

2017-2019

AGREEMENT

BETWEEN

THE CITY OF BINGHAMTON

AND

**BINGHAMTON FIREFIGHTERS LOCAL 729,
AFL-CIO, I.A.F.F.**

TABLE OF CONTENTS

| | Page |
|---|------|
| Table of Contents | 2 |
| ARTICLE 1 - Recognition..... | 3 |
| ARTICLE 2 - Holidays..... | 3 |
| ARTICLE 3 - Work Week and Working Condition..... | 5 |
| ARTICLE 4 - Vacations..... | 7 |
| ARTICLE 5 - Sick Leave..... | 7 |
| ARTICLE 6 - Death Benefits..... | 8 |
| ARTICLE 7 - Personal Leave..... | 9 |
| ARTICLE 8 - Insurance..... | 10 |
| ARTICLE 9 - Uniform Allowance..... | 11 |
| ARTICLE 10 - Retirement..... | 11 |
| ARTICLE 11 - Out-of-Title-Work..... | 12 |
| ARTICLE 12 - Hourly Rate of Pay..... | 13 |
| ARTICLE 13 - Bulletin Board..... | 13 |
| ARTICLE 14 - Release Time for Association Business..... | 13 |
| ARTICLE 15 - Grievances..... | 14 |
| ARTICLE 16 - Contract Administration..... | 14 |
| ARTICLE 17 - Fire Labor Management Committee..... | 15 |
| ARTICLE 17B – Labor/Management Safety & Health Committee... .. | 15 |
| ARTICLE 18 - Execution..... | 16 |
| ARTICLE 19 - Saving Clause..... | 16 |
| ARTICLE 20 - Legislative Action Taylor Law - 204(A)1..... | 16 |
| ARTICLE 21 - Term of Contract..... | 16 |
| ARTICLE 22 - Retroactive Clause..... | 16 |
| ARTICLE 23 - Salary..... | 16 |
| ARTICLE 24 – OSHA Mandated Examinations..... | 18 |
| ARTICLE 25 - Miscellaneous..... | 19 |
| ARTICLE 26 - Educational Benefits..... | 19 |
| ARTICLE 27 - Notification of Injury or Sickness for General Municipal Law 207-a Claims and Procedure Subsequent to Initial Determinations by the City..... | 19 |
| ARTICLE 28 - Retirement Incentive..... | 20 |
| ARTICLE 29 - Health Insurance Bonus..... | 20 |
| ARTICLE 30 – Drug and Alcohol Policy..... | 21 |
| ARTICLE 31 - Respiratory Policy..... | 22 |
| AGREEMENT EXECUTION..... | 22 |

THIS AGREEMENT, entered into this _____ day of _____, 2017, by and between the **CITY OF BINGHAMTON**, a municipal corporation organized under and by virtue of the Laws of the State of New York, hereinafter referred to as "the City" and the **BINGHAMTON FIREFIGHTERS LOCAL 729, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**, hereinafter referred to as "the Association".

ARTICLE I - RECOGNITION

Section A. The City recognizes the Association as the sole and exclusive representative of all members of the Bureau of Fire, except for the Fire Chief, and office staff in accordance with the provisions of Permanent City Ordinance No. 200 of 1969.

The City agrees that the Association shall be the sole and exclusive representative for all bargaining and grievances.

Section B. The City shall deduct from the wages of members and remit within ten days to the Association regular membership dues for those members who sign authorizations permitting such payroll deductions. The City shall also deduct from the wages of all Firefighters covered by this Agreement, who are not members of the employee organization, an amount equivalent to the dues levied by the Association and said amount shall be transferred to the Association within ten (10) days. The Association will establish and maintain a procedure providing for the refund to any employee demanding the return of any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. The Association and all bargaining unit members waive any claim against the City for deductions which in good faith are made or not honored as the case may be. All disputed amounts shall be escrowed by the City, and all disputes under this Section shall be resolved in accordance with Section 16. The only liability to the City under the Section is to restore monies improperly collected or to pay dues properly owing.

Section C. The Association affirms that it will not assert the right to strike against the City, to assist or participate in any strike, or to impose an obligation upon its members to conduct, assist or participate in such a strike.

ARTICLE 2 - HOLIDAYS

Section A. In addition to all holidays designated as such for Firefighters by any state or national law, members of the Bureau of Fire shall also receive the benefit of all other holidays designated or observed as such by the City. Eight (8) hours for each holiday not worked shall be paid to each member of the Bureau of Fire.

Section 1. All holidays enumerated below shall be paid to all fire personnel covered by this Agreement:

| | 2017 | 2018 | 2019 |
|------------------------|-------------|-------------|-------------|
| New Year's Day | 01/01/2017 | 01/01/2018 | 01/01/2019 |
| Martin Luther King Day | 01/16//2017 | 01/15/2018 | 01/21/2019 |
| Lincoln's Birthday | 02/12/2017 | 02/12/2018 | 02/12/2019 |
| Washington's Birthday | 02/22/2017 | 02/22/2018 | 02/22/2019 |
| Memorial Day(observed) | 05/29/2017 | 05/28/2018 | 05/27/2019 |
| Independence Day | 07/04/2017 | 07/04/2018 | 07/04/2019 |
| Labor Day | 09/04/2017 | 09/03/2018 | 09/02/2019 |
| Columbus Day(observed) | 10/9/2017 | 10/8/2018 | 10/14/2019 |
| Election Day | 11/07/2017 | 11/06/2018 | 11/14/2019 |
| Veteran's Day | 11/11/2017 | 11/11/2018 | 11/11/2019 |
| Thanksgiving Day | 11/23/2017 | 11/22/2018 | 11/28/2019 |
| Christmas Day | 12/25/2017 | 12/25/2018 | 12/25/2019 |

If the above dates conflict with State or Federal laws, there will be no duplicate payments made for said holidays.

Section 2. Payment for Firefighters who work on holidays: In addition to their regular day's pay and/or overtime pay, those who work on holiday shall be paid at the rate of time and one-half for hours actually worked. If payment for actual hours worked is less than the eight (8) hours paid to the Firefighter who did not work on the holiday, Firefighters will be paid the difference to equal the eight (8) hour payment.

Section 3. Holiday pay will be in the next immediate pay period.

Section 4. This Section does not cover holidays that are designated and observed by other bargaining units as a result of contract negotiations.

Section 5. All staff, including but not limited to, Lieutenants, Captains, and Fire Marshal assigned to the Fire Marshal office and Training Instructor and EMS Captain assigned to the Training Office agree to work six (6) of the enumerated holidays. The selection of holidays is at the option of the employee based upon seniority and as available, at the discretion of the Chief and will be made at the time of vacation selection. Holidays occurring while the Firefighter is on vacation count as holidays worked under this subsection. For holidays that fall on a weekend (Saturday or Sunday), the staff may choose the immediately preceding Friday or the immediately succeeding Monday as the holiday for purposes of working six (6) enumerated holidays as referenced above.

Section 6. All staff, including but not limited to, Lieutenants, Captain and Fire Marshal assigned to the Fire Marshal office and Training Instructor and EMS Captain assigned to the Training Office will observe the aforesaid holidays on the date said holidays are observed by City Hall. In the event that City Hall does not observe the aforesaid holidays, said holidays will be observed by the Fire Prevention Staff Officers, Fire Lieutenants and Captains on the same dates as the other Firefighters with the exception of Lincoln's birthday.

ARTICLE 3 - WORK WEEK AND WORKING CONDITIONS

Section A. Work Week and Pay Schedules

The City will continue to recognize that the average work week is forty (40) hours, in accordance with New York State Law. Salary payments will be on a semi-monthly basis.

Section B. Work Schedules

Section 1. Changes in the written work schedule shall be arrived at by mutual agreement between the Chief and the Association, subject to the approval of the Commissioner of Public Safety. The work schedule for the staff officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention shall be 7:30 a.m. to 5:30 p.m., four (4) days per week.

Section 2. All Firefighters, other than Fire Administration, Fire Marshal's Office and Training, will be scheduled on a twenty-four (24) hour work schedule. Effective January 1, 2008, Firefighters working a 24-hour (one shift) schedule will be paid for forty-eight (48) (i.e. two shifts) hours of AL leave time at straight time the first pay date in November each year in a separate check. Firefighters will continue to receive the remaining forty-eight (48) hours (i.e. two shifts) off in accordance with present practice. The scheduling of AL days off and days to be worked will be completed by November of each year, along with the vacation schedule, as is the present practice.

The 24-hour work schedule shall consist of 24-hours on duty and 72-hours off duty (24/72). Firefighters will not work more than thirty six (36) hours unless they have had twelve (12) hours off.

Firefighters will work no more than twelve (12) hours on ambulance duty and then twelve (12) hours on line duty or twelve (12) hours off duty before any further ambulance duty.

Section C. Overtime

Section 1. All members of the Fire Bureau who are kept on duty because of a conflagration, major emergency, or to maintain manpower standards shall be paid at one and one-half times the regular hourly rate for time actually worked.

Section 2. All authorized overtime duty required of members of the Bureau of Fire shall be compensated at the rate of one and one-half times the regular hourly rate of pay. This shall be paid on the pay date following the overtime. The overtime pay for Firefighters held over at the end of their shift will be computed based upon actual time worked up to fifteen (15) minutes. Firefighters

held over at the end of their shift more than 15 minutes shall be paid for one (1) hour of overtime. Firefighters held over at the end of their shift for more than 1 hour shall be paid overtime based on all the actual time worked in six (6) minute increments.

Section 3. A Firefighter who is required to report to Court or report for other duty at the direction of the Fire Chief during off-duty hours, shall be compensated at the rate of one and one-half times the Firefighter's regular hourly rate of pay with a minimum payment of three (3) hours.

Section D. Working Rules

Section 1. Nothing herein shall be deemed to prohibit the adoption of rules by the Bureau for the operation of the Bureau, providing such rules do not conflict with any of the provisions of this Agreement, and there shall have been prior consultation before adoption of the rules with officers of Local 729.

Section 2. The Labor-Management Committee otherwise provided for in this Agreement shall be empowered to undertake consultation on either work schedules or vacation schedules at the request of either party.

Section 3. Any agreed vacation and/or work schedule shall be presented to fire personnel no later than December 15. Any new vacation and/or work schedules shall be effective January 1.

Section 4. Results of any written or oral examinations or tests will be held in strict confidence between the individual member and any person of supervisory capacity. The confidentiality of this Section is not intended to include legal or grievance proceedings where the results of examinations or tests are reasonably necessary for the prosecution or defense.

Section 5. Any reprimand shall be given in a manner that will not embarrass the Firefighter before other Firefighters or the public.

Section E. Fire Bureau Regulations

Section 1. All rules and regulations of the Binghamton Fire Bureau not covered by this Agreement shall be covered in general or special orders and by the published Binghamton Fire Bureau Rule Book. A new revised rule book shall be published at least once every five (5) years. The Association shall be consulted in any revision of the Rule Book.

Section 2. All general and special orders shall be in writing signed by duly authorized officers of the Bureau.

Section 3. All administrative verbal orders of a continuous nature shall be followed by a written order within ninety-six (96) hours to remain effective, with proper authorized signatures, and shall be placed on station bulletin boards for a period not less than thirty(30)days.

ARTICLE 4 - VACATIONS

Section A. Firefighters shall be granted vacation in each calendar year as follows: Two (2) twenty-four (24) hour shifts after two (2) years; Four (4) twenty-four (24) hour shifts after three (3) years; Six (6) twenty-four (24) hour shifts after four (4) years. (Members assigned to the Fire Prevention Staff shall receive sixteen (16) ten hour shifts after four (4) years;

Vacations may be taken one (1) shift at a time, other than staff officers and the Fire Lieutenant and Fire Captain regularly assigned to fire prevention who are covered by Section D. All Firefighters with twenty (20) or more years of service shall be granted an additional two (2) 24-hour shifts of vacation. (Members assigned to the Fire Prevention Staff with twenty (20) or more years of service shall be granted an additional six (6) ten hour shifts of vacation.) Said additional two (2) vacation shifts may or may not be consecutive and said additional two (2) vacation shifts for Line Personnel shall be arranged between the individual and his/her Duty Chief after all others have selected their vacations (staff officers, Fire Lieutenant and Fire Captain regularly assigned to fire prevention are covered by Section D). Said additional time will be selected on a seniority basis and on an as-available basis at the Chief's discretion. Three (3) Firefighters (Line Personnel) per shift can take vacation.

Section B. The City shall provide payment for unused, and/or accumulated holiday, vacation (vacation credit shall not accumulate from year-to-year), and overtime or recall time upon the separation or retirement of a member in good standing.

Section C. Line Officers and Firefighters shall pick vacations within the group to which they are assigned, with officers picking first by seniority and Firefighters picking second by seniority. No more than two (2) Assistant Chiefs will take vacation at the same time, unless permission is granted by the Chief of the Department.

Section D. Staff Officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention shall choose vacations separate from Line Officers and Firefighters. Vacations shall be based upon seniority and as available, at the discretion of the Chief of the Department.

ARTICLE 5 - SICK LEAVE

Section A. Sick leave for non-duty connected injury or illness shall be computed at the rate of one (1) sick day per month and may be accumulated. All employees appointed to the Fire Bureau from other City departments shall be entitled to the transfer of two-thirds (2/3) of all accumulated non-Fire Bureau City-earned sick days upon appointment to the Fire Bureau. Sick leave for new members shall start accumulating at the date of entry in the Department. Sick leave shall be deducted at the rate of two (2) sick days for Line Firefighters per use and one (1) sick day per use for all staff, including but not limited to Lieutenants, Captain and Fire Marshal assigned to the Fire Marshal office and Training Instructor and EMS Captain assigned to the Training Office regularly assigned to Fire Prevention because of non-duty connected injury or illness.

Section B. Any Firefighter that has been absent five (5) different times (for any length of time per absence) over a twelve (12) month period may be required to visit a physician each and

every time that the Firefighter is absent due to illness thereafter, within the twelve (12) month period in which he/she has five (5) different absences and to provide, at their own expense, a written statement from the physician to the supervisor, upon returning to work. Any Firefighter that is absent two (2) or more consecutive sick shifts or any staff member that is absent five (5) or more consecutive sick shifts shall be required to consult a physician upon returning to work. The Fire Chief retains the right to exercise his/her prerogatives as provided for in the City of Binghamton's Code Section 2-184, in cases of abuse.

Section C. Consistent with past practice, payment of sick days will be calculated by multiplying the hourly rate of pay times eight (8) hours per day times the number of accumulated sick days. Maximum accumulated sick time for payout purposes, upon retirement or leaving the City's service in good standing, eligible to retire, will be set a one hundred fifty (150) days with maximum payout set at two-thirds (2/3) of accumulated days up to a maximum payout of one hundred (100) days. For example, an eligible employee with one hundred fifty (150) accumulated days would receive a payment of hundred (100) days pursuant to this paragraph. Payment will be made within thirty (30) days of retirement or leaving service. The hourly rate of pay will be calculated in accordance with past practice.

Section D. A Committee may be established to determine eligibility for donations of accrued time from members in the event of a disaster or illness. The Committee will consist of two (2) individuals appointed from Local 729 and two (2) individuals appointed by the Mayor. A determination of eligibility requires three (3) votes by the Committee. The eligibility determination is not subject to any grievance or arbitration process.

The maximum allowed in the bank is One Hundred Thousand Dollars (\$100,000). In order to donate to the bank, a member must have a minimum of thirty (30) sick days on the books. Donations to the bank may be made in December of each year. A member may donate one (1) sick day per year. Once donated, the time cannot be taken back. Sick time usage for donation purposes is only applicable to this Section of this Agreement.

The donated time will be valued at the donor's rate of pay at the time of donation and will be given to the recipient at his/her current rate of pay.

Accounting of the transfer to donated time shall be the sole responsibility of the City.

The Committee may request that the City allow members to donate sick days, other than in December, if the fund balance falls below Twenty-Five Thousand Dollars (\$25,000) at any point in time. It will be at the Committee's discretion whether or not to allow this.

ARTICLE 6 DEATH BENEFITS

Section A. Unused compensatory time, overtime, holiday, and vacation pay shall be paid over to the department member's surviving spouse or, if there be none, to the beneficiary or estate, within thirty (30) days of the termination of employment because of death. Payment shall be at the hourly rate set forth in this Agreement.

Section B. The City agrees to continue the provisions of General Municipal Law Section 208-b to provide death benefits for beneficiaries of Firefighters of the City of Binghamton if the Mayor shall determine, on the basis of the evidence, that such Firefighter met the statutory criteria.

Section C. The City shall pay to the Firefighter's surviving spouse or, if there be none to the beneficiary or estate of a Firefighter, two-thirds (2/3) of up to one hundred fifty (150) accumulated sick days to a maximum payout of one hundred (100) days. For example, an eligible surviving spouse, beneficiary or estate of Firefighter with one hundred fifty (150) accumulated days would receive a payout of one hundred (100) days. Such payment shall be made within thirty (30) days of termination of such employment because of death. Payment shall be at the hourly rate set forth in this agreement. Notwithstanding the above, the City shall pay the Firefighter's surviving spouse or, if there be none, the beneficiary or Estate of a Firefighter, 100% of accumulated sick leave days of a Firefighter killed in the line of duty.

Section D. A surviving spouse and/or surviving dependent children (as defined by State Law) of a Firefighter killed in the line of duty shall receive health insurance coverage under the City's plan. The surviving spouse and/or surviving dependent children shall contribute the same percentage or amount contributed by current members, as the same may be adjusted from time to time to the annual cost of insurance premiums. The City shall pay the remaining cost. A surviving spouse or dependant child who leaves the plan shall have no right to return in the future. No new dependant children shall be added to coverage by virtue of this provision. Exceptions for coverage will be considered and made on a case-by-case basis by the City. A surviving spouse shall only be eligible for coverage until he/she is eligible for health coverage under the Federal Medicare Program.

ARTICLE 7 PERSONAL LEAVE

Two (2) twenty-four (24) hour shifts for personal leave shall be granted to all members of the Bureau of Fire, except staff officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention, who shall receive three (3) personal leave days. Firefighters, except staff officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention, shall be permitted to take 24-hours of personal leave in two (2) twelve (12) hour periods. Request for such leave shall be made twenty four (24) hours in advance, except in case in the member's emergency. Leave must be approved by the Duty Chief, whose approval shall not be unreasonably withheld. Personal leave days shall not be accumulative.

Chiefs, Acting Chiefs, Assistant Chiefs, and Acting Assistant Chiefs shall grant a member a minimum of two (2) hours off duty in emergency cases of sickness, accident, or other emergency occurring in the member's immediate family which shall be defined as spouse, parent, sibling, child, mother and father-in-law, and grandparents, grandparents-in-law, grandchildren, brother and sister-in-law, step-Mother and step-Father, step-siblings, step-child, significant other and significant other's Mother, Father, brother, sister or child. A significant other is defined as the member's domestic partner.

One (1) full 24-hour shift shall be granted to a member in case of death in his/her immediate family, as defined above.

In case of extreme emergency, additional time off duty may be granted, despite the fact that the circumstance of such case may not be herein described.

Members shall be continually mindful of the fact that the provisions and benefits to them as outlined above are not to be abused. All cases shall be at the discretion of the Chief or his/her designee.

The first two requests for personal leave shall be granted per 12 hour periods. Additional requests may be granted subject to the discretion of the Duty Chief.

ARTICLE 8 INSURANCE

A. For all members hired prior to 9/30/2011, the City will provide coverage under the Blue Cross/Blue Shield of Central New York Classic Blue Regionwide Plan; and the Blue Cross/Blue Shield of Central New York Dental Program Basic Coverage Schedule of Allowances Schedule A; and the Supplemental Basic Benefits Rider Schedule of Allowances Schedule A; and the Periodontics Benefits Rider Schedule A and the Orthodontic Benefits Rider Schedule A and the Blue Cross/Blue Shield Vision Expense Schedule of Allowances Schedule A.

B. All members hired after 9/30/2011 will be enrolled in the Blue Cross/Blue Shield PPO Plan. Employees on the PPO Plan will contribute the following percentages of the premium as of the date indicated with the City paying the balance of the premium:

| | Member pays | City pays |
|----------------------------------|--------------------|------------------|
| Upon execution of this Agreement | 16% | 84% |
| January 1, 2018 | 16% | 84% |
| January 1, 2019 | 16% | 84% |

C. For all members receiving coverage under the plans described in Paragraph A above will contribute the following percentage of the premium as of the date indicated with the City paying the balance of the premium

| | Member pays | City pays |
|----------------------------------|--------------------|------------------|
| Upon execution of this Agreement | 18% | 82% |
| January 1, 2018 | 18% | 82% |
| January 1, 2019 | 19% | 81% |

D. These premiums shall be automatically subject to the City flex benefit unless the individual requests to opt out of the flex plan in writing, said opt out waiver must be exercised in the month of December for the following year.

- E. The annual deductibles for Classic Blue Regionwide are \$100.00/300.00 and the annual stop-loss maximum under the current major medical component of the plan is three thousand dollars (\$3,000.00).
- F. The City may change to another health insurance carrier other than the above plan, providing the same benefits only by mutual consent of the parties.

The City agrees to cooperate and provide copies of all information regarding health care expenses paid by the City for the Firefighters.

ARTICLE 9 - UNIFORM ALLOWANCE

Section A. The City shall pay Nine Hundred Dollars (\$900.00) per unit member and One Thousand Two Hundred Dollars (\$1,200.00) for new hires in their first year. Effective January 1, 2019, the City shall pay One Thousand Dollars (\$1,000) per unit member and One Thousand Two Hundred Dollars (\$1,200) for new hires in their first year. New hires employed between January 1st and June 30th will receive One Thousand Two Hundred Dollars (\$1,200.00) For new hires employed after June 30th the allowance will be pro-rated. Such allowances shall be paid for all Firefighters, except those permanently classified as 207(a). Said allowance shall be pro-rated during the year for each month of service and will be paid not later than March 1, unless extended by mutual agreement, for thirty (30) days. Firefighters shall receive no more than one (1) clothing allowance per calendar year. Effective January 1, 2018, the uniform allowance will be prorated on a monthly basis for the calendar year in which a Firefighter retires.

All members will provide themselves with approved fire retardant station wear as specified under N.F.P.A. 1975. The City shall be responsible for replacing items of "turnout gear" which are damaged in the direct line of duty. The City and the Union shall jointly form a Review Committee to handle any disputed claims regarding the administration of this provision. The Review Committee shall include the Chief of the Bureau or his/her designee, a union designee and the City's Director of Purchasing.

Section B. There shall not be any change in the type of uniforms, work clothes or work turn-out gear presently used during the term of this Agreement except by mutual agreement of the Labor-Management Committee.

ARTICLE 10 - RETIREMENT

Section A. For all members of the Bureau of Fire, the City will continue the retirement plans in effect. Pursuant to New York State Retirement Law, those members of the Bureau of Fire hired:

Before July 31, 1973 shall be governed by Tier I;

On or after July 31, 1973 through June 30, 2009 shall be governed by Tier II;

On or after July 1, 2009 through January 8, 2010 shall be governed by Tier III;

On or after January 9, 2010 through March 31, 2012 shall be governed by Tier V;

On or after April 1, 2012 shall be governed by Tier VI.

For all members of the Bureau of Fire, the City will continue the retirement plans in effect, as outlined below, as modified by the requirements of the applicable State statutes now in effect:

1. One (1) year averaging of final salary in accordance with Article 8, Section 302(9)(d) of the New York State Retirement and Social Security Law.
2. Twenty-five (25) year one-half (1/2) pay retirement.
3. Twenty-five (25) year one-half (1/2) pay retirement with one-sixtieth added for each additional year of service.
4. Twenty (20) year one-half (1/2) pay retirement.
5. The provisions of New York Retirement and Social Security Law, Section 375-i (the improved career plan).

The City will make no attempt to exclude or block application of Section 375-i to 207-a Firefighters.

Section B. Upon retirement or separation from service, any uncontested net leave balance of vacation, sick leave, and personal leave, and any other monies due to a member pursuant to this Agreement will be paid within thirty (30) days of the City's receipt of a fully executed Separation Check-Out Record. Any contested leave time or payment will be noted on the Separation Check-Out Record. E.G., if there are up to one hundred (100) days eligible for reimbursement and forty (40) days are in dispute or in a negative balance, the City will reimburse the Member for sixty (60) eligible days pending resolution of the disputed days.

ARTICLE 11 - OUT-OF-TITLE WORK

Section A. If any Firefighter is assigned to fill a temporary vacancy caused by another Firefighter's vacation, sickness, leave of absence or for any other reason which requires such Firefighter to perform work in a higher paying classification, he/she shall be compensated at the next higher rate of pay of the higher classification. If such work must be performed in a lower classification, in no case shall the Firefighter be compensated less than his/her regular established rate of pay.

Section B. If a member works out of title for less than a complete work shift, the member will be credit was follows:

1. If a member works less than six (6) hours out of title during a shift, no out of title credit will be received.

2. If a member works six (6) or more hours out of title during a shift, the member shall receive a minimum of twelve (12) hours out of title credit.
3. If a member works twelve (12) or more hours out of title during a shift, the member shall be paid for hours actually worked out of title.

Section C. All fire apparatus will have an officer or acting officer in charge at all times.

Section D. If a line Captain's position is vacant due to promotion, retirement or a catastrophic event, the Lieutenant who is eligible to fill the position will start earning out-of-title credit as soon as the vacancy occurs. In the event of a temporary Captain's position vacancy due to illness or other events (of a short term nature or not listed above), not including vacation or personal leave time, the eligible Lieutenant will start earning out-of-title after thirty days from the Captain's last shift worked.

The Chief has the right, at his sole discretion, to grant out-of-title anytime if he feels it is warranted.

ARTICLE 12 - REGULAR HOURLY RATE OF PAY

In accordance with past practice, the regular hourly rate of pay is the annual salary divided by 2080 hours. The "annual salary" is the sum of salary, longevity pay, educational benefit increase (\$300 or \$600) and five percent or three percent (5% or 3%) paramedic pay, when applicable.

ARTICLE 13 - BULLETIN BOARD

The Association shall have the right to post notices and communications on the bulletin boards situated in an appropriate place at the Fire Bureau, subject to the approval of the Fire Chief as to the contents thereof.

ARTICLE 14 - RELEASE TIME FOR ASSOCIATION BUSINESS

Section A. The City will give release time with pay to Officers and Delegates designated by the Association for Association business, but this shall be limited to a maximum of two (2) Firefighters at any one (1) time; except that for conventions of the International Association of Firefighters which is biannual, and the New York State Firefighters, which is annual, the maximum shall be three (3) Firefighters at any time. The Fire Chief will be notified at least five (5) days prior to such release time requested.

Section B. The City will give release time with pay, not to exceed three (3) representatives at any one time, to those members designated by the Association, to participate as a negotiating committee and/or fire labor management committee to conduct Association business pursuant to the Agreement.

Section C. The City will allow the following for Line of Duty Deaths: The President or Secretary of the Union, Local 729, may request to attend LODD, and receive release time with pay, not to exceed one (1) shift in total, if it is geographically feasible (6 hours or less by car). Due to the short notice, the request does not have to be made five (5) days prior as required under (A) above, but must be made as soon as is practicable for manpower planning.

ARTICLE 15 - GRIEVANCES

Grievances within the Department shall be handled in accordance with the procedures established pursuant to Resolution No. 21 1963, duly adopted by the Binghamton City Council September 23, 1963.

ARTICLE 16 - CONTRACT ADMINISTRATION

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

Section A. The dispute shall be presented within ten (10) calendar days of its occurrence and discussed by the Deputy Commissioner of Public Safety and representatives of the Association. The Section aggrieved shall be spelled out in writing. If these discussions fail to produce a satisfactory agreement within five (5) calendar days, a written record of the dispute shall be made by each party to this Agreement. Such written record shall be forwarded within five (5) calendar days to the Mayor and the President of the Association.

Section B. The Mayor or the Mayor's representative shall discuss the dispute with the representatives of the Association within seven (7) days of receipt of the written record.

Section C.1. If the dispute is not settled within fourteen (14) calendar days, either party may take the dispute to arbitration upon the service of written notice to the other party of intention to do so; said notice shall be served within ten (10) calendar days; otherwise the right of arbitration of such dispute shall be deemed waived.

Section C.2. Within five (5) work days after such written notice of submission to arbitration, the City and the Association will agree upon a mutually acceptable arbitrator, competent in the area of the grievance, and will obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified time period, a request for a list of arbitrators will be made to the American Arbitration Association by either party. The parties will then be bound by the rules and procedures of the American Arbitration Association for the selection of an arbitrator.

Section C.3. The selected arbitrator will hear the matter promptly and will issue a decision no later than fourteen (14) calendar days from the date of the close of the hearing, or, if oral hearings have been waived, then from the date the final statements and proofs are submitted to the arbitrator. The arbitrator's decision will be in writing and will set forth findings of fact, reasoning and conclusion on the issues.

Section C.4. The arbitrator shall have no power or authority to make any decision which requires the commission of an act prohibited by law or which is in violation of the terms of this Agreement.

Section C.5. The decision of the arbitrator shall be final and binding upon all parties.

Section C.6. The cost for the services of the arbitrator, including expenses, if any, will be borne equally by the City and the Association.

Section D. Nothing contained herein shall be deemed to alter in any way the grievance procedure adopted by the City pursuant to the provision of the General Municipal Law, with regard to grievances of individual members.

ARTICLE 17 - FIRE LABOR - MANAGEMENT COMMITTEE

A Fire Labor-Management Committee shall be established for the purpose of discussing at mutually agreeable times, matters of mutual concern, including but not limited to questions regarding continuing education and training, productivity and physical fitness, but not to include amendment of this Agreement. This Committee shall be limited to three (3) labor and three (3) management members and shall meet at the request of either party upon reasonable notice to the other party, but not more often than once every month, unless otherwise mutually agreed upon. Any expenses pursuant to said meetings shall be equally borne by the parties to this Agreement.

It is agreed that the parties will continue to discuss the implementation of a disciplinary policy and issues pertaining to the process for determining and administering claims under General Municipal Law 207-a, and any agreed upon policy or procedures will be implemented into the Contract by way of a Memorandum of Agreement. A failure to reach agreement on any of these topics will not be considered a breach of this Contract.

The City and the Union anticipate that, during the term of this Agreement, there will be changes to health insurance coverage in response to legislative changes in the Affordable Care Act (“ACA”). There is currently a great deal of ambiguity dealing with the Cadillac Tax, which is slated to be effective on 1/1/2020, and the parties are not able to fully ascertain its impact on the health insurance coverage and its associated costs. As a result of this, either party may request to reopen this Agreement, specifically Article 8 – Insurance only, and will agree to do so within 15 days of the request, if healthcare costs are projected to exceed the limits under the law for the imposition of the “Cadillac Tax”.

This language expires and will no longer be applicable when the “Cadillac Tax” as outlined in ACA is not-enforced, repealed or is resolved, if needed, to both parties’ satisfaction.

ARTICLE 17B - LABOR/MANAGEMENT SAFETY AND HEALTH COMMITTEE

A labor/management safety and health committee shall be established for the purpose of discussing at mutually agreeable times, matters of mutual concern relating directly or indirectly to the

safety and health of the members of the Binghamton Fire Department. This committee shall be limited to three (3) labor and three(3) management members who shall meet at the request of either party upon reasonable notice to the other party, unless otherwise mutually agreed upon. Any expenses pursuant to said meetings shall be equally borne by the parties to this Agreement.

ARTICLE 18 - EXECUTION

No amendment or alteration of this Agreement shall be binding, unless it is in writing and signed by the Mayor as authorized by City Council and by two (2) duly authorized representatives of the Association.

ARTICLE 19 - SAVING CLAUSE

This Agreement and all provisions herein are subject to all applicable laws, and in the event any provision of this Agreement is held to violate such laws, said provision shall not bind either of the parties, but the remainder of this Agreement shall remain in full force and effect, as if the invalid or illegal provision had not been a part of this Agreement.

ARTICLE 20 - LEGISLATIVE ACTION TAYLOR LAW - 204(A)1

It 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 therefore, shall not become effective until the appropriate legislative body has given approval.

ARTICLE 21 - TERM OF CONTRACT

This contract shall be effective January 1, 2017, and the expiration date will be December 31, 2019.

ARTICLE 22 - RETROACTIVE CLAUSE

The parties agree that the provisions of this Agreement, unless otherwise expressly stated herein, will be retroactive to January 1, 2017.

ARTICLE 23 - SALARY

Section A. Members will receive the following salaries:

| | 1/1/2017 | 7/1/2017 | 1/1/2018 | 1/1/2019 | 7/1/2019 |
|--------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Deputy Chief | \$88,385 | \$89,490 | \$91,504 | \$92,647 | \$93,805 |
| Fire Marshal | \$88,385 | \$89,490 | \$91,504 | \$92,647 | \$93,805 |
| Assistant Chief | \$85,272 | \$86,338 | \$88,280 | \$89,384 | \$90,501 |
| Fire Training Instructor | \$85,272 | \$86,338 | \$88,280 | \$89,384 | \$90,501 |
| Fire Captain | \$78,277 | \$79,255 | \$81,039 | \$82,052 | \$83,078 |

| | | | | | |
|-----------------------------------|----------|----------|----------|----------|----------|
| Fire Lieutenant | \$72,837 | \$73,748 | \$75,407 | \$76,350 | \$77,304 |
| Firefighter 1 st Grade | \$66,618 | \$67,451 | \$68,969 | \$69,831 | \$70,704 |
| Firefighter 49-60 months | \$59,877 | \$59,877 | \$59,877 | \$59,877 | \$59,877 |
| Firefighter 37-48 months | \$53,729 | \$53,729 | \$53,729 | \$53,729 | \$53,729 |
| Firefighter 24-36 months | \$50,050 | \$50,050 | \$50,050 | \$50,050 | \$50,050 |
| Firefighter 12-23 months | \$45,055 | \$45,055 | \$45,055 | \$45,055 | \$45,055 |
| Firefighter less than 12 months | \$39,044 | \$39,044 | \$39,044 | \$39,044 | \$39,044 |

Section B. Upgrading of Firefighters is to take effect on their anniversary date.

Section C. Employees covered by this Agreement, including 207-a firefighters, shall receive longevity payments of \$900 after eight (8) or more years of continuous service; \$1,700 after fifteen (15) or more years of continuous service; \$2,100 after twenty (20) or more years of continuous service. Longevity payments are not cumulative. Longevity amounts will be added on the anniversary date of the year of service.

Section D. Firefighters hired before 1/1/12 shall be compensated an additional Two Dollars (\$2.00) per hour when assigned to fire ambulance duty. Firefighters assigned to ambulance duty will be limited to two (2) members per shift. This Section shall not apply to ALS personnel who are compensated pursuant to Section F below. Firefighters hired on or after 1/1/12 will not receive this additional compensation.

Section E. Firefighters who voluntarily serve the Bureau of Fire as Emergency Medical Technician Instructors, a maximum of two (2) per group or as Municipal Fire Instructors, maximum of 2 per group shall be compensated at an additional Twenty-seven Dollars and Eight Cents (\$27.08) per pay period (semi-monthly).

Firefighters who voluntarily serve the Bureau of Fire as an SCBA Technician, ALS Technician or Hose Repair Technician shall be compensated at an additional Twenty-Seven Dollars and Eight Cents (\$27.08) per pay period (semi-monthly). There will only be one of each of these positions.

Instructors shall be limited to two (2) members per work group for a total of eight (8) instructors.

Section F. Upon satisfactory completion of the New York State Health Department Paramedics course and receipt of certification, a Firefighter hired before 1/1/12 participating in the ALS Program shall receive an adjustment equal to five percent (5%) of their base salary. In addition, the EMS Coordinator, provided he/she is a paramedic, shall receive an adjustment equal to five percent (5%) of his base salary. This five percent (5%) adjustment for both Firefighters and the EMS

Coordinator shall be added to base salary for all purposes including overtime compensation, social security and retirement and paid in semi-monthly installments.

Any Firefighter receiving the benefits under this sub-division, who through permanent promotion or transfer will no longer be able to be assigned to ambulance duty, will cease to receive the five percent (5%) paramedic adjustment.

Any Firefighter receiving the benefits under this sub-division, who through promotion or assignment to the Fire Marshal's Office as a Fire Investigator and temporarily can no longer be assigned to ambulance duty will have his/her paramedic adjustment reduced to three percent (3%) as long as his/her paramedic certification is maintained. If further promotion or assignment returns the individual to a position where the individual is regularly assigned to the ambulance he/she will receive the five percent (5%) paramedic adjustment.

Any Firefighter hired on or after January 1, 2012 will not receive the five percent (5%) salary adjustment.

Section G. Effective September 1, 2013, any paramedic assigned to ambulance duty shall receive an additional Seven Dollars (\$7.00) per hour for each twelve (12) hour shift assigned to ambulance duty in excess of eighteen (18) (twelve (12) hour) shifts per calendar year.

Section H. The members of the Fire Bureau and the City of Binghamton will work toward a goal of an all paramedic department. In that regard, the City will send all employees hired after 1/1/12 for paramedic training and certification within five (5) years of the date of hire, and members hired before 1/1/12 will provide twenty-four (24) months notification, when possible, before departing the ALS program.

If a Firefighter cannot complete the class for any reason and take the test within the five (5) years, the 5 years will be extended accordingly. When the Firefighter is selected for paramedic training, in accordance with Civil Service as a condition of employment with the City of Binghamton and the Fire Department, both parties will fully support the student and they will be afforded the following opportunities to complete training and be certified as a paramedic. If a Firefighter fails the initial test to become a paramedic, he/she will be allowed to immediately reschedule a retake exam. If he/she is not successful, the Firefighter can then take a refresher class and take the test for a third and final time. No more attempts to take the class or test will be offered to the member. Regardless of the time parameters provided for in the Civil Service job description, the Firefighter will only be afforded one (1) cycle, as outlined above, to go through the paramedic program to be a paramedic.

Section I. All members of the Fire Bureau will be paid via direct deposit, and will receive electronic paystubs.

ARTICLE 24. OSHA MANDATED EXAMS

All firefighters shall be entitled to applicable OSHA mandated exams and physicals (i.e. both Respirator Fitness exam and Haz-Mat physicals) and the cost of such exams and physicals shall be born by the City. Such exams shall be completed by July 1st of each year.

ARTICLE 25 - MISCELLANEOUS

It is mutually agreed that for purposes of this Agreement, the term Firefighter(s) shall include all members of the Bureau of Fire, where applicable. The terms Firefighter(s) and All members of the Bureau of Fire shall not include the Fire Chief, Superintendent of Maintenance or clerical office staff.

ARTICLE 26 - EDUCATIONAL BENEFITS

If the Employer gives prior written approval, then a Firefighter will be reimbursed for courses taken on the employee's own time. A written request for approval shall be made by the Firefighter to the Chief prior to course registration. The Chief shall forward said request to the Mayor with his/her recommendation, if any. Tuition payments by the employer will not be made in excess of Six Thousand Dollars (\$6,000) per year effective 1/1/2017, Seven Thousand Dollars (\$7,000) per year effective 1/1/2018, and Eight Thousand Dollars (\$8,000) per year effective 1/1/2019. Courses eligible for reimbursement under this Article shall be limited only to courses necessary for the Firefighter to fulfill the necessary course work for an Associates' Degree in Fire Science, a Bachelors' Degree in Fire Science or the Paramedic Program.

All members who currently hold a two-year (Associate) degree in Fire Science, or the Paramedic Program from a State accredited institution shall have their annual salary increased by Three Hundred Dollars (\$300.00). Any members who obtain such degree shall receive the aforesaid increase.

All members who currently hold a fire related Bachelors' Degree from a State accredited institution shall have their annual salary increased by Six Hundred Dollars (\$600.00). Any members who obtain such degree shall receive the aforesaid increase.

Upon satisfactory completion of the New York State Health Department Paramedic course and receipt of certification, the Firefighter will receive a one time stipend in lieu of overtime of Three Thousand Dollars (\$3,000.00). Paramedic students will continue to be required to report to work during the active school year as currently administered.

ARTICLE 27 - NOTIFICATION OF INJURY OR SICKNESS FOR GENERAL MUNICIPAL LAW SECTION 207-a CLAIMS AND PROCEDURE SUBSEQUENT TO INITIAL DETERMINATIONS BY THE CITY.

Section A. Notification of injuries or sickness for claims under General Municipal Law Section 207-a shall be considered satisfactory if notification is given consistent with notification of accident and claims under the New York State Workers' Compensation Law.

Section B. REVIEW OF INITIAL DETERMINATIONS OF THE CITY WITH RESPECT TO GENERAL MUNICIPAL LAW SECTION 207-a

The City of Binghamton will make all initial determinations under General Municipal Law Section 207-a including whether a Firefighter was injured in the performance of duties or taken sick as a result of the performance of duties; the providing of medical, surgical or other treatment; whether the Firefighter is able to perform his/her regular duties; whether the Firefighter is able to perform specified types of light duty consistent with his/her status as a Firefighter; and whether a Firefighter shall forfeit his/her entitlement to payments pursuant to General Municipal Law Section 207-a for engaging in any employment other than as provided for by the statute.

Subsequent to the City's initial determination under the statute as to whether a Firefighter was injured in the performance of duties or taken sick as a result of the performance of duties, should the Firefighter disagree with the City's determination, the dispute related thereto will be submitted to final and binding arbitration pursuant to the Rules and Procedures of the American Arbitration Association by service of a written Notice of Intention to demand arbitration served by Certified or Registered Mail within thirty (30) days of the initial determination disagreed with. The parties will then be bound by the Rules and Procedures of the American Arbitration Association for selection of an arbitrator and for further procedures.

Determinations, other than the initial determination as to whether a Firefighter was injured in the performance of duties or taken sick as a result of the performance of duties, including determinations as to the providing of medical, surgical or other treatment; whether the Firefighter is able to perform his/her regular duties; whether the Firefighter is able to perform specified types of light duty consistent with his/her status as a Firefighter; and whether a Firefighter shall forfeit his/her entitlement to payments pursuant to General Municipal Law Section 207-a for engaging in any employment other than as provided for in the statute and disputes and disagreements with respect to said determinations will be resolved in accordance with the current City procedure using an impartial hearing officer appointed by or on behalf of the Mayor, with disputes and disagreements related to the hearing officer's determination on such matters resolved in accordance with Article 78 of the CPLR.

ARTICLE 28 - RETIREMENT INCENTIVE

All members who retire within one (1) year after initially becoming eligible for retirement will receive a payment of Two Thousand Five Hundred Dollars (\$2,500.00). Any Firefighter granted either an accidental disability retirement or performance of duty disability retirement pursuant to Section 363-a and/or Section 363-c of the Retirement and Social Security Law shall be entitled to the payment of Five Hundred Dollars (\$500.00) for each year in service or fraction thereof up to the maximum payment of Two Thousand Five Hundred Dollars (\$2,500.00).

ARTICLE 29 - HEALTH INSURANCE BONUS

Members who are eligible for family coverage with the City and choose not to carry the coverage with the City, but elect to carry the coverage through their spouse's plan, the military or the member's other employer (i.e., electrical union), will receive a minimum of Two Thousand Six

Hundred Dollars (\$2,600), per the schedule below. In order to be eligible for this payment, the member is required to provide proof to the City they are covered under their spouse's coverage, military coverage or another employer of the member. Effective with Firefighters hired on or after 1/1/2017, members eligible for single coverage who opt out are not eligible for a health insurance bonus.

Effective January 1, 2017 and every three (3) months thereafter (April 1st, July 1st and October 1st) the amount of the cash "payout" will be adjusted pursuant to the following schedule:

| <u>Instead of Health Insurance Coverage</u> | <u>Electing the "Payout"</u> |
|---|------------------------------|
| 1-19 Unit Members | \$2,600 |
| 20 Unit Members | \$2,700 |
| 22 Unit Members | \$2,800 |
| 24 Unit Members | \$2,900 |
| 26 Unit Members | \$3,000 |
| 28 Unit Members | \$3,100 |
| 30 Unit Members | \$3,200 |
| 32 Unit Members | \$3,300 |
| 34 Unit Members | \$3,400 |
| 36 Unit Members | \$3,500 |
| 38 Unit Members | \$3,600 |
| 40 or More Unit Members | \$3,700 |

Conversely, should the number of unit members electing the payout amount decrease from one quarterly period to the next, the payout amount for all unit members shall be decreased in accordance with the above schedule (but not below \$2,600). Any employee wishing to opt for this payment in lieu of health insurance must complete all required paperwork and turn such required paperwork into the Insurance Section of the Comptroller's Office by the 15th of the month prior to the initial month that the payment in lieu of health insurance will become effective for that employee.

Employees shall receive the above payments in equal semi-monthly payments.

However, any member who opts to receive this payment in lieu of health insurance and who subsequently loses their required alternative health insurance must re-enter the City insurance plan as of the 1st of the month following written notice to, and sign up at, the Insurance Section in the Comptroller's Office. The payment in lieu of health insurance will cease as of the 1st pay period of the month in which the City insurance plan resumes.

ARTICLE 30 – DRUG AND ALCOHOL POLICY

The Drug and Alcohol Policy annexed as Exhibit "A" to the Agreement is applicable to all members of this bargaining unit as well as the Chief of the Bureau.


ARTICLE 31 - RESPIRATORY POLICY


The Respiratory Policy to the Agreement is annexed as Exhibit "B".

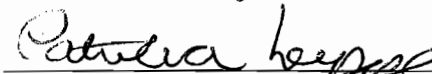
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their representatives.


Date: May 3, 2017

CITY OF BINGHAMTON

By: 
Richard David, Mayor


By: 
Daniel Eggleston, Fire Chief

By: 
Patricia A. Keppler, Director
of Personnel & Safety

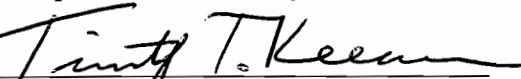
By: 
Chuck Shager, Comptroller

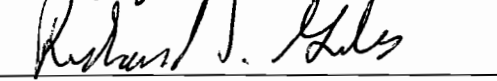

Attested

**BINGHAMTON FIREFIGHTERS LOCAL 729
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

By: 
David Holleran, President

By: 
Joseph Smith, Secretary

By: 
Timothy Keenan, Treasurer

By: 
Richard Giles, Insurance Chairman

Approved as to form

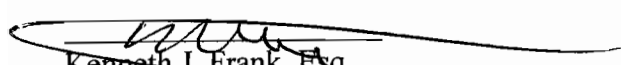

Kenneth L. Frank, Esq.
Corporation Counsel

EXHIBIT "A"

DRUG AND ALCOHOL TESTING POLICY

Purpose

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

Program Requirements

2.1 Participation as a Condition of Employment

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

2.2 Prohibited Behavior

It is the policy of the City of Binghamton's Fire Bureau that:

- a) No firefighter shall use, sell, distribute, dispense, possess or manufacture any alcoholic beverages, illegal drugs or any other intoxicating or controlled substance on a job site or on City property while on duty or while in a City vehicle;
- b) No firefighter shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch or rest period as a result of consuming alcohol, illegal drugs, or any other intoxicant or controlled substance;
- c) In some cases, the use of prescription or over-the-counter drugs may cause impairment that prohibits the firefighter from performing firefighter duties. It is the sole responsibility of the firefighter taking any prescription or over-the-counter medication(s) that may impair performance to consult with his/her physician or pharmacist regarding its effects and to inform his/her supervisor if he/she may be impaired. A firefighter may be required to have his/her physician certify that a given medication does/does not adversely affect the firefighter's fitness for duty;
- d) Violation of any of these rules by a City firefighter may result in disciplinary action up to and including termination of employment;

2.3 Circumstances of Testing

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

- a) Pre-employment Testing. Applicants for employment in the class of firefighter and any Officer position not filled internally must be given a pre-employment drug test.

firefighter applicants may not be hired or assigned to duty unless they complete and pass the test. Prior to conducting the drug test, the City will inform the applicant of the testing requirements. Vacancy announcements and job postings must stipulate that passing a drug test is a condition of employment. Finally, applicants may be required to sign a document acknowledging that they know they are subject to testing.

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

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

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

- d) Random Testing. The selection of firefighters for random drug testing and, effective January 1, 2003, random breath alcohol testing, shall be made by a scientifically valid random number selection method. The selection method shall assure that each firefighter shall have an equal chance of being tested each time selections are made. Selection shall be determined by the City's testing vendor, contracted to administer the drug and alcohol-testing program.

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

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

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

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

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

2.4 Behavior that Constitutes a Refusal to Submit to a Test. The following actions or behaviors shall constitute a refusal to submit to a required test:

- a) Refusal to take test;
- b) Inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;

- c) Tampering with, or attempting to adulterate, the specimen or collection procedure;
- d) Failure to report to the collection site in the time allotted;
- e) Failure to remain readily available for post-accident testing; or
- f) Failure to submit to a hair analysis drug test if the firefighter's drug urine specimen is determined by the testing lab to be dilute.

2.5 Testing Procedures

a) Drug Testing

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

This policy expressly provides that collection protocol will include split specimen techniques. Each urine specimen is sub-divided into two (2) containers labeled as primary and split specimens. Both specimens are forwarded to the laboratory certified by the U.S. Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless and until it is required for confirmation of a positive test.

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

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

Any firefighter whose drug urine specimen is determined by the testing lab to be "dilute" shall be immediately subject to a hair analysis drug test. Failure to submit to such a test in the event of a "dilute" specimen shall be grounds for discipline up to and including termination of employment.

If the laboratory reports a positive result to the MRO, then the MRO contacts the firefighter and conducts an interview to determine if there is an alternative medical

explanation for the presence of a controlled substance in the specimen. If the firefighter provides appropriate documentation and the MRO determines that there is a legitimate medical use of the prohibited drug, then the test result is reported to the City as negative.

Urine specimens are analyzed for the following drugs:

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

b) Alcohol Testing.

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

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

c) Confidentiality of Test Results.

The City of Binghamton, the drug testing laboratory, the alcohol testing facility and the Medical Review Officer maintain firefighter alcohol and drug testing results and records under strict confidentiality. The results cannot be released to any other party, except a Substance Abuse Professional, without the written consent of the firefighter. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation or other administrative proceedings arising from a positive alcohol or drug test or other violation of these rules. Statistical records and reports are maintained by the City of Binghamton and the alcohol and drug testing provider. This information is aggregate data and is used only to monitor the effectiveness of the program.

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

- a) Consequences of Alcohol Misuse. firefighter who engage in prohibited alcohol conduct must be immediately relieved of duty. The following circumstances constitute

prohibited behaviors:

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

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

No firefighter who has engaged in any prohibited alcohol conduct as defined in Section 2.6 a) (2) – (4) shall be allowed to perform duty until the firefighter has been evaluated by a Substance Abuse Professional. Before any firefighter found to have violated Section 2.6 a) (1) – (4) returns to duty, the firefighter must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. Any Firefighter who, through no fault of his own, cannot be evaluated by a Substance Abuse Professional within three (3) business days of a request will be placed on Administrative Leave with pay pending such evaluation.

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

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

b) Consequences of Use of Drugs

- i. A firefighter who has an initial verified positive drug test result must be immediately removed from duty and shall not be allowed to return to duty until (i) the firefighter has been evaluated and approved to return to duty by a substance abuse professional through the Employee's Assistance Program (EAP) [or successor organization], and (ii) undergo and pass a return-to-duty substance test with a verified negative result. Pending evaluation and approval by a substance abuse professional and a return-to-duty substance test, a firefighter may utilize accumulated sick time for up to thirty (30) calendar days. Sick time may be extended beyond thirty (30) calendar days if recommended by the substance abuse professional to the Fire Chief or Director of Personnel. If the firefighter does not have accumulated sick time, then the firefighter may be permitted to use vacation time or other leave time at the sole discretion of the Fire Chief. Notwithstanding the above, any Firefighter who, through no fault of his own, cannot be evaluated by

a Substance Abuse Professional within three (3) business days of a request will be placed on Administrative Leave with pay pending such evaluation.

- ii. A firefighter who has a verified positive drug test result will be subject to disciplinary action up to, and including, termination of employment. Such discipline will be pursuant to the requirements and procedures of NYS Civil Service Law (CSL) §75.
 - iii. For a random verified positive drug test only, prior to commencing formal discipline under CSL §75, the City will notify the firefighter as soon as practical of the proposed discipline. The firefighter will have the option to either (i) accept the proposed discipline and begin serving agreed-upon discipline while undergoing counseling or rehabilitation as determined by the substance abuse professional and pending a return-to-work test; or (ii) use sick time or other leave time as provided in paragraph “(b).i” above and proceed with formal discipline under CSL §75. The City agrees that it will not suspend a firefighter pending the outcome of a hearing as permitted by CSL §75.3 based solely on an initial random verified positive drug test. Nothing herein restricts the right of the City to suspend a firefighter pursuant to CSL §75.3 for any other reason.
 - iv. A firefighter who has a verified positive drug test is required to follow any counseling and/or rehabilitation program as determined by the substance abuse professional, including future drug tests. If the substance abuse professional advises the City that the firefighter has failed or refused to follow such counseling or has a subsequent verified positive drug test, the firefighter will be subject to disciplinary action up to, and including, termination of employment. The use of sick time or other leave time as provided in paragraph “(b).i” and paragraph “(b).iii” above shall not apply to any violation of this paragraph. Such discipline will be pursuant to the requirements and procedures of CSL §75.
- c. Refusal to Submit to a Required Alcohol or Drug Test (as defined in Section 2.3 above)
Refusal or failure to submit by a firefighter to a required alcohol or drug test constitutes a failed test, resulting in immediate removal from duty and appropriate disciplinary action up to, and including, termination of employment; use of sick time or other leave time as provided in paragraph “(b).i” and paragraph “(b).iii” above shall not apply to any violation of this paragraph.

2.7 Training for Supervisors

The City of Binghamton shall ensure that all supervisors and other persons designated to determine whether reasonable suspicion exists to require a firefighter to undergo testing must receive a minimum of sixty (60) minutes of training on alcohol misuse and a minimum of sixty (60) minutes of training on controlled substance use every two (2) years. The training shall include the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. The training shall include an overview of the program requirements, disciplinary procedures, confrontation and documentation procedures, and rehabilitation and treatment options which are available through the City of Binghamton’s Employee’s Assistance Program (EAP).

2.8 Training for City firefighters

The City of Binghamton shall ensure that all firefighters shall have the opportunity to be trained for a minimum of sixty (60) minutes every two (2) years on the effects and consequences of prohibited drug and alcohol use on personal health, safety and the work environment, as well as the manifestations and behavioral signs that may indicate prohibited use, as per the training materials (video and written) provided by the City's Employee's Assistance Program.

2.9 Supervisory Responsibilities

It is the policy of the City of Binghamton that:

- a) Supervisors are responsible for determining, through direct observation whether a firefighter is capable of performing his or her assigned duties. Determinations shall be based on specific contemporaneous, articulate, reliable observations concerning the appearance, behavior, speech or body odor of the employee;
- b) Firefighters who are suspected of being unfit for duty as a result of alcohol or drug use shall be required to undergo reasonable suspicion drug and/or alcohol testing in accordance with this policy. Supervisors must immediately bring their observations to the attention of their superiors in order that arrangements for testing can be implemented as soon as practicable;
- c) Incidents and behavior described above must be witnessed and documented immediately. The supervisor's manager should be consulted and advised of the incident. A firefighter who is impaired should not be allowed to drive home from the work place or the test site. The supervisor should arrange to send the unfit firefighter home with a member of the employee's family or friend of the firefighter or in a taxi at the firefighter's expense. If all other alternatives are exhausted, a supervisor may allow a firefighter who is unfit for duty to then be driven home in a City vehicle;
- d) The fact that an unfit firefighter engaged in prohibited behavior as defined in Section 2.2 above and was not allowed to remain at work or was tested is not considered a disciplinary suspension. After the employee is removed from the work place and tested, supervisors and managers should discuss the specifics of the situation with their Department Head to review appropriate disciplinary action. Each situation will be evaluated on a case-by-case basis; and
- e) When a firefighter displays dangerous, aggressive or abusive behavior, which clearly constitutes a danger to that firefighter or others and the firefighter resists voluntarily leaving the workplace, the supervisor may immediately suspend the firefighter and order the firefighter to leave the premises. The supervisor must take immediate steps to notify the Department Head of the situation including having the Department Head paged or called at home.
- f) In cases where the firefighter does not comply with disciplinary suspension and the firefighter continues to display aggressive and/or abusive behavior that constitutes a danger in the workplace, the supervisor may have to contact local law enforcement

authorities to remove the employee from the workplace. Law enforcement intervention should only be taken if it is believed an immediate danger to persons or property exists and the other measures described above were unsuccessful in controlling the situation.

2.10 Management Responsibilities.

It is the policy of the City of Binghamton that:

- a) A drug and alcohol-free workplace shall be maintained through the efforts and personal example of management;
- b) Subordinate managers and supervisors who fail to perform their duties and responsibilities as outlined in this policy will be subject to disciplinary action up to and including termination of employment;
- c) Managers and supervisors are encouraged to discuss with firefighters any behavior or job performance factors that may indicate the use of drugs, alcohol, or other violations of this policy and to suggest, when appropriate, that a firefighter seek assistance through the City's Employee's Assistance Program;
- d) Effective January 1, 2000, managers shall direct all firefighters under their direction and subject to this policy to comply with the provisions of this policy for pre-employment, reasonable suspicion, post-accident, return-to-duty and follow-up testing;
- e) firefighters who make reasonable suspicion determinations must receive training on the physical, behavioral and performance indicators of probable drug use and alcohol misuse. Such training shall be conducted by staff from the City's Employee's Assistance Program.

Exhibit "B"
RESPIRATORY PROTECTION PROGRAM

City of Binghamton Fire Department



RESPIRATORY PROTECTION PROGRAM

This plan addresses health and safety protection for the
Binghamton Firefighters

Prepared By:

City of Binghamton and Binghamton Firefighters, Local 729

Original Date Prepared: September, 2004

Last Update: April, 2017

RESPIRATORY PROTECTION PROGRAM

TABLE OF CONTENTS:

| | |
|-----|--|
| I | Purpose |
| II | Program Administration |
| III | Respiratory Selection |
| IV | Maintenance, Cleaning, Inspection, And Storage |
| V | Breathing Air Quality |
| VI | Training |
| VII | Fit Testing |
| VII | Procedures For Proper Use of Respirators in Routine And Reasonably Foreseeable Emergency Situations |
| IX | Medical Evaluation |
| X | Program Evaluation |
| XI | Recordkeeping |

APPENDICES:

| | |
|---|---|
| A | Respiratory Selection Worksheet |
| B | Approved Respiratory Protection |
| C | Physician Statement of Respirator Suitability |

RESPIRATORY PROTECTION PROGRAM

I PURPOSE

The elements described in this program are designed to ensure the safe and effective usage of respiratory protection at the City of Binghamton Fire Department.

II PROGRAM ADMINISTRATION

The Training Instructor is responsible for the overall implementation and maintenance of the respiratory protection program.

The Training Instructor duties include:

| |
|--|
| <ul style="list-style-type: none">• Determining which tasks require respiratory protection. |
| <ul style="list-style-type: none">• Selecting the proper respirator for a specific application. |
| <ul style="list-style-type: none">• Conducting employee training and conducting fit testing. |
| <ul style="list-style-type: none">• Implement policies ensuring that employees clean, maintain and properly store respirators |
| <ul style="list-style-type: none">• Conducting a periodic evaluation of the respiratory program to ensure that it is achieving its desired goal. |

Supervisors are responsible for:

| |
|---|
| <ul style="list-style-type: none">• Ensuring that appropriate, approved type respirators are available for use. |
| <ul style="list-style-type: none">• Ensuring that employees wear the required respirators |
| <ul style="list-style-type: none">• Ensuring that employees clean, maintain and properly store respirators |

Employees are responsible for:

| |
|--|
| <ul style="list-style-type: none">• Using the respiratory protection in accordance with the training received. |
| <ul style="list-style-type: none">• Wearing the respirator as prescribed in all IDLH or potential IDLH atmospheres |
| <ul style="list-style-type: none">• Inspecting, cleaning, sanitizing, and proper storage of their respirator. |

RESPIRATORY PROTECTION PROGRAM

III RESPIRATORY SELECTION

The Training Instructor is responsible for selecting the appropriate respiratory protection.

The appropriate respirators will be selected based upon the following elements:

| |
|---|
| <ul style="list-style-type: none">• The type (s) and concentrations of airborne contaminant(s). |
| <ul style="list-style-type: none">• The characteristics and location of the hazardous area. |
| <ul style="list-style-type: none">• The workers' activities in the hazardous area. |
| <ul style="list-style-type: none">• The capabilities and limitations of the respirators. |
| <ul style="list-style-type: none">• Duration of respirator use. |
| <ul style="list-style-type: none">• Selection will be made according to "practices for Respiratory Protection" American National Standards Institute (ANSI) Z88.2-1980. |
| <ul style="list-style-type: none">• Only respirators having NIOSH approval will be used. |

NOTE: The Respirator Selection Worksheet(s) to be completed by the employer is included in Appendix A. The Worksheet for Respirator Selection Includes:

- Part I – Employee Exposure Evaluation
- Part II – Respirator Determination; and
- Part III – Respirator Selection.

Part III, Respirator Selection is subdivided into the following categories:

- a) Voluntary Use of a Respirator
- b) Respirator Use Required by a Standard; and
- c) Respirator Use Required due to Immediately Dangerous to Life and Health Atmospheres (IDLH)

NOTE: Respirators currently approved for use at the City of Binghamton Fire Department, based on the completion of the Respiratory Selection Worksheet(s), are listed in Appendix B.

RESPIRATORY PROTECTION PROGRAM

IV MAINTENANCE, CLEANING, INSPECTION AND STORAGE

The City of Binghamton Fire Department Training Instructor will ensure that employees properly clean and maintain their respirators.

The following items will be included in the maintenance program:

| |
|---|
| <ul style="list-style-type: none">• Cleaning and sanitizing. |
| <ul style="list-style-type: none">• Disassemble components from the respirator and inspect for any defects per manufacturer instructions |
| <ul style="list-style-type: none">• Immerse the respirator and components in warm soapy water (120-130F). |
| <ul style="list-style-type: none">• Rinse the respirator and components. |
| <ul style="list-style-type: none">• Sanitize the respirators and components per manufacturer's instructions |
| <ul style="list-style-type: none">• Rinse components and allow to dry. |
| <ul style="list-style-type: none">• Inspect, test, and tag for repair if necessary. |
| <ul style="list-style-type: none">• Storage should separate the respirator from sunlight, caustic and toxic chemicals that may cause the deterioration of the respirator (mask and other parts) |
| <ul style="list-style-type: none">• Adherence to manufacturer's recommendations• |

Inspect before and after each use for the following:

| |
|---|
| <ul style="list-style-type: none">• Deterioration of any rubber or silicone parts. |
| <ul style="list-style-type: none">• Conditions of components (straps, buckles, valves, etc.). |
| <ul style="list-style-type: none">• Tightness of all connections. |
| <ul style="list-style-type: none">• Check any end-of-service life indicators. |
| <ul style="list-style-type: none">• SCBA alarms, regulators, gauges, etc. |
| <ul style="list-style-type: none">• SCBA cylinder pressure. |
| <ul style="list-style-type: none">• Any other components per manufacturer's instructions |

RESPIRATORY PROTECTION PROGRAM

V BREATHING AIR QUALITY

The employer shall ensure that:

| |
|---|
| <ul style="list-style-type: none">Breathing air quality is tested quarterly per NFPA 1989 5.6 and meets the minimum requirements for Grade D breathing air described in ANSI/Compressed Gas Association Commodity Specification for Air, G-7.1-1989. This will be accomplished via contract through a certified third party vendor. |
| <ul style="list-style-type: none">Cylinders are tested and maintained in accordance with DOT regulations (49 CFR parts 173 and 178) |
| <ul style="list-style-type: none">Oxygen or air containing more than 23.5% oxygen is not used in compressed air systems. |
| <ul style="list-style-type: none">Contaminated air cannot enter the compressor. |
| <ul style="list-style-type: none">A tag indicating the most recent change or servicing of the compressor and sorbent beds is on the compressor with the signature of the person who performed the service. |
| <ul style="list-style-type: none">Oil lubricated compressor has high temperature alarm or carbon monoxide monitor or both. |
| <ul style="list-style-type: none">Air fittings are incompatible with all other gas fittings. |

VI TRAINING

All employees who are required to use respiratory protection will be instructed on the proper selection, use, and limitations of this equipment. This training will be provided prior to any assignment requiring the use of such equipment.

The training, conducted by the City of Binghamton Fire Department Training Instructor, will also include information on:

| |
|---|
| <ul style="list-style-type: none">Nature of the respiratory hazard and what may happen if the respirator is not used properly. |
| <ul style="list-style-type: none">Engineering and administrative controls being used and the need for the respirator as added protection. |
| <ul style="list-style-type: none">Reason(s) for selection of a particular type of respirator. Limitations of the selected respirator. Methods of donning the respirator and checking the fit and operation. |
| <ul style="list-style-type: none">Proper wear of the respirator. Respirator maintenance and storage. |
| <ul style="list-style-type: none">Proper method for handling emergency situations, and; |
| <ul style="list-style-type: none">A record of employee names and dates and type of initial training and subsequent refresher training will be recorded. |

RESPIRATORY PROTECTION PROGRAM

VII FIT TESTING

It is well-recognized that no one respirator will fit every individual. Therefore, to provide the appropriate respirator, fit testing will be performed to ensure a tight seal between the face piece and wearer.

NOTE: A Fit Test Record is generated by the fit test machine software upon completion of a successful fit test. One record must be completed for each employee and respirator mask assigned for the employee's use.

VII PROCEDURES FOR PROPER USE OF RESPIRATORS IN ROUTINE AND REASONABLY FORESEEABLE EMERGENCY SITUATIONS

The City of Binghamton Fire Department will follow established procedures for proper use of SCBA in routine and reasonably foreseeable emergency situations as recognized by New York State Office of Fire Prevention and Control (NYSOFPC) and included in the curriculums of NYSOFPC Firefighter I and Firefighter Survival (or current equivalents).

RESPIRATORY PROTECTION PROGRAM

IX MEDICAL EVALUTION

| | |
|----|---|
| 1) | <p>Individuals assigned to tasks that require the use of respiratory protection will have a medical evaluation consisting of completion by the firefighter and review by a PLHCP of the OSHA Respirator Medical Evaluation Questionnaire in accordance with OSHA 1910.134 App C and spirometry testing. These questionnaires and spirometry results, in accordance with OSHA regulations, shall be confidential and kept at a medical care facility and not be made available to the employer. The employer must allow the firefighter to answer the questionnaire during normal working hours at a time and place convenient to the firefighter and must not look at or review the firefighter's answers. The employer must advise the firefighter how to deliver or send this questionnaire to the licensed health care professional who will review it <i>to determine if they are able to perform the work while wearing a respirator.</i></p> <p>The firefighter will be advised of any question raised by the licensed health care professional as to the firefighter not being fit to wear a respirator and any such questions will be referred to the firefighter's personal physician by the PLHCP. The firefighter's personal physician will make the determination as to whether the firefighter is respirator fit. The firefighter's personal physician will be provided with a copy of OSHA Respirator Medical Evaluation Questionnaire in accordance with OSHA 1910.134 App C and spirometry testing results for purposes of reporting the results of the personal physician's evaluation of the firefighter. Any comments on Appendix C must be limited to a specific description of restricted duties, if any. If in the opinion of the personal physician the firefighter has failed the evaluation, that block will be checked and no comments will be made. If review of the questionnaire and spirometry results by the PLHCP does not raise any questions as to the firefighter's fitness to wear a respirator, that PLHCP should report that the firefighter passed the questionnaire and spirometry by checking the pass box and finishing the form to the employer. If referral is made to the firefighter's personal physician, the PLHCP shall provide the City with Appendix C completed through date of referral with no results or comments noted.</p> |
| 2) | The evaluation will be given prior to an employee being allowed to wear a respirator. Periodic examinations will be conducted as necessary. |
| 3) | This program, the medical evaluation, and the OSHA Regulations are designed to protect the firefighter and promote safety in the workplace and are not meant to remove the firefighter from the workplace or from employment. If, the firefighter is not determined to be respirator fit by his personal physician, the firefighter will be referred for assistance and rehabilitation with respect to any limitation found or identified during the course of medical evaluation so as to promote respiratory fitness and continue the firefighter as an active and viable employee of the City of Binghamton. |
| 4) | If the firefighter is referred to his/her personal physician as a result of the OSHA medical evaluation questionnaire and/or spirometry results by the PLHCP for evaluation of fitness to wear a respirator, the Chief will be notified of such request for evaluation made by the PLHCP and, in the interest of safety, the firefighter can be reassigned to duties not involving IDLH atmospheres and an SCBA. The employer will pay for any physician and testing charges with respect to the medical evaluation. |

RESPIRATORY PROTECTION PROGRAM

| | |
|----|--|
| 5) | If the firefighter fails to receive medical clearance to wear a SCBA from the personal physician, the firefighter can proceed with a rehabilitation program prescribed by the firefighter's physician(s) for up to six months while assigned in a light duty position. If at the end of the aforesaid six month period of rehabilitation, the firefighter fails to receive medical clearance to wear a SCBA, at the employer's option, the firefighter can be continued on a light duty status not involving an IDLH atmosphere and an SCBA or, at the firefighter's option, he or she can (a) continue on the payroll using vacation and personal leave days, sick leave days and accumulated sick leave days; (b) apply for General Municipal Law 207-a benefits if felt applicable; (c) request an unpaid personal leave until he or she can be determined by the firefighter's physician to be certified to wear a SCBA. Vacation, personal leave and sick leave days and accumulated sick leave days can be used during General Municipal Law Section 207-a procedures, in accordance with present practice. Light duty for a non-job related illness or injury may be applied for in accordance with Fire Bureau policy. |
|----|--|

X PROGRAM EVALUATION

This section requires the employer to conduct evaluations of the workplace to ensure that the written respiratory protection program is being properly implemented, and to consult employees to ensure that they are using the respirators properly.

| | |
|----|---|
| 1) | The employer shall conduct evaluations of the workplace as necessary to ensure that the provisions of the current written program are being effectively implemented and that it continues to be effective. |
| 2) | The employer shall regularly consult employees required to use respirators to assess the employees' views on program effectiveness and to identify any problems. Any problems that are identified during this assessment shall be corrected. Factors to be assessed, include, but are not limited to: |
| a) | Respirator fit (including ability to use the respirator without interfering with effective workplace performance; |
| b) | Appropriate respirator selection for the hazards to which the employee is exposed; |
| c) | Proper respirator use under the workplace conditions the employee encounters; and |
| d) | Proper respirator maintenance. |

RESPIRATORY PROTECTION PROGRAM

XI RECORDKEEPING

This section requires the employer to establish and retain written information regarding medical evaluations, fit testing, respirator maintenance, air quality testing and the respirator program. This information will facilitate employee involvement in the respirator program, assist the employer in auditing the adequacy of the program, and provide a record of compliance determinations by OSHA.

Fit Testing

Fit test records shall be retained for respirator users until the next fit test is administered.

Medical Evaluation

Records of medical evaluations required by this section must be retained by the PLHCP and made available in accordance with 29 CFR 1910.1020.

Respirator Maintenance

Records of respirator maintenance performed by City of Binghamton Fire Department personnel or manufacturer approved service technicians will be maintained for the life of the SCBA.

Air Quality Testing

Records of quarterly air quality test results will be maintained for one year.

Respiratory Protection Program

A written copy of the current respirator program shall be retained by the employer and attached as Exhibit "B" to all versions of Agreement between The City of Binghamton and Binghamton Firefighters Local 729, AFL-CIO, I.A.F.F.

RESPIRATORY PROTECTION PROGRAM

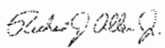
APPENDIX A- RESPIRATOR SELECTION WORKSHEET

| | |
|---|---|
| <u>Location:</u> | City of Binghamton Fire Department |
| <u>Process/Operations:</u> | Firefighting, Rescue, Hazmat Mitigation |
| <u>Reason for Requesting Respirator Eval:</u> | Program Maintenance |
| <u>Requested by:</u> | Chief of Department |
| I. | EMPLOYEE EXPOSURE EVALUATION: |
| <u>Contaminants or other respiratory hazards:</u> | Smoke, vapors, toxic gasses encountered in firefighting/rescue |
| <u>Estimated Concentrations:</u> | Varies |
| <u>Chemical state of contaminants:</u> | Varies and is unknown |
| <u>Physical form of contaminants:</u> | Smoke, vapors, gases, particulate matter, etc. |
| <u>Approximate Exposure Limits:</u> | Varies and is unknown |
| II. | RESPIRATOR DETERMINATION GUIDE: |
| Exposure is documented to be below the exposure limits and use by employees is voluntary: | Respirator use is “not required” under the standard. A respirator may be used if desired. Go to Section IIIa. |
| Exposure is documented to be below the exposure limits and use by employees is required by a job rule or procedure: | Respirator use is required under the standard. Go to Section IIIb. |
| Exposure may exceed exposure limit and maximum concentration is known. | Respirator use is required under the standard. Go to Section IIIb. |
| Exposure is not characterized (“cannot identify or reasonably estimate the employees’ exposure”). | Exposure is considered IDLH. Go to Section IIIc. |

RESPIRATORY PROTECTION PROGRAM

APPENDIX A- RESPIRATOR SELECTION WORKSHEET

Section IIIa – Voluntary Use of a Respirator

| | | |
|-------------|---|---|
| III. | RESPIRATORY SELECTION | |
| | a. | Voluntary Use of Respirator |
| | Indicate make, model, and approval number of the respirator selected and indicate any limitations on its use. If the respirator is a chemical cartridge or filter type respirator, indicate the frequency required for cartridge or filter replacement. | |
| | Type of Respirator: | N/A |
| | Manufacturer: | |
| | Model No: | |
| | Approval No: | |
| | Limitations: | |
| | Cartridge/filter change schedule (if applicable): | |
| | | |
| | | |
| | Basis for determining cartridge change schedule: | |
| | Include all calculations and assumptions. Indicate basis for assumptions and references to published literature where appropriate. | |
| | | |
| | | |
| | | |
| | Prepared by: (Print) | Richard J. Allen Jr. |
| | Signature: |  |
| | Date: | 04/01/2017 |

RESPIRATORY PROTECTION PROGRAM

APPENDIX A- RESPIRATOR SELECTION WORKSHEET


Section IIIb – Respiratory Use is required by the Standard

| | | |
|-------------|---|---|
| III. | RESPIRATORY SELECTION | |
| | b. | Respiratory Use is Required by the Standard |
| | Indicate make, model, and approval number of the respirator selected and indicate any limitations on its use. If the respirator is a chemical cartridge or filter type respirator, indicate the frequency required for cartridge or filter replacement. | |
| | Type of Respirator: | N/A |
| | Manufacturer: | |
| | Model No: | |
| | Approval No: | |
| | Limitations: | |
| | Cartridge/filter change schedule (if applicable): | |
| | | |
| | | |
| | Basis for determining cartridge change schedule: | |
| | Include all calculations and assumptions. Indicate basis for assumptions and references to published literature where appropriate. | |
| | | |
| | | |
| | | |
| | Prepared by: (Print) | Richard J. Allen Jr. |
| | Signature: | <i>Richard J. Allen Jr.</i> |
| | Date: | 04/01/2017 |

RESPIRATORY PROTECTION PROGRAM

APPENDIX A- RESPIRATOR SELECTION WORKSHEET

Section IIIc – Atmosphere Considered to be Immediately Dangerous to Life or Health (IDLH)

| | | |
|-------------|---|---|
| III. | RESPIRATORY SELECTION | |
| | c. | Atmosphere Considered to be Immediately Dangerous to Life or Health (IDLH) |
| | Indicate make, model, and approval number of the respirator selected and indicate any limitations on its use. If the respirator is a chemical cartridge or filter type respirator, indicate the frequency required for cartridge or filter replacement. | |
| | Type of Respirator: | Self-Contained Breathing Apparatus (SCBA) |
| | Manufacturer: | Scott |
| | Model No: | X3 5.5 - X3415022200302 |
| | Approval No: | NFPA 1981-2013 |
| | Limitations: | |
| | Cartridge/filter change schedule (if applicable): | |
| | | N/A |
| | Basis for determining cartridge change schedule: | |
| | Include all calculations and assumptions. Indicate basis for assumptions and references to published literature where appropriate. | |
| | | |
| | | |
| | Prepared by: (Print) | Richard J. Allen Jr. |
| | Signature: |  |
| | Date: | 04/01/2017 |

RESPIRATORY PROTECTION PROGRAM

APPENDIX B – APPROVED RESPIRATORY PROTECTION

Respirators currently approved for use at the City of Binghamton Fire Department are listed below:

| RESPIRATOR MANUFACTURER | MODEL | WORK TASK |
|----------------------------|---------------------------------------|---|
| Scott | SCBA X3 5.5 - X3415022200302 | Operating in IDLH or potentially IDLH atmospheres |
| Scott | SCBA APi75 4.5 – APi45700200201 | Operating in IDLH or potentially IDLH atmospheres |
| | | |
| | | |
| | | |
| | | |
| | | |

RESPIRATORY PROTECTION PROGRAM

City of Binghamton Fire Department

APPENDIX C - PHYSICIAN STATEMENT

RESPIRATOR SUITABILITY

(29 CFR 1910.134)

Name: _____ Exam Date: _____

Date of Birth: _____ SS#: _____

Based on this examination and the information provided, the above-named employee's respirator suitability is:

CLASS (Circle One)

1. No restrictions on respirator use

2. Some specific use restrictions:

3. No respirator use permitted

MEDICAL CLEARANCE

(29 CFR 1910.120)

_____ This employee has no detected medical findings or medical history responses that would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response situations.

_____ This employee has significant abnormal medical findings or medical history responses and does not qualify for medical clearance.

EMPLOYEE NOTIFICATION

_____ I have informed the employee of the results of the medical examination and of any medical condition that may arise as a "result of his/her work environment, as relayed to me by the Company.

Physician Signature

Printed or typed name

Date

Other Important Documents

NYS Civil Service Section 75 Disciplinary Procedures

TITLE B

REMOVAL AND OTHER DISCIPLINARY PROCEEDINGS

Section 75. Removal and other disciplinary action.

75-a. Civil service proceeding; commencement upon alleged violation of certain provisions of the labor law relating to police officers.

75-b. Retaliatory action by public employers.

76. Appeals from determinations in disciplinary proceedings.

77. Compensation of officers and employees reinstated by court order.

§ 75. Removal and other disciplinary action.

1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee holding a position in the non-competitive class other

than a position designated in the rules of the state or municipal civil service commission as confidential or requiring the performance of functions influencing policy, who since his last entry into service has completed at least five years of continuous service in the non-competitive class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or

(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise.

2. Procedure. An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred,

or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge.

3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. Pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct

complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

§ 75-b. Retaliatory action by public employers.

1. For the purposes of this section the term:

(a) "Public employer" or "employer" shall mean (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission or public benefit corporation, or (vi) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state.

(b) "Public employee" or "employee" shall mean any person holding a position by appointment or employment in the service of a public employer except judges or justices of the unified court system and members of the legislature.

(c) "Governmental body" shall mean (i) an officer, employee, agency, department, division, bureau, board, commission, council, authority or other body of a public employer, (ii) employee, committee, member, or commission of the legislative branch of government, (iii) a representative, member or employee of a legislative body of a county, town, village or any other political subdivision or civil division of the state, (iv) a law enforcement agency or any member or employee of a law enforcement agency, or (v) the judiciary or any employee of the judiciary.

(d) "Personnel action" shall mean an action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

2. (a) A public employer shall not dismiss or take other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information: (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or

safety; or (ii) which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.

(b) Prior to disclosing information pursuant to paragraph (a) of this subdivision, an employee shall have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. For the purposes of this subdivision, an employee who acts pursuant to this paragraph shall be deemed to have disclosed information to a governmental body under paragraph (a) of this subdivision.

3. (a) Where an employee is subject to dismissal or other disciplinary action under a final and binding arbitration provision, or other disciplinary procedure contained in a collectively negotiated agreement, or under section seventy-five of this title or any other provision of state or local law and the employee reasonably believes dismissal or other disciplinary action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a defense before the designated arbitrator or hearing officer. The merits of such defense shall be considered and determined as part of the arbitration award or hearing officer decision of the matter. If there is a finding that the dismissal or other disciplinary action is based solely on a violation by the employer of such subdivision, the arbitrator or hearing officer shall dismiss or recommend dismissal of the disciplinary proceeding, as appropriate, and, if appropriate, reinstate the employee with back pay, and, in the case of an arbitration procedure, may take other appropriate action as is permitted in the collectively negotiated agreement.

(b) Where an employee is subject to a collectively negotiated agreement which contains provisions preventing an employer from taking adverse personnel actions and which contains a final and binding arbitration provision to resolve alleged violations of such provisions of the agreement and the employee reasonably believes that such personnel action would not have been taken but for the conduct protected under subdivision two of this section, he or she may assert such as a claim before the arbitrator. The arbitrator shall consider such claim and determine its merits and shall, if a determination is

Family Medical Leave Act



Office of Personnel and Safety

City of Binghamton Family Medical Leave Policy

In accordance with the requirements of the federally mandated Family Medical Leave Act of 1993, as amended by FY 2008 National Defense Authorization Act (P.L. No 1210-181), employees of the City of Binghamton may take an unpaid leave of absence for family and medical emergencies. Outlined below are the key provisions of the law.

Eligibility Requirements

Employees are eligible if they have satisfied **both** of the following requirements **prior** to the start of any requested leave: **1)** worked for the City at least one (1) year **and**; **2)** worked for 1,250 hours in the previous 12 months.

Events for Which Leave May Be Taken

- The birth of an employee's child and in order to care for the child.
- The placement of a child with an employee for adoption or foster care and in order to care for the newly placed child.
- To care for a spouse, child or parent with a serious health condition.
- A serious health condition which renders an employee unable to perform the essential functions of his /her position as defined under the FMLA.
- Military Leaves as set forth below.

Duration of Leave

General Rule:

Family medical leave may not exceed a total of 12 weeks in any given 12 month period as calculated by the "rolling" 12 month methodology. Under this methodology, the amount of family medical leave time to which an employee is entitled to at any given point shall be determined by reviewing how much family medical leave the employee has used in the 12 month period immediately prior to the start of any new request for family medical leave. The difference between the amounts already used during the previous 12 months and 12 weeks shall be the maximum entitlement for that particular request.

Spouses who both work for the City are entitled to a total of 12 weeks of leave between the two of them (rather than 12 weeks each) for the birth or adoption of a child or the care of a sick parent.

Certain "key employees" (defined by federal statute as a salaried employee who is among the highest paid 10 percent of all City employees) may be denied restoration to their job at the conclusion of leave if it can be shown that to do so the City would suffer substantial and grievous economic injury to its operations.

Military Leaves:

- Military Caregiver Leave: An employee who is the spouse, son, daughter, parent or next of kin, (nearest blood relative) of a service member who is undergoing medical treatment, recuperation, or therapy or is otherwise in outpatient status or on the temporary disability retired list for a serious injury or illness incurred while on active duty may take up to 26 workweeks in a 12-month period to care for the service member. This leave will be combined with any other FMLA



Office of Personnel and Safety

leave the employee takes in the same period, and the combined total is not to exceed 26 workweeks. Also, this leave is available only during a single 12-month period.

- **Qualifying Military Exigency:** This provision make the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving n the National guard or Reserves to use for "any qualifying exigency". arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. Qualify exigency is defined as 1) short-notice deployment;(2) military event and related activities; (3)childcare and school activities;(4) financial and legal arrangements;(5) counseling (6) rest and recuperation;(7) post-deployment activities; and (8) additional activities not encompassed in the other categories. but agreed to by the employer and employee. This leave will be combined with any other FMLA leave the employee takes in the same period, and the combined total is not to exceed 12 workweeks.

Pay Status

Unpaid family medical leave will be provided only after the employee has exhausted all entitlement to paid sick leave when the reason for requesting such leave is a "serious health condition" of the employee (including childbirth by the employee). At the employee's option, any paid annual leave (vacation) or personal leave to which the employee is entitled at the commencement of the family medical leave may also be utilized as part of the family medical leave. This also applies in the event of adoption by the employee, foster care placement in the employee's home or childbirth by the employee's spouse.

In the event of a "serious health condition" of an eligible member of the employee's family (as defined above), the employee may elect to use sick leave, accrued annual leave or personal leave, prior to the commencement of unpaid family medical leave. This includes adoption by the employee, foster care placement in the employee's home or childbirth by the employee's spouse.

Paid leave time taken by an employee shall not be counted against an employee's 12 week entitlement period.

Notice and Request Requirements

Employees are encouraged to notify their Department Head of the need for any family medical leave as far in advance as possible. All requests for family medical leave must be submitted in writing to the Department Head for approval. An employee must provide at least 30 days advance notice when the reason for requesting leave is "foreseeable" (i.e. birth or adoption or planned medical treatment). Further, the employee must make all reasonable efforts to schedule such leave so as not to disrupt City operations.

In cases of leave for serious illness, the employee will be required to report periodically on his or her medical and leave status. **Any employee or family medical leave for 30 or more consecutive days must give 2 weeks' notice of intent to return to work. Failure to do so may result in a delay of the employee's return to duty.**

Medical Certification

A medical certification will be required to support any initial request for family medical leave or any extension thereof (up to the 12 weeks maximum entitlement) due to a "serious health condition" of the employee or a qualifying member of the employee's family. An employee may request to take intermittent leave or to work a reduced schedule only if medically necessary and verified by a physician.

In its sole discretion, the City may require a second medical opinion and periodic recertification (at the City's expense). In the event the first and second opinion differs, the City (at its own expense) may require the binding opinion of a third health care provider, approved jointly by the City and the employee.



Office of Personnel and Safety

Medical Insurance Coverage

During any approved family medical leave, the City will continue group medical coverage consistent with the requirements of the law (up to a maximum of 12 weeks per 12 month period). The City may exercise its rights pursuant to the law to collect and/or recover either a portion or the entire premium paid for maintaining an employee's (and dependent family members' coverage, if applicable) group medical coverage in cases where the employee fails to return to work from family medical leave or in any other circumstances permitted by law. Failure by the employee to make any required medical premium payments within fifteen (15) days of notification by the Comptroller's Office may result in the immediate discontinuation of such coverage and/or may subject the employee to the provisions of COBRA.

Return to Duty

An employee who takes family medical leave due to his/her own serious health condition must provide satisfactory medical certification of his/her ability to perform all assigned duties **before** he/she will be allowed to return to work. Return to Work Medical Certification Forms are available in the Personnel and Safety Office and **must** be completed and returned to the Personnel and Safety Office at least 2 weeks prior to the date the employee intends to return to work. In addition, an employee **must** inform his/her department head of their intent to return to duty at least 2 weeks prior to the date of return. Failure to do so may result in a delay of the employee being allowed to return to work.

Upon return from an approved family medical leave, the employee will be restored to his/her original position or a fully equivalent position. All benefits accrued prior to the start of such leave will remain intact (unless utilized during the course of such leave). No additional benefits shall accrue, however, during any periods of **unpaid** family medical leave.

Information

Future information regarding the City's Family Medical Leave Policy or procedures may be obtained from the Personnel and Safety Office.

Military Leave

CHECK LIST FOR MILITARY LEAVE NOTIFICATIONS AND REQUESTS

- 1.0 NOTIFICATION:** Upon receiving a notification from your unit of activation / mobilization / deployment, coordinate with the following. In lieu of official orders, an email from your unit is sufficient.
- Personnel Director and Sr. Payroll Clerk and Department Head. The Personnel Director is responsible for approval of the leave. Pursuant to City of Binghamton Code of Ordinances § 124-38. **Continued pay and benefits for active military personnel. [Added 10-15-2001 by Ord. No. 01-127; Amended 5-17-2004 by Ord. No. 04-56; Amended 3-16-09 by Ord. No. 10-2009; Amended 5-7-2014 by Ord. No. 14-21],** Paragraph "D" states notice **MUST** be made within 5 business days of receipt of notice. It is suggested both hard and digital notice are utilized. Members should keep copies of all correspondence.
- 2.0 COMMUNICATION:** ~~Keep lines of communication open.~~ Unit mobilization notices often occur many weeks to many months before deployment or departure dates. Though a formal written notice was completed, periodically provide status updates to supervisory personnel.
- 3.0 COORDINATE:** Prior to departure, several items are **required** to be addressed with the payroll office.
- 3.1** Review your NYS mandated military day balance with the Sr. Payroll Clerk.
 - 3.2** Though not required, military members may elect to receive pay for vacation, personal and / or accumulative leave days to extend full pay status. Please discuss this with the Sr. Payroll Clerk. For example: *Active duty dates 1 February through 31 July. Above mentioned days off are scheduled October through December. The service member can elect to receive pay for those days. Upon return to work, days previously scheduled off will be worked.* NOTE: All days are only accumulated if worked. Approximately one 24-hours shift is earned for each three months of scheduled work.
 - 3.3** If you have applied for and have been granted continued pay as outlined in Code of Ordinances § 124-38, you must notify the payroll office (Ext. 7011) of your base pay. Notice shall be provided on your unit letterhead and signed by your unit commander or authorized representative. ONLY base pay will be provided. Any other payments received (hazardous duty, jump pay, family separation pay, etc.) are MILITARY benefits, NOT pay. Therefore, should NOT be provided or disclosed to city personnel. Nor are you required to submit a copy of your military W-2 or LES.
 - 3.4** All, payroll related issues shall be coordinated in writing to the payroll office at least 7 business days prior to departure. Again both hard and digital copies should be completed.
 - 3.5** Are you currently covered by the city health insurance? If so, do you intend to continue coverage during activation or will you utilize the military insurance? If you elect to utilize only the military insurance, you are eligible to receive the union negotiated insurance buyout option from the city. If your military insurance starts mid-month, you will be carried until the end of the month with the City and will be required to pay your portion. Prior to your return, you must notify the Sr. Payroll Clerk of your return date to coordinate restarting your health insurance as you want to avoid any lapse in coverage.

4.0 CONTACT INFORMATION: Ensure the immediate supervisor and shift commander have current contact information. It behooves you to stay in occasional to regular communication. If activated during vacation selection time, request your shift commander forward a copy of the vacation request form.

Please provide the Sr. Payroll Clerk with the name and contact information of your power of attorney for any pay issues that may arise while you are gone.

§ 124-38. Continued pay and benefits for active military personnel. [Added 10-15-2001 by Ord. No. 01-127; Amended 5-17-2004 by Ord. No. 04-56; Amended 3-16-09 by Ord. No. 10-2009; Amended 5-7-2014 by Ord. No. 14-21]

A. That the Council of the City of Binghamton authorizes payment to city employees who are required to report for active duty pursuant to a United States Code Title 10 "Mobilization" (as defined in section C below) for an OCONUS (Outside Continental United States) tour or CONUS (Continental United States) tour for homeland security as a reservist or members of the National Guard the difference between their military pay and their city pay during such mobilization. This section does not apply to voluntary service or training.

B. The Council also authorizes the provision of health insurance benefits, if not provided by the United States Military, during such mobilization and for a period up to six months after demobilization from said active duty. The employee will contribute to the cost of such health insurance in the same amount as if the employee was working for the City.

C. "Mobilization" shall include required training and any accrued leave time associated with such mobilization, as defined by United States Code Title 10.

D. All requests for benefits under this section will be submitted in writing to the Director of Personnel and Safety and the Bureau or Department Head within five (5) business days of the employee's receipt of the Order or notice for mobilization. The written notice to the Director of Personnel and Safety and the Bureau or Department Head will include a copy of the Order or notice requiring mobilization and the anticipated dates of mobilization. The final determination regarding eligibility under this section will be made by the Director of Personnel and Safety.

E. This Ordinance shall automatically expire on May 31, 2018.

3/2016

MRO processes related to drug testing

(ii) Assertion by the employee that his or her personal characteristics (e.g., with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).

(2) Information from a medical evaluation under paragraph (g) of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of §40.93(b).

(i) A finding or diagnosis by the physician that an employee has a medical condition, in itself, does not constitute a legitimate medical explanation.

(ii) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).

[65 FR 79526, Dec. 19, 2000, as amended at 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004]

§ 40.147 [Reserved]

§ 40.149 May the MRO change a verified drug test result?

(a) As the MRO, you may change a verified test result only in the following situations:

(1) When you have reopened a verification that was done without an interview with an employee (see §40.133(d)).

(2) If you receive information, not available to you at the time of the original verification, demonstrating that the laboratory made an error in identifying (e.g., a paperwork mistake) or testing (e.g., a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. You verified the test results as reported to you. Then the laboratory notifies you that it mixed up the two test results, and X was really negative and Y was really positive. You would change X's test result from positive to negative and contact Y to conduct a verification interview.

(3) If, within 60 days of the original verification decision—

(i) You receive information that could not reasonably have been provided to you at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/metabolite(s) in the employee's specimen; or

(ii) You receive credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists.

Example to Paragraph (a)(3): If the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, you may change the test result from positive to negative if you conclude that the prescription provides a legitimate medical explanation for the drug(s)/metabolite(s) in the employee's specimen.

(4) If you receive the information in paragraph (a)(3) of this section after the 60-day period, you must consult with ODAPC prior to changing the result.

(5) When you have made an administrative error and reported an incorrect result.

(b) If you change the result, you must immediately notify the DER in writing, as provided in §§40.163–40.165.

(c) You are the only person permitted to change a verified test result, such as a verified positive test result or a determination that an individual has refused to test because of adulteration or substitution. This is because, as the MRO, you have the sole authority under this part to make medical determinations leading to a verified test (e.g., a determination that there was or was not a legitimate medical explanation for a laboratory test result). For example, an arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008]

§ 40.151 What are MROs prohibited from doing as part of the verification process?

As an MRO, you are prohibited from doing the following as part of the verification process:

(a) You must not consider any evidence from tests of urine samples or other body fluids or tissues (e.g., blood or hair samples) that are not collected or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result or a DNA test result questioning the identity of his DOT specimen, you are required to ignore this test result.

(b) It is not your function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open urine containers where other people could access them).

(c) It is not your function to determine whether the employer should have directed that a test occur. For example, if an employee tells you that the employer misidentified her as the subject of a random test, or directed her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, you must inform the employee that you cannot play a role in deciding these issues.

(d) It is not your function to consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell you that someone slipped amphetamines into her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, you must not declare a test as negative based on an explanation of this kind.

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted).

(f) You must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. You also must not accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.

(g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP, 6-AM, MDMA, MDA, or MDEA in a specimen.

(h) You must not accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.

(i) You must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce urine with no detectable creatinine. There are no physiological means through which a person can produce a urine specimen having this characteristic.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 75 FR 49863, August 16, 2010]

§ 40.153 How does the MRO notify employees of their right to a test of the split specimen?

(a) As the MRO, when you have verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, you must notify the employee of his or her right to have the split specimen tested. You must also notify the employee of the procedures for requesting a test of the split specimen.

(b) You must inform the employee that he or she has 72 hours from the time you provide this notification to him or her to request a test of the split specimen.

(c) You must tell the employee how to contact you to make this request. You must provide telephone numbers or other information that will allow the employee to make this request. As the MRO, you must have the ability to receive the employee's calls at all times during the 72 hour period (e.g., by use of an answering machine with a “time stamp” feature when there is no one in your office to answer the phone).

(d) You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see §40.173).

(e) You must tell the employee that additional tests of the specimen (e.g., DNA tests) are not authorized.

§ 40.155 What does the MRO do when a negative or positive test result is also dilute?

(a) When the laboratory reports that a specimen is dilute, you must, as the MRO, report to the DER that the specimen, in addition to being negative or positive, is dilute.

(b) You must check the “dilute” box (Step 6) on Copy 2 of the CCF.

(c) When you report a dilute specimen to the DER, you must explain to the DER the employer's obligations and choices under §40.197, to include the requirement for an immediate recollection under direct observation if the creatinine concentration of a negative-dilute specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/dL.

(d) If the employee's recollection under direct observation, in paragraph (c) of this section, results in another negative-dilute, as the MRO, you must:

(1) Review the CCF to ensure that there is documentation that the recollection was directly observed.

(2) If the CCF documentation shows that the recollection was directly observed as required, report this result to the DER as a negative-dilute result.

(3) If CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov.9, 2004; 73 FR 35971, June 25, 2008]

§ 40.157 [Reserved]