetary conditions.

ARTICLE VI - PROMOTION

A. In the event that promotions are to be made in the Middletown Fire Department, such promotions shall be made from the ranks of the Middletown Professional Firefighters Association, Inc. and all such promotions shall be competitive positions governed by the rules, regulations, laws and qualifications as set up by the Civil Service Commission. There shall be excluded from this paragraph the position of Administrator of the Fire Department, Chief Officer of the Fire Department, or any person occupying a like or similar position created by the City.

B. Any employee promoted on provisional or probationary status will return to their previous bid assignment should the provisional or probationary period be unsuccessfully completed. All other assignments bid in connection with the promotion shall remain contingent on the promoted employee's permanent assignment to the promoted position.

ARTICLE VII - FIRE INSPECTORS

A. Present provisions for the position of Fire Inspector shall continue except as modified in this article to the extent that the position of Fire Inspector be a competitive position under Civil Service and that any firefighter who has had at least three years of service as of the date of examination as a paid firefighter in the City of Middletown shall be entitled to take the examination and to be appointed. The fire inspectors shall receive a clothing allowance of \$600 and a cleaning allowance of \$225. Cleaning allowance shall be paid in cash to each Fire Inspector by February 1st of each year. Payment of the cleaning and clothing allowance shall be subject to the terms stated in Article XIII section D and E.

B. A fire inspector shall be designated as senior fire inspector. The designated fire inspector shall have seniority as a Middletown Fire Inspector, have three years' service as

a Middletown Fire Inspector, and have completed the prescribed courses for a code enforcement officer in the State of New York. It shall be the duty of the senior fire inspector to break in and help train new fire inspectors. There shall be a \$500 differential over the salary of a fire inspector paid to the senior fire inspector. When existing Senior Fire Inspector's position is vacant, this section shall be null and void.

C. It shall be the procedure and policy of the Middletown Fire Department that the Fire Inspectors' vehicles be washed, waxed and maintained professionally.

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

ARTICLE VIII - WORK SCHEDULES

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

B. The firefighters shall be authorized, upon the express approval of the Chief, to exchange tours of duty of equal duration with other members of the unit. Twenty-four (24) hours prior notice of such exchange shall be given to the Chief. The Chief or Assistant Chiefs shall be the sole determining factor in applications for exchanges. They shall not be unreasonably withheld.

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

D. Except for responding to fire calls, covering at stations and the normal working routine including shoveling snow and general house cleaning, there will be no outside activities assigned to firefighters when the temperature reaches 90° or higher, or 32° or lower, except where the Chief of the fire department deems it necessary. This inclement weather clause will also cover rain or snow storms. Traveling directly to and from

stations for the purpose on in-station training is permissible and will not affect this inclement weather section.

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

F. TIME OWED: Any firefighters owing time, shall be used first and until paid back, at the reasonable discretion of the chief. Any firefighter who owes time at the time of separation from the City service will be responsible for repayment. "Any time owed shall be deducted from the firefighter's final payment from the City upon separation. If there is any balance owed thereafter, it must be paid within six months of separation."

ARTICLE IX – HOLIDAYS

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|--------------------------|----------------------------|
| 1. New Year's Day | 7. Labor Day |
| 2. Lincoln's Birthday | 8. Columbus Day |
| 3. Washington's Birthday | 9. Veteran's Day |
| 4. Good Friday | 10. Election Day |
| 5. Memorial Day | 11. Thanksgiving Day |
| 6. Independence Day | 12. Christmas Day |
| | 13. Martin Luther King Day |

A. In addition to the present contract article, each paid member of the department shall receive two weeks off in lieu of ten holidays named above. Payment shall be 8 hours each, for the eleventh, twelfth and thirteenth holidays listed above. Fire Inspectors shall not receive this benefit. They will, however, get the above holidays off with pay.

B. New firefighters shall be allotted time off for holidays by the following formula.

- Appointed January through June 30th – two weeks off in lieu of ten days
- Appointed July through September 30th – one week off in lieu of holidays
- Appointed after October 1st – no time off for holidays

For retiring Firefighters, the holidays will be pro-rated based upon actual holidays.

C. No firefighter will be required to work a holiday during his break-in training period, 4- 10 hours days while assigned to central fire station. If a holiday or day off is scheduled while attending the mandatory training academy for probationary firefighters, that schedule will be followed through the end of the week of graduation. If hours worked are too few or in excess, a labor- management meeting shall be conducted as per Article XX. (Labor- Management Committee). Firefighters appointed after October 1st, and breaking-in will not be required to work a holiday and will not have to work another day to make up the day off.

D. New firefighters shall be given 8 hours pay each for the eleventh, twelfth, and thirteenth holidays if appointed January to June 30th. They will be given 8 hours pay for one holiday if appointed between July and September 30th. There will be no pay for holidays if appointed after October 1st.

E. The dates of the holidays are those published by the mayor in memorandum to all departments prior to the beginning of each year. (Thirteen Holidays)

ARTICLE X - PERSONAL LEAVE

A. Each paid member of the Middletown Fire Department shall receive in each year, forty-eight (48) hours of personal leave with pay, effective January 1, 1992. Personal leave shall be taken in 8, 12 or 24-hour increments as shift assigned.

B. The Chief of the Fire Department shall grant no time off on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Eve Day, Christmas Day and New Year's Eve Day. Exception to this provision will be the normal vacation schedule, relief schedule, sick time, 207A time, or funeral time, Swap time shall be allowed,

firefighter's spouse. Additional leave of absence shall be granted to an employee in the sole discretion of the Chief of the department and such leave, if granted, shall be charged to sick leave, vacation or personal leave time. The foregoing provision for full pay shall apply only if such leave falls on scheduled work days up to but not in excess of 3 days to the date of the funeral, provided the said employee actually, in fact, attends the funeral. If requested by the Chief of the department, proof thereof in form satisfactory to him shall be provided.

ARTICLE XII - REIMBURSEMENT

A. The City shall replace protective gear that has been damaged, worn out or stolen; such replacements shall conform to the standards set forth in Article XXI. The City shall reimburse each paid firefighter for the replacement or repair of eye glasses, contact lenses and dentures damaged in the performance of duty.

B. Should an employee resign for another outside fire department position within three (3) years after appointment, they shall reimburse the city for all training, education, uniform and equipment up to \$1,000.

ARTICLE XIII - UNIFORM ALLOWANCE

A. The clothing allowance shall be \$525 and \$125 for cleaning. It shall be the obligation of the firefighter to obtain clothing out of that allocation.

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

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

D. Effective January 1, 2010 the City shall have the right to replace the cleaning allowance provided by the contract with a cleaning service. The City shall provide thirty days' notice of intent to implement the cleaning service no later than January 1, 2010. If

the City does not provide the notice as provided herein, the City shall continue to make the cleaning service payment as provided by the contract. In no circumstance will the City be obligated to make a cleaning allowance payment and provide a cleaning service for the same fiscal year.

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

F. Effective on June 24, 2009, the Union shall withdraw any claim it may have with respect to the application of withholding and/or payroll taxes on the amount of uniform allowance and/or cleaning allowance paid to an employee.

ARTICLE XIV – REPRESENTATIVES

Two (2) representatives of the Middletown Professional Firefighters Association, Inc. will be granted time off from their normal work days for attendance at International Association of Firefighters conventions, district meetings, New York State Professional

Firefighters Association conventions and meetings, state AFL-CIO meetings, Orange County Central Labor Council, conferences at which subjects pertinent to the Fire Departments firefighters or the City of Middletown are on the agenda. Time off not to exceed twenty (20) 12 hour shifts. Time off will also be granted to up to two (2) persons to attend scheduled arbitrations arising out of the contract. Negotiations will continue under current practices.

ARTICLE XV - SALARY SCHEDULES

- A. Effective 1/1/13 -- 1.5% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/12;
Effective 1/1/14 -- 1.5% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/13;
Effective 1/1/15 -- 1.5% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/14;
Effective 1/1/16 -- 1.5% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/15;
Effective 1/1/17 -- 2.0% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/16;
Effective 1/1/18 -- 2.5% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/17;
- Effective 1/1/19 -- 2.75% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/18;
Effective 1/1/20 -- 2.0% salary increase for all members of the Union based on the salaries in effect for each member on 12/31/19;
- B. The salary schedules are set forth in the Appendix.
- C. The Lieutenant designated as MTO for administration of the training program as required by New York State, shall receive an additional \$1000 in salary for such

duties, paid quarterly. "All training reports must be filed by the MTO with the City Clerk, after review and approval by the Fire Chief, within two weeks of any training.

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

ARTICLE XVI - OVERTIME

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

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

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

D. The Chief of the fire department will assign a regular firefighter as acting Lieutenant in the event no Lieutenant is on duty. This assignment will be made by seniority and qualifications, on a rotating basis on the group with the absent Lieutenant. To accept the position of acting Lieutenant a firefighter shall meet the minimum qualifications to take the Lieutenant examination. The firefighter assigned to be acting Lieutenant shall receive Lieutenant pay for the shift as per his time and grade as applied to the Lieutenant salary schedule. He shall be responsible to affect training set forth by his Lieutenant or the municipal training officer. Should a long absence of a Lieutenant occur, the Chief may appoint an acting Lieutenant, from any group, for the duration of the absence at the appropriate Lieutenant pay scale.

E. There will be a minimum of 4 hours of paid overtime on all emergency duty. Compensation for said emergency duty overtime shall be paid at the rate of one and one-half (1.5) times the normal rate of pay.

F. Fire Inspectors shall receive payment for all overtime worked at the rate of time and one-half. There will be a minimum of four hours of paid overtime at the rate of time

and one-half, on all emergency duty. The current practice with regard to the method and procedure of implementation of overtime for fire inspectors shall continue.

G. The city agrees to pay all firefighters time and one-half for time worked past their scheduled shift up to one hour as follows:

0 - 30 minutes	1/2 hour at time and one-half
31 - 60 minutes	1 hour at time and one-half

All other emergency duty will follow Section E above.

ARTICLE XVII - SICK LEAVE

A. The members of the unit shall receive ninety-six (96) sick hours per year.

B. Sick leave will be taken and deducted on an hour for hour basis, ie: 12 hours taken, 12 hours deducted, effective January 1, 1992.

C. The City agrees to pay each member or the member's estate, if deceased, forty (40%) percent of his salary for all accumulated sick leave earned at any time during the employee's continuous employment with the city. Any unit member shall be paid for all such time which remains accumulated and unused at the time of severance from city employment for any reason.

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

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

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

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

ARTICLE XVIII - VACATIONS

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

B. All employees' will receive their vacation allowances on a pro-rated monthly basis according to their grade. The existing method of selection and taking of vacation shall remain the same.

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

ARTICLE XIX - GRIEVANCE PROCEDURE

A. It is the intent of this procedure to provide for the orderly settlement of differences in a fair and equitable manner. The resolution of a grievance at the earliest possible state is encouraged.

B. An employee shall have the right to present grievances in accordance with these procedures, free from coercion, interference, restraint, discrimination or reprisal.

C. An employee shall have the right to be represented at any stage of the procedure by a duly authorized representative.

D. Each party to a grievance shall have access at reasonable times to all written statements and records pertaining to such case.

E. All hearings shall be confidential.

F. The function of these procedures is to assure equitable and proper treatment under the existing laws, rules and regulations and policies which relate to or affect the employee in the performance of his assignment.

DEFINITION A grievance is a claim by any member of the paid firefighters or a group of members of the paid firefighters, based upon any event or condition affecting the terms and conditions of employment, including any claimed violation, misinterpretation, misapplication or inequitable application of law or this agreement.

PROCEDURES The aggrieved employee with the President of the Middletown Professional Firefighters Association, Inc., or its duly appointed representative, shall present a written grievance to the Chief of the fire department or a designee of the Chief, who shall orally and informally discuss the grievance with the employee. The Chief shall render a determination to the employee within 48 hours after the grievance has been presented. If the grievance is not satisfactorily resolved at this stage, the employee or the union may make a formal appeal. Any aggrieved unit member shall have the right at that stage of the proceedings to be represented by the union's grievance committee and/or by any other representative selected by the union.

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

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

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

ARTICLE XX - LABOR MANAGEMENT COMMITTEE

A. Following the execution of this agreement the parties shall maintain a Labor Management Committee.

B. This committee shall consist of six members: three to be appointed by the President of the Middletown Professional Firefighters Association, Inc., and three to be appointed by the Mayor of the City of Middletown.

C. This committee shall meet monthly at such time and place as shall be determined by the members thereof. An agenda of the matters proposed to be discussed and considered will be sent to the parties at least three (3) days prior to a meeting.

D. Matters of mutual concern pertaining to improvement of working conditions, morale and safety, as well as the promotion of educational and other activities, may be referred to this committee for discussion and consideration.

E. Issues which would be grievable under the contract, and that cannot be resolved by a majority opinion of the committee, shall be subjected to Impartial Binding Arbitration. Arbitrators shall be chosen from a list supplied by the New York State Public Employment Relations Board of the American Arbitration Association. Procedures for selecting an arbitrator shall be those specified by the organization furnishing the list.

F. The parties agree to meet in Labor-Management Committee to develop a 207-a procedure, a disciplinary procedure, and a swap procedure that is mutually satisfactory to the parties by December 31, 2017. All the procedures and provisions of the Labor-Management Committee as set forth in the parties' contract apply to these proceedings.

ARTICLE XX1 - NEW FIREFIGHTERS

A. Any new firefighter coming to work as a professional firefighter shall receive the following protective gear, to be ordered within the first month of his employ.

1. The City shall provide to new firefighters a Sam Houston N6ABD or Leather New Yorker.
2. Leather boots with steel toe and shank made by Pro Warrington, Thorogood or recognized manufacturer of leather structural firefighting boots.
3. Bunker coat and pants with liners, fit to size, safety striped, made by Globe, or comparable.
4. Gloves, made by Globe, or comparable.
5. Nomex hood, personal safety rope and Gemtor Harness and straps if it will not create any loss of warranty of the equipment.

6. Any Firefighters Protective Equipment in need of replacement will be reissued protective equipment described within this article. (Info not to be included in contract. Gemtor Harnesses will be issued from supply room on the 3rd floor of central firehouse. No extra cost to the city).

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

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

ARTICLE XXII – LIEUTENANTS

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

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

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

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

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

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

Department Rules and Regulations. Revisions shall be provided no later than January 1, 2007.

ARTICLE XXIII - UNSAFE, HAZARDOUS CONDITIONS

A. The employer agrees to provide the highest standards of safety and health in the fire department. Upon notification in writing to the Chief of unsafe or hazardous conditions, he shall investigate and resolve such conditions that are found, within five (5) working days, in order to protect the health and welfare of the firefighters. If unresolved in five working days can go to grievance or health and safety committee.

B. The parties shall continue to maintain a Health and Safety Committee. Matters of health and safety may be brought to this committee.

C. This committee shall consist of three Fire Chiefs and three members of the Middletown Professional Firefighters Association.

D. This committee shall meet monthly or upon request of one or both parties, at such time and place as shall be determined by the members thereof. An agenda of the matters proposed to be discussed and considered will be sent to the parties at least three (3) days prior to a meeting.

E. Issues that cannot be resolved by a majority opinion of the committee shall be referred to the Labor Management Committee.

ARTICLE XXIV - INCREASED PRODUCTIVITY

A. The Middletown Professional Firefighters and the City of Middletown recognize the need for increased productivity. The firefighters and the city agree to jointly set up programs to effectuate increased productivity. The areas discussed are:

1. In service inspections
2. In service pre-planning
3. In service alarm system maintenance
4. Emergency First Aid certification

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

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

ARTICLE XXV - ACCUMULATION OF SICK LEAVE & HOSPITALIZATION

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

ARTICLE XXVI - TESTING FOR ILLEGAL DRUGS

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

ARTICLE XXVII - FUND FOR FIRE PREVENTION PROGRAMS

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

ARTICLE XXVIII - EXTRA FIREFIGHTERS

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

relief firefighters assigned to a group may be used to fill positions as per Rules and Regulations and Past Practice.

B. Firefighters could be assigned by the Chief or his designee to move within the group as follows:

1. To cover a vacancy created when a firefighter who has reported for duty leaves unexpectedly due to illness, injury or family emergency, and only until a recalled off-duty firefighter arrives. In such cases, recall shall commence immediately.

2. Under alarm conditions while awaiting the arrival of a recalled off-duty firefighter. In such cases, recall shall commence immediately.

3. To transport an unmanned apparatus to shop for repairs in Orange County.

4. Mechanical reasons.

5. To cover rescue calls as per current practice.

C. 1. In addition to the provisions set forth in the contract, the Chief shall have the sole discretion to move a maximum of one (1) firefighter per twenty-four (24) hour tour, on a seniority basis per schedule prepared by the Middletown Professional Fire Fighters Association.

2. Reasonable efforts will be made to move scheduled Fire Fighters during overtime coverage the evening prior to his regular scheduled twenty-four (24) hour shift (acquired meals, protective equipment, linen, etc.)

3. When a Fire Fighter who would be next on the seniority schedule is unavailable, the Fire Chief may opt to substitute the next Fire Fighter on the prepared seniority list and continue thereafter according to the schedule.

4. a. Any firefighter may be moved up to fifteen (15) times per year as long as the same firefighter is not moved two (2) times (or more) in a row.

b. A firefighter may use his assigned rig to go get meals at a food location such as a grocery store within the City limits. (This provision applies only if the firefighter must work an unplanned shift in the morning following his original shift, ie. it would not apply to a swap of shifts.)

ARTICLE XXIX - WORKING RELIEF DAYS

The City agrees that all firefighters will have the option to work his relief days at straight time or take the time off at his option. A firefighter working his relief day shall not be considered a relief firefighter under "Extra Firefighters" moving men agreement.

ARTICLE XXX – RESIDENCY

Except as limited below, firefighters shall be entitled to reside anywhere in Orange County, State of New York, or within a twenty-five (25) mile radius of the City of Middletown, New York, within the State of New York. Effective June 14, 2017 and thereafter, all newly hired firefighters must move into the City and maintain residence within City limits for the duration of their employment. (“Residency” is defined as such term is defined under NYS law.)

ARTICLE XXXI – INITIAL MANDATORY PHYSICAL EXAMINATIONS

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

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

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

LAW

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

ARTICLE XXXIII - DURATION

This agreement shall be effective as of the first day of January, 2013 and shall remain in full force and effect until the 31st day of December, 2020. The contract shall be automatically renewed from year to year thereafter unless either party notifies the other of intent to terminate or modify the agreement. In that event, both parties shall mutually select a date for the commencement of negotiations and shall submit to one another all proposals for modifications to the contract. It shall be no later than July 1st of the final year. No new proposals may be made after that date. All provisions of the contract which remain in contention between the parties as of the termination of this agreement shall remain open. All other provisions, however, shall remain in full force and effect during the period of negotiations.

ARTICLE XXXIV – POLICY MANUAL

All orders previously issued by the Chief or Chiefs of the Middletown Fire Department will be consolidated into a policy manual within six months of the date (6/14/17) of ratification of a new agreement between the parties. A copy of the policy manual will be filed with the Clerk of the City, and a copy of the policy manual will be retained by the Union and the Fire Chief. Copies of any updates to the policy manual will be filed with the Clerk of the City as well as the Union and the Fire Chief.

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Firefighter	2013 (1.5%)	2014 (1.5%)	2015 (1.5%)	2016 (1.5%)	2017 (2.0%)	2018 (2.5%)	2019(2.75%)	2020 (2.0%)
1)	50,134	50,886	51,649	52,424	53,472	54,809	56,316	57,443
2)	58,698	59,579	60,473	61,380	62,607	64,172	65,937	67,256
3)	60,645	61,555	62,478	63,415	64,684	66,301	68,124	69,487
4)	62,611	63,550	64,504	65,471	66,781	68,450	70,333	71,739
5)	64,576	65,545	66,528	67,526	68,877	70,599	72,540	73,991
6)	65,528	66,511	67,509	68,522	69,892	71,639	73,609	75,082
7)	67,133	68,140	69,162	70,200	71,604	73,394	75,412	76,920
10)	68,650	69,679	70,724	71,785	73,221	75,052	77,115	78,658
15)	70,422	71,478	72,550	73,638	75,111	76,989	79,106	80,688
18)	71,645	72,719	73,810	74,917	76,416	78,326	80,480	82,090
Lieutenant	2013 (1.5%)	2014 (1.5%)	2015 (1.5%)	2016 (1.5%)	2017 (2.0%)	2018 (2.5%)	2019(2.75%)	2020 (2.0%)
1)	58,542	59,420	60,312	61,216	62,441	64,002	65,762	67,077
2)	67,114	68,121	69,142	70,179	71,583	73,373	75,390	76,898
3)	69,053	70,089	71,141	72,208	73,652	75,493	77,569	79,121
4)	71,019	72,084	73,165	74,263	75,748	77,641	79,777	81,372
5)	72,986	74,080	75,192	76,319	77,846	79,792	81,986	83,626
6)	73,935	75,044	76,169	77,312	78,858	80,830	83,052	84,713
7)	75,812	76,950	78,104	79,275	80,861	82,882	85,162	86,865
10)	77,335	78,495	79,672	80,867	82,485	84,547	86,872	88,609
15)	79,107	80,294	81,498	82,721	84,375	86,484	88,863	90,640
18)	80,328	81,533	82,756	83,997	85,677	87,819	90,234	92,039
Fire Inspector	2013 (1.5%)	2014 (1.5%)	2015 (1.5%)	2016 (1.5%)	2017 (2.0%)	2018 (2.5%)	2019 (2.75%)	2020 (2.0%)
3)	70,558	71,616	72,690	73,781	75,256	77,138	79,259	80,844
4)	72,521	73,609	74,713	75,833	77,350	79,284	81,464	83,093
5)	74,490	75,607	76,741	77,892	79,450	81,437	83,676	85,350
6)	75,439	76,570	77,719	78,885	80,462	82,474	84,742	86,437
7)	77,367	78,528	79,706	80,901	82,519	84,582	86,908	88,647
10)	78,883	80,066	81,267	82,486	84,136	86,239	88,611	90,383
15)	80,655	81,865	83,093	84,339	86,026	88,177	90,601	92,413
18)	81,882	83,110	84,357	85,622	87,335	89,518	91,980	93,819

DATED: _____

CITY OF MIDDLETOWN

MIDDLETOWN PROFESSIONAL
FIREFIGHTERS ASSOCIATION, INC.

BY: _____
JOSEPH M. DESTEFANO,
MAYOR

BY: _____
MICHAEL DEMCHAK,
PRESIDENT

APPENDIX A

MIDDLETOWN FIRE DEPARTMENT ALCOHOL AND DRUG POLICY

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

Section 1 Alcohol/Drug Testing

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

Section 2 Testing Procedures

A. Tests for Alcohol:

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

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6. A positive test for alcohol is any result above 0.0 %.
 7. If the result of the initial screening is an alcohol concentration of greater than 0.0%, a confirmation test will be performed in conformance with the provisions of the Federal Motor Carrier Safety Administration, Department of Transportation regulations codified at 49 Code of Federal Regulations section 40 et seq.. If the first test result is negative (e.g. 0.0% or lower), no further testing will be performed. If the confirmation test is negative, the entire test will be deemed negative, and a negative test result will be reported. Samples will be destroyed.
- B. Tests for Prohibited Drugs:
1. Tests for prohibited drugs shall be conducted only by urinalysis and shall be performed only by federal Department of Health and Human Services certified laboratories. The City agrees to the use of "Partners In Safety" as the organization that will be conducting the testing, or such other testing company as performs drug testing for other City employees.
 2. A specimen may be tested only for cocaine, marijuana, opiates, amphetamines and phencyclidine, (e.g. PCP, Angel Dust). A specimen may not be used to conduct any other analysis or test, except as hereinafter described.
 3. A "split sample" method of collection shall be used. The employee shall urinate into a collection container which the collection site person, in the presence of the donor and after determining specimen temperature, pours into two specimen bottles. Each container shall have a code number and date of collection affixed.
 - a) The first bottle is to be used for the test pursuant to this procedure and 60 ml. of urine shall be poured into it. Up to 60 ml. of the remainder of the urine shall be poured into the second specimen bottle.
 - b) All requirements of this procedure and any applicable regulations shall be followed with respect to both samples, including the requirement that a copy of a chain of custody form accompany each bottle processed. The laboratory administering the test shall ensure that the appropriate chain of custody is established in order to verify the identity of each sample being used.
 - c) Any specimen collected under "split sample" procedures must be stored in a secured, refrigerated environment and an appropriate entry made in the chain custody form.
 4. Visual observation of urination shall be by an individual that is the same gender as the employee providing the specimen.
 5. In accordance with the Federal Regulations, the employee shall be permitted to be present to observe the sealing and tagging of the specimen containers.
 6. Initial drug screening will be by Enzyme Multiple Immunoassay Testing (EMIT). No sample will be further tested upon a negative screening for illegal drugs. Any level which tests positive at the highest cutoff levels as set forth in Federal Regulations 49 CFR §40, on an initial screening test will be confirmed by Gas Chromatography/Mass Spectrometry (GC/MS). Only those specimens which are confirmed as positive in the

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

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

Section 3 Random Drug Testing

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

Section 4 Reasonable Suspicion Testing

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

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testing (hereinafter referred to as the “designated supervisor”) shall be the Fire Chief, or in his absence, the next in line chief officer available. The Fire Lieutenant on duty shall notify the Fire Chief of any suspicion of inappropriate activity.

2. Removal Based on Behavior or Appearance Alone: Whenever no approved testing devices are available and an employee is removed from the employee’s safety-sensitive function based on behavior and/or appearance alone, the employee shall be assigned to duties within the employee’s job description which do not require the performance of safety-sensitive functions, or the employee shall be sent home without loss of pay or leave credits.
3. Documentation of Reasonable Suspicion: Whenever the designated supervisor finds the available facts objectively indicate that reasonable suspicion exists that a test of the employee would yield a positive result of the prohibited use of alcohol or drugs, and as soon as practicable after an order to test is given, without causing an undue delay in the testing process, the City shall document the facts contributing to and forming the basis for the reasonable suspicion. These facts shall include, but not be limited to: (1) a description of the employee’s appearance, behavior and speech; (2) names of witnesses to the employee’s appearance, behavior and speech, where practicable; (3) if the employee’s appearance, behavior or speech is not the basis for testing, the facts used to support a determination of reasonable suspicion and the source of the information.
4. Initial Training of Fire Chief and Chief Officers: The Fire Chief and Chief Officers who may be required to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol or drug testing shall receive two (2) hours of formal training on the physical, behavioral, speech and performance indicators of probable misuse of alcohol or use of prohibited drugs. Such training must be completed before the individual can require an employee to undergo a test.
5. Follow-up Training of Supervisors: The Fire Chief and Chief Officers who may be required to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol or drug testing shall attend a refresher course every other year on the physical, behavioral, speech and performance indicators of probable misuse of alcohol or use of prohibited drugs. If the Fire Chief and Chief Officers who may be required to make a determination of reasonable suspicion has not attended and completed the refresher course within a twenty-four (24) month period, the Fire Chief and/or Chief Officer(s) shall not qualify as a designated supervisor with authority to require an employee to undergo a test. The Fire Chief and/or Chief Officer(s) who has completed the reasonable suspicion course, or the refresher course, within the preceding twelve (12) month period will be considered as designated to determine reasonable suspicion.
6. Right to Representation: During reasonable suspicion testing, the MPFA shall be afforded an opportunity to be present to observe the testing, subject to the consent of the individual to be tested. Reasonable efforts shall be made to contact the MPFA representative of the employee being tested and to give such representative the opportunity to accompany an employee throughout the testing process if requested by the employee. The MPFA representative shall have thirty (30) minutes to respond to the testing location from the time contacted, at which time the testing shall begin.

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

Section 5 Consequences of Positive Test

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

Section 6 Referral, Evaluation and Treatment

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

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subject to discipline for that referral. The treatment and/or rehabilitation program may be inpatient or outpatient.

2. The City, in its discretion, except as required in Section 6.1 above, may refer an employee who has a drug or alcohol abuse/misuse problem for assistance to recover from such problem provided the employees seek and accept assistance. This will be kept confidential and is unrelated to the drug and alcohol testing process. The City may provide assistance, referral and advise employees with respect to drug and alcohol abuse when requested. Failure to meet rehabilitation requirements may lead to disciplinary action pursuant to the applicable disciplinary procedure. This is to be considered an employee benefit, not an excuse to condone the use of drugs or alcohol in the workplace.
3. Designation of Substance Abuse Professional: The Substance Abuse Professional shall be either a licensed physician or a licensed or certified psychologist, social worker or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission with clinical experience in the diagnosis and treatment of alcohol and prohibited drug related disorders.
4. Rehabilitation Program: The City shall make available to bargaining unit members, a treatment and/or rehabilitation program through the contractual health insurance provider.
5. The Substance Abuse Professional shall not communicate with the City other than to certify in writing whether or not the employee is participating on a regular and consistent basis and in a meaningful way in the treatment and/or rehabilitation program and/or has successfully completed the treatment and/or rehabilitation program.
6. Failure to participate in a treatment and/or rehabilitation program on a regular and consistent basis and in a meaningful way shall result in termination of the leave of absence (paid or unpaid) unless otherwise required by law and shall be grounds for disciplinary action pursuant to the applicable disciplinary procedure.
7. Rehabilitation/Leave of Absence: An employee may use all accumulated sick leave credits, vacation leave credits, holidays and other such accrued leave time up to the limits set forth in the collective bargaining agreement or other applicable laws, rules or regulations, including any discretionary leave rights prior to requesting a leave of absence. An employee may request a leave of absence without pay without utilizing the said leave credits noted herein above. A leave of absence without pay will be allowed for treatment on an in-patient or outpatient basis. Nothing herein shall be construed to diminish any rights which may apply under the Americans With Disabilities Act, the Family Medical Leave Act or other relevant laws. Use of paid or unpaid leave time pursuant to this program shall be counted as leave time for purposes of any right the employee may have to leave time under the Family Medical Leave Act.
8. The City will use its best efforts to schedule employees participating in a treatment and/or rehabilitation program to minimize conflicts with the requirements of the treatment and/or rehabilitation program.
9. The maximum period of an unpaid leave of absence for purposes of this program shall not exceed the period of time provided by applicable civil service law and regulations. In the event that an employee does not successfully complete the treatment and/or rehabilitation program within the period of paid and unpaid leave of absence, the City

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

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

Section 7 Medical Review Officer

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

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related to the use of illegal drugs will be disclosed to the Fire Chief. Any medical information provided to the MRO that is not specifically related to use of illegal drugs will be treated as confidential and not disclosed. If it is determined with reasonable certainty that there is a legitimate medical or other reason to account for the positive laboratory findings, no information identifying the specific employee will be disclosed and the test results will be reported as negative.

Section 8 Program Confidentiality

1. The results of all individual drug and alcohol tests will be kept in a secure location with controlled access.
2. All individual test results will be considered confidential. The release of an employee's results will only be given in accordance with the individual employee's written authorization, or as is otherwise required by applicable federal or state law or for use in a disciplinary hearing pursuant to this procedure.
3. It is understood that any medical explanation given by an employee to any person involved in this process is strictly confidential.

Section 9 Disputes - Grievance Procedure

Any dispute, violation, misapplication or misinterpretation of the Substance Abuse Policy and Testing Procedure shall be subject to and go directly to arbitration of the Grievance Procedure as set forth in the collective bargaining agreement.

Section 10 Department Head

The Department Head shall be the Fire Chief for the purposes of this procedure.

Section 11 Severability

In the event that any Article, section or portion of this Agreement is found to be invalid by a decision of a tribunal or competent jurisdiction, then such specific Article, section or portion specified in such decision shall be of no force and effect, but the remainder of this Agreement shall continue in full force and effect. Upon the issuance of such a decision, then either party shall have the right to immediately re-open negotiations with respect to a substitute for such Article, section or portion of the Agreement involved.