

**Articles of Agreement**

**between**

**THE CITY OF EL PASO, TEXAS**

**and**

**LOCAL 51**

**INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, INC.**

**September 1, 2022 to August 31, 2026**

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## **ARTICLE I PURPOSE OF AGREEMENT**

**Section 1.** This Agreement, entered into this — day of August, 2022, is between the CITY OF EL PASO, TEXAS, hereinafter called the "City," and LOCAL 51, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, INC. hereinafter called the "Association."

**Section 2.** The purpose of this Agreement is to promote harmonious relationships between the City and the employees covered hereby and to fix the rates of pay, hours of work, and the terms and conditions of employment for those employees. This document recognizes the inherent dignity of the parties to this Agreement and by signing both parties agree to work together to maintain a favorable working environment where the value of each individual is recognized and respected.

**Section 3.** The use of the masculine gender in this Agreement shall be deemed to include the feminine gender, unless the reference is to a specific male individual.

## **ARTICLE II DEFINITIONS**

The following definitions apply to this Agreement:

**Anniversary Date** - for Pay Purposes - for those employees holding the rank of fire fighter, the Anniversary Date shall be the date of graduation from the Training Academy. The date for all other fire fighter ranks shall be the date of their last promotion. All fire fighters employed as of September 1, 1984 shall retain their current anniversary date unless at some future date they are promoted to a higher rank.

The date for FMS employees not certified to fight structural fires shall be their last promotion date. The date for ARFF shall be as shown in Appendix E.

**Agreement** - means the Articles of Agreement between the City of El Paso and International Association of Fire Fighters, Local 51, Inc.

**Bargaining Agent** - means the International Association of Fire Fighters, Local 51, Inc. and their designated bargaining committee, so long as they meet the requirements of Section 174.101 of the Local Government Code.

**City** - means the City of El Paso.

**Charter or City Charter** - means the Charter adopted by the City of El Paso in effect as of the date this Agreement is approved by City Council.

**Civil Service Rules** - means the rules adopted by the Civil Service Commission in effect as of the date this Agreement is approved by City Council.

**Employer** - means the City of El Paso.

**Employee** - means fire fighter.

**56-hour employee** – means an employee whose work schedule is determined in accordance with the cycle set forth in Appendix B hereof.

**Fire fighter** - means any employee recognized as meeting the definition in Section 174.003 of the Local Government Code.

**Grievance** - means a dispute or a disagreement involving interpretation or application or alleged violation of any provision of this Agreement.

**Line of Duty** – for purposes of Article XVIII, Section H, is defined as any activity performed while on duty, unless such activity is prohibited by written prohibition, direct order, or is a violation of law, or such activity is purely personal.

**Union** - means the International Association of Fire Fighters, Local 51, Inc. so long as it meets the requirements of Section 174.101 of the Local Government Code.

### **ARTICLE III RECOGNITION**

The City recognizes the Association as the exclusive bargaining agent for a unit consisting of each permanent paid employee in the City's Fire Department, except the Fire Chief. The parties hereto agree that no portion of this Agreement shall be applicable to, and the Association will not seek to represent, any employees outside the described unit.

### **ARTICLE IV NO STRIKE, NO LOCK OUT**

**Section 1.** The City agrees that it will not lock out the employees covered by this Agreement.

**Section 2.** The Association agrees that neither it nor any of the employees covered by this Agreement will sanction, call, acquiesce, or engage in, or fail to make a good faith effort to discourage, any strike; sit-down; slow-down; sick-out; sympathy strike; picketing for the purpose of inducing, influencing, or coercing a change in the conditions or compensations or the rights, privileges, or obligations of employment; or any other work stoppage or interference with or against the City for any reason. The Association shall be deemed to have made "a good faith effort to discourage" the conduct prohibited by this Section when, promptly upon learning (or being notified) that one or more employees contemplate, have threatened, or have undertaken any of the prohibited conduct, it publicly disavows the threatened or actual conduct prohibited by this Section and publicly announces any such conduct is prohibited both by law and by this Agreement; it provides actual notice of the same sort to each person whom it learns (or is notified) contemplates, has threatened, or has undertaken any such activity and formally urges each such employee to refrain from or immediately cease any and all such conduct; and, to the extent permitted by the City, it posts a notice to such effect at all places where

notices to employees or members are normally posted.

**Section 3.** It is expressly understood and agreed that the refusal or failure of any employee or employees covered by this Agreement to cross or work behind the picket line of any association, union, or other organization or person shall constitute a violation of this Agreement.

**Section 4.** Any employee covered by this Agreement who participates in any action prohibited by this Article may be discharged, suspended, and/or demoted, and/or otherwise disciplined at the option of the City. This Section shall be cumulative of any other rights the City may have by statute, at common law, or in equity against the Association and/or the employees covered by this Agreement.

## **ARTICLE V CITY'S RETAINED PREROGATIVES**

**Section 1.** Except to the extent expressly abridged by this Agreement, the City reserves and retains, solely and exclusively, all of its inherent and/or statutory rights to operate the City government.

**Section 2.** The direction of the City's working forces, including, by way of illustration only and not of enumeration, the right to plan, direct, expand, control, initiate, reduce, transfer, or terminate specific operations, duties, or functions; to hire, assign, transfer, promote, or refrain from any of the foregoing; to discharge, suspend, demote, reprimand, or otherwise discipline employees pursuant to the current City Charter or the Civil Service Rules; to introduce any new or improved methods or facilities; subcontract functions other than actual fire fighting activities and emergency basic and advanced life support, except that in cases of system overload or multiple patient incidents, the Fire Chief or his designee, may request assistance from agencies that the City has a franchise or contract with, for the purpose of providing emergency aid assistance; and to make such rules and regulations as may be necessary or desirable for the operation of the City continues to be vested exclusively in the City.

**Section 3.** The initial probationary period for new employees shall be the time period in which the employee works, to include for purposes of this section all hours taken for holiday leave and a maximum of 36 hours of sick leave, a total of 2912 hours. A probationary employee may be discharged at any time at the discretion of the Chief without appeal to the Commission.

**Section 4.** That the parties agree that the Fire Chief, at his sole discretion, may develop and implement a program for the purpose of recognizing outstanding service and acts of distinct heroism by fire fighters, on or off duty, and the members of the public. Such program shall be a management prerogative and is intended only for the limited purposes established by the Chief and shall not grant or confer any rights to employees under this Agreement, nor shall the implementation of such a program become or constitute a past practice of the City as addressed in Article VI, Section 4. The parties agree that as part of such a program, the Chief, at his sole discretion, may award additional hours of vacation or other leave to top fire fighter recipients of program awards.

## **ARTICLE VI EXISTING CONDITIONS**

**Section 1.** Except to the extent abridged or modified elsewhere in the Agreement, any economic benefits set forth in the current City Charter, Ordinance No. 8064, the Rules and Regulations of the Civil Service Commission, the Rules and Regulations of the Fire Department, and the applicable state statutes and amendments thereto, as of the effective date of this Agreement, shall not be changed for the duration of this Agreement, except pursuant to the procedure established in Article XXXII, Section 2.

**Section 2.** Physical items used by employees shall continue to be furnished as they have been in the past; that is, those types of items which have been furnished by the City shall continue to be furnished by the City and those types of items which have been furnished by employees shall continue to be furnished by employees. The question of what types of items have been furnished by the City shall be resolved by reference to City purchase orders for the past three (3) years. The parties agree that this provision shall not be interpreted so as to preclude resort to improved technology.

**Section 3.** Any changes in wages, hours, terms and conditions of employment, and other benefits granted by the Texas Legislature or decreed by a court of competent jurisdiction requiring the City to compensate, remunerate, or otherwise assist employees after the effective date of this Agreement shall not alter the terms of this Agreement during the life of said Agreement. This provision shall not unfavorably affect employees as to any changes in wages, hours, terms and conditions of employment, and other benefits granted by the Texas State Legislature requiring the State of Texas to compensate, remunerate, or otherwise assist employees after the effective date of this Agreement. Any changes in wages, hours, terms and conditions of employment, and other benefits granted by the Texas State Legislature requiring the State of Texas to compensate, remunerate, or otherwise assist employees shall not be incorporated into this Agreement; nor shall the City be required at any time to pay any share of said wages, hours, terms and conditions of employment, and other benefits. Any reduction or elimination of wages, hours, terms and conditions of employment, and other benefits by the Texas State Legislature that previously required the City to compensate, remunerate, or otherwise assist employees after the effective date of this Agreement shall not alter the terms of this Agreement during the life of said Agreement.

**Section 4.** Past practices currently in effect and not specifically covered in this Agreement will be continued.

## **ARTICLE VII RULES AND REGULATIONS**

**Section 1.** The Association and the City recognize that increased productivity will require the continuation of improvements and technological progress through new methods, techniques, and equipment which will contribute to improved quality and efficiency of fire protection for the citizens of El Paso. The Association and the City will act in good faith and with a cooperative attitude to achieve these ends.

**Section 1a.** The Association agrees that the employees covered by this Agreement shall comply with all Fire Department rules and regulations, including those relating to conduct and work performance.

**Section 2.** There shall be established a committee composed of seven members, one of whom will be the Chief of the Department or his designee, three of whom shall be appointed by the President of Local 51, and three of whom shall be appointed by the Chief of the Department. The committee shall address any matters of mutual concern.

**Section 3.** This committee shall also update and maintain standard departmental rule and regulation manuals that are clear and functional.

**Section 4.** This Article is not intended to abridge or modify Article V or Article VI conditions.

**Section 5.** The rules and regulations committee shall meet at the request of either the President of Local 51 or the Chief. The committee shall meet and make revisions no less than once in a calendar year. Revisions shall be provided electronically to all work stations no later than 45 days after the end of each year. The City will provide an electronic copy to each employee no later than 90 days after the end of each year.

## **ARTICLE VIII PERSONNEL FILES**

**Section 1.** There shall be one official personnel file, which will be kept at the City's Human Resources Department. Prior to permanently placing any of the following items in the employee's personnel file, the City shall notify any employee on the next working shift of all material concerning investigations, complaints, reprimands, counseling sessions for violations of any rules, regulations, or policies that might be considered detrimental to the employee's position, advancement, or future with the Department that are to be placed in the employee's personnel file. The Fire Department may keep an investigatory or disciplinary file, separate and apart from the official personnel file.

**Section 2.** An employee shall be allowed to review any of his own personnel file under supervision at any reasonable time and may file written objection to any matter contained therein.

**Section 3.** Any alleged violation of this clause or written objection to the content of a personnel file shall be subject to the grievance procedure of this Agreement.

## **ARTICLE IX WAGES AND OTHER COMPENSATION**

**Section 1.** Wages shall be paid in accordance with the Wage Scales attached hereto as Appendix A and reflect the following pay increases in the amount specified below:

- 3% Effective upon signing the agreement the first pay period following September 1, 2022;
- 3% Effective the first pay period following September 1, 2023;



- 3% Effective the first pay period following September 1, 2024; and
- 3% Effective the first pay period following September 1, 2025.

All employees shall receive a step increase on their anniversary date and shall continue thereafter to receive step increases on each succeeding anniversary date until reaching the top step in their classification. These step increases shall be automatic. Any employee at the top step in the classification, upon receiving a promotion to a higher classification and entering said classification at a step other than the top step, shall receive a step increase on his anniversary date, and an additional step increase on each succeeding anniversary date, until such time as the employee reaches the top step in the new classification.

The salary of a person covered by this Agreement will not be reduced upon promotion to another position, the minimum salary for which is less than that received at the time of promotion. In such case, advancement will be equal to a step increase in pay.

A Fire Medical employee in Grade FS1 who successfully completes the Academy and obtains his structural fire certification will be designated as a fire fighter.

Fire Paramedics in the Grade FS2 and Medical Lieutenants in the Grade FS4 who successfully complete the Academy and obtain their structural fire certification will retain their rank.

**Section 2.** A 56-hour employee's regular straight-time hourly rate of pay will be determined by dividing the employee's annual salary as indicated by reference to Appendix A by 2912. A 40-hour employee's regular straight-time hourly rate of pay shall be determined by dividing the employee's annual salary as determined by reference to Appendix A by 2080.

**Section 3.** An employee upon graduation from the Training Academy shall be entitled to and receive all benefits as set out in this Agreement.

**Section 4.** Pensions for employees previously covered under the Article VI Wages and Other Compensation of the 1994-1996 Articles of Agreement between City of El Paso and the El Paso Public Service and Safety Employees Association shall continue to be paid in amounts in accordance with City Charter and the City's Pension Ordinance subject to approval by the City Pension Board and City Council. The City and the Association recognize that the members of the ARFF unit and medical personnel who are not certified as fire fighters are currently prohibited from being members of the Fire and Police Pension Fund. If, at any time in future, the members of the unit are admitted to the Fire and Police Pension Fund, after meeting the qualifications therefore, the City will comply with any legal requirements regarding contributions to same, except that any such payments shall be on a prospective, and not retroactive, basis. This in no way obligates the City to make or change past contributions made to the City Employees' Pension Fund on behalf of the members in the unit.

**Section 5.** Pension contributions shall be made on all cash payments under this Article.

**Section 6.** An employee who is required to accept responsibilities and carry out the duties of a position or rank above the rank the employee normally holds shall be paid an additional 5% above

the employee's regular rate of pay while so acting.

The City may transfer employees, as it has in the past, but shall not transfer, if the sole purpose is to avoid payment for working out of class.

Out-of-class pay shall not be calculated until such time as an employee has worked more than one (1) hour. If more than one (1) hour is worked, the calculation shall include total hours worked. Any voluntary trading off of working days shall not qualify an employee for additional compensation.

**Section 7.** Employees who are assigned to 40-hour work schedules and work between the hours 1500 hours and 2300 hours shall receive a premium pay of thirty cents per hour; 40-hour employees who are assigned duty and work between the hours 2300 hours and 0700 hours shall receive a premium pay of sixty cents per hour. Premium pay shall not apply to 40-hour personnel assigned to Operations.

**Section 8.** Employees are entitled to longevity pay of five dollars per month per year of continuous City service with the El Paso Fire Department, with a maximum amount not to exceed one hundred twenty-five dollars per month.

## **ARTICLE X OVERTIME PAY**

**Section 1.** All hours paid for in excess of fifty-six (56) hours in a work week for 24-hour shift employees shall be determined by dividing his annual salary, as indicated by reference to Appendix A, by 2080 times one and one-half (1 ½) provided however, if such excess hours are worked by an employee who is conducting or participating in Comsar Training, Hazardous Material Training, Dive Rescue Training and Urban Search and Rescue Training, including any travel time compensated pursuant to Section 3 relating to such training, the employee shall receive compensatory time at a rate of one and one-half (1 ½) hours for each hour of employment spent in or relating to such training for which overtime compensation is required by this section.

**Section 2.** For an employee regularly scheduled to work forty (40) hours per week, all hours paid for in excess of forty (40) hours in a work week shall be paid at a rate of time and one-half (1 ½) the employee's regular straight-time hourly rate of pay provided however, if such excess hours are worked by an employee who is conducting or participating in Comsar Training, Hazardous Material Training, Dive Rescue Training and Urban Search and Rescue Training, the employee shall receive compensatory time at a rate of one and one-half (1 ½) hours for each hour of employment spent in or relating to such training for which overtime compensation is required by this section.

**Section 3.** Any employee who is called to work in excess of the employee's regularly scheduled hours of work, other than for the types of training set forth above, shall be paid for the time actually worked until the employee is relieved by the appropriate commanding officer. If the employee is called back, one hour of travel time will be paid in addition to actual time worked. The one hour travel time provided in this Section shall be inapplicable where the additional working time is immediately prior to or following any other time worked by that employee.

**Section 4.** Employees selected to help write examinations, or serve on a designated labor/management committee, shall be paid overtime pay for time actually worked on these examinations or committees while off duty, and one hour travel time.

**Section 5.** 56-hour employees trained to work at the Communications Center may be called to work at the Center on their scheduled days off, provided the employees do not work more than 48 hours straight without a 24-hour break. After an employee has reported for duty, but then is rescheduled to report for duty at Communications, the employee shall be paid for the time actually worked and one hour of travel time.

**Section 5a.** 56-hour employees trained to work at the Communications Center may be rescheduled to work at the Center for 8 hours in exchange for 24 hours, in order to maintain skills.

**Section 5b.** Employees rescheduled to work at the Communications Center under Section 5a of this Article will be considered to have worked 24 hours for FLSA purposes and the rescheduling will not cause the forfeiture of FLSA Overtime Pay (FOH).

**Section 6.** If an employee is required to appear in court due to events that occurred while on duty or for job-related matters, and the court date is not during working hours, such employee shall be compensated for the time actually worked in accordance with this Article, and one hour of travel time.

**Section 7.** Pension contributions will be made on all cash payments for overtime pay.

**Section 8.** The City will pay for all hours actually worked in excess of 204 hours in a 27-day work cycle for fire suppression personnel, at the rate of time and one-half (1½) the employee's regular, straight-time hourly rate of pay, in accordance with the Fair Labor Standards Act, except when the employee has worked excess hours to conduct or participate in Comsar Training, Hazardous Material Training, Dive Rescue Training, and Urban Search and Rescue Training, such employee shall receive compensatory time off as set forth in Sections 1 and 2 above.

**Section 9.** The City shall not reduce an employee's regular schedule for the purpose of avoiding or reducing the payment of overtime.

**Section 10.** Employees who accrue compensatory time under this Article may accrue a maximum of 144 hours of compensatory time, however the employee shall only be paid for a maximum accrual of 80 hours upon termination of employment. The employee shall be allowed to use the accrued compensatory time under the same policies that exist for the use of vacation days.

## **ARTICLE XI INCENTIVE PAY**

**Section 1.** Fire Protection Certification. The City shall pay monthly each employee holding a certificate granted by the Texas Commission on Fire Protection Personnel Standards and Education

as follows:

a.	Master Certificate	\$124.00
b.	Advanced Certificate	\$ 94.00
c.	Intermediate Certificate	\$ 64.00

Beginning first pay period following September 1, 2024:

a.	Master Certificate	\$174.00
b.	Advanced Certificate	\$144.00
c.	Intermediate Certificate	\$114.00

**Section 2.** Paramedic Pay. The City shall pay monthly, \$300.00 paramedic certification pay to employees who are locally credentialed as paramedics and have successfully completed structural firefighting training and are certified by the Texas Commission as fire fighters. Beginning the first pay period following September 1, 2023, paramedic certification will increase to \$400 pay for those on a 56-hour assignment.

**Section 2a.** Employees who sign up and are selected to attend the Fire Academy's Paramedic Academy will receive a \$250 sign on incentive. An additional \$250 will be received upon paramedic certification and local credentialing.

**Section 2b.** Paramedic Assignment Pay. Effective the first pay period beginning after the effective date of this Agreement, The City shall pay locally credentialed Paramedics an amount equal to 5% more than the rate the Paramedic would receive pursuant to the Wage Scales set forth in Appendix A for time actually worked on an ambulance.

**Section 2c.** Basic Assignment Pay. The City shall pay locally credentialed Emergency Medical Technicians an amount equal to 5% more than the rate that the EMT would receive pursuant to the Wage Scales set forth in Appendix A for time actually worked on an ambulance.

**Section 3.** Education Pay. Effective with the first pay period beginning after the effective date of this Agreement. The City shall pay each employee holding an Associate's degree granted by an accredited college or university the sum of \$100.00 per month. The City shall pay each employee holding a Bachelor's degree granted by an accredited college or university the sum of \$150.00 per month. The City shall pay each employee holding a Master's degree granted by an accredited college or university the sum of \$200.00 per month. This section shall apply only to the highest degree held by the employee. Fire fighters who have not provided appropriate documentation to verify that they have the above degrees will not be entitled to the educational incentive pay until such documentation is provided.

Beginning the first pay period following September 1, 2025:

Associates degree	\$150 per month
Bachelor's degree	\$200 per month

Master's degree                      \$250 per month

**Section 4.** To ensure that records are accurate and incentive pay is timely issued, fire fighters are responsible for reporting and providing proper documentation to the Fire Chief or his designee to show that the fire fighter has completed training and education received. Fire fighters are not entitled to retroactive incentive pay. Incentive pay shall begin on the date that the fire fighter has reported and provided the proper documentation to the Fire Chief or his designee.

**Section 5.** Effective the first pay period beginning after the effective date of the Agreement, the City shall pay \$75.00 per month to the employees who are assigned to the following teams:

Hazardous Materials Team: a maximum of 15 employees per shift for a total of 45 employees.

De-Con Team: a maximum of 12 employees per shift for a total of 36 employees.

Special Rescue: a maximum of 6 employees per shift for a total of 18 employees.

COMSAR: a maximum of 10 employees per shift for a total of 30 employees.

Water Rescue: a maximum of 7 employees per shift for a total of 21 employees.

ARFF: a maximum of 10 employees per shift for a total of 30 employees.

Fire/Arson Investigators: a maximum of 16 peace officers assigned to the Arson Division.

Provided however no employee shall be entitled to receive more than one specialty pay under this section.

## **ARTICLE XII EXTRA BOARD**

**Section 1.** For the duration of this Agreement, an Extra Board shall be maintained with a procedure to be established by the Chief.

**Section 2.** In order to maintain the number of employees per Company to at least three (3) or more, the City shall have the right to utilize the Extra Board.

**Section 3.** This Extra Board shall consist of a call list where an employee volunteers his service to be paid at one and one-half (1½) times the employee's regular straight-time rate.

**Section 4.** Any employee called to work from the Extra Board list that reports to work, shall be paid for any time worked at the Extra Board rate of pay. If an employee works six (6) hours or less or is advised that the employee's services are not needed at the time the employee reports to work, the employee shall be paid one (1) hour of Travel Time at the Extra Board rate of pay. The Travel Time provided for in this section shall be inapplicable when the additional working time is immediately before or following the employee's regular scheduled work.

**Section 5.** Any employee called to duty from the Extra Board call list shall have no increased

sick leave benefits, vacations, or any other benefit, except as provided in Article IX, Section 6 and except that pension payment will be paid on the payments to said employee.

**Section 6.** The Extra Board call list shall never be used in lieu of existing staffing.

**Section 7.** Any employee called to work Extra Board before the end of their shift, will be coded extra board immediately following their shift with no interruption in pay.

### **ARTICLE XIII UNIFORM ALLOWANCE**

**Section 1.** The City shall furnish each member of the Bargaining Unit an initial set of uniforms as follows:

- a) For 40-hour employees: 5 shirts, 5 slacks, 1 pair of footwear, 1 belt, 1 tie, 1 coat, 3 pair of exercise shorts, and 3 exercise t-shirts;
- b) For 56-hour employees: 4 shirts that are made of flame resistant fabric or made from 100 percent cotton or cotton blend fabrics, 4 pants made of flame resistant fabric or made from 100 percent cotton or cotton blend fabrics (initial disbursement of uniforms will include 4 shirts and 4 pants upon hiring or promotion), 1 pair of footwear, 1 belt, 1 tie, 1 work jacket, 3 pair of exercise shorts, and 3 exercise t-shirts.

Each member shall be responsible for the appearance and upkeep of the uniform in accordance with Departmental Rules and Regulations regarding the same. Uniforms made of flame resistant fabric or made from 100 percent cotton or cotton blend fabric will be issued as replacements per the normal replacement schedule.

**Section 2.** The City shall replace each employee's required accessories and uniforms as they wear out due to normal wear and tear or where they are irreparably damaged in the line of duty, through no negligence of the employee. Each employee shall be responsible for replacing at the employee's cost any of the foregoing which the employee loses or irreparably damages through gross carelessness. The City shall determine whether any piece of clothing or equipment referred to in this Section is worn out and should be replaced.

**Section 3.** The City shall furnish to all peace officers of the Fire Prevention Division:

- A) A vest to each officer who requests one. If an officer requests and is provided with a vest, the officer shall wear the vest at all times while on duty, unless any specific duty would require otherwise, to be determined in the sole discretion of the Chief or his designee.
- B) Sufficient ammunition to load his weapon and sufficient ammunition for two reloads at all times.
- C) A copy of the Texas Penal Code, Texas Code of Criminal Procedure, Texas Motor Vehicle Laws, Texas Family Code, and The Controlled Substances Act.

## **ARTICLE XIV INSURANCE**

**Section 1.** All employees shall participate in one of the two City sponsored health benefit programs. Employees may elect to be covered by the Basic Plan or the Consumer Driven Health Plan (CDHP) as follows:

a) The Basic Plan and the Consumer Driven Health Plan of the City of El Paso Health Insurance Benefit Program will not be amended for employees covered by the Agreement during the terms of this Agreement without the mutual consent of the parties. Participation in such plan is subject to the employee contributing to such plan at the rate of contribution as agreed to by the parties and the rates agreed to by the parties shall not be amended during the terms of this Agreement without the mutual consent of the parties. Participation in such plan is further subject to all program and coverage requirements, policies and conditions as set by the City for such plan, and the requirements, policies and conditions shall not be amended during the terms of this Agreement without the mutual consent of the parties. The benefits provided are those stated in the Master Contract Document (hereinafter referred to as “Master Contract Document”) which is attached and incorporated herein as Appendix “F.” This agreement, and the Master Contract Document for health benefits adopted herein, shall control the available health benefits during the term of this agreement, for employees covered by this Agreement.

**For calendar year 2023, the employee contribution to the Basic Plan shall be:**

\$ 211.92 per month for employee coverage;  
\$ 496.35 per month for employee and spouse coverage;  
\$ 311.69 per month for employee and child(ren) coverage; or  
\$ 785.70 per month for employee and family coverage.

**For calendar year 2024, the employee contribution to the Basic Plan shall not exceed:**

\$ 258.54 per month for employee coverage;  
\$ 605.54 per month for employee and spouse coverage;  
\$ 380.26 per month for employee and child(ren) coverage; or  
\$ 958.56 per month for employee and family coverage.

**For calendar year 2025, the employee contribution to the Basic Plan shall not exceed:**

\$ 315.42 per month for employee coverage;  
\$ 738.76 per month for employee and spouse coverage;  
\$ 463.92 per month for employee and child(ren) coverage; and  
\$ 1,169.44 per month for employee and family coverage.

**For calendar year 2026, the employee contribution to the Basic Plan shall be:**

\$ 384.82 per month for employee coverage;  
\$ 901.29 per month for employee with spouse coverage;  
\$ 565.98 per month for employee and child(ren) coverage;  
\$ 1,426.72 per month for employee and family coverage.

**For calendar year 2023, the employee contribution to the Consumer Driven Health Plan shall not exceed:**

\$ 22.56 per month for employee coverage;  
\$ 120.17 per month for employee and spouse coverage;  
\$ 62.89 per month for employee and child(ren) coverage; or  
\$ 136.93 per month for employee and family coverage.

**For calendar year 2024, the employee contribution to the Consumer Driven Health Plan shall not exceed:**

\$ 27.52 per month for employee coverage;  
\$ 146.61 per month for employee with spouse coverage;  
\$ 76.73 per month for employee and child(ren) coverage;  
\$ 167.05 per month for employee and family coverage.

For calendar year 2025, the employee contribution to the Consumer Driven Plan shall not exceed:

\$ 33.57 per month for employee coverage;  
\$ 178.86 per month for employee with spouse coverage;  
\$ 93.61 per month for employee with child(ren) coverage; or  
\$ 203.81 per month for employee with family coverage.

**For calendar year 2026, the employee contribution to the Consumer Driven Plan shall not exceed:**

\$ 40.96 per month for employee coverage;  
\$ 218.21 per month for employee with spouse coverage;  
\$ 114.20 per month for employee with child(ren) coverage; or  
\$ 248.64 per month for employee with family coverage.

- i. In addition, employees covered under this Agreement shall be considered eligible employees under the City's Section 125 Cafeteria Plan.
- ii. Employees covered under this Agreement will have the City's prescription drug program as established by the plan requirements as approved by the City Council.

The prescription costs at participating pharmacies to the employee who elects coverage through either the Basic Plan or the Consumer Driven Plan for calendar years 2023-2026 will be:



For all plans, out of pocket maximum will include copays, deductible, and out of pocket expenses paid by member.

**For the Basic Plan:**

Preventative Rx covered at 100%

Mail Order or Retail as available (30 day supply)

Generic Member pays at 20% or max copay of \$10 or \$20. Preferred Brand Member pays at 20% or max copay of \$30 or \$40. Non-Preferred Member pays at 20% or max copay of \$45 or \$55. Mail Order or Retail as available (90 day supply)

Generic Member pays double the 30 day copay.  
Preferred Brand Member pays double the 30 day copay.  
Non-Preferred Brand Member pays double the 30 day copay.

**For CDHP Plan:**

Preventative Rx covered at 100%

Prescriptions subject to the deductible then covered at 100% Mail Order or Retail as available (30 day supply)

Generic Deductible waived at Prev drugs, Copays apply for Expanded Prev drug list.  
Preferred Brand Deductible waived at Prev drugs, Copays apply for Exp Prev drug list.  
Non-Preferred Brand Deductible waived at Prev drugs, Copays apply for Exp Prev drug list.

Mail Order or Retail as available (90 day supply)

Generic Deductible waived at Prev drugs, Copays apply for Exp Prev drug list.  
Preferred Brand Deductible waived at Prev drugs, Copays apply for Exp Prev drug list.  
Non-Preferred Brand Deductible waived at Prev drugs, Copays apply for Exp Prev drug list.

- iii. A Dental benefit program equivalent to that presently in effect shall also be provided; provided however, the City Dental Benefit Program for employees covered by this Agreement shall have a maximum amount allowed per member/dependent per year of \$1,000.00 and the employee contribution per pay period for such coverage shall be as follows:

	<u>1/1/2023</u>	<u>1/1/2024</u>	<u>1/1/2025</u>	<u>1/1/2026</u>
Employee Only	\$1.10	\$1.10	\$1.10	\$1.10

Employee & dependents     \$3.31                      \$3.31                      \$3.31                      \$3.31

- iv. In addition, all employees will be entitled to elect the Dental and Optical Benefit Program as is made available to non-uniformed employees. No pension contributions shall be made on any cash payments under this Section of Section 1 above.

**Section 2.** For the duration of this Agreement and for so long as the City will continue to make available such coverage at no additional cost to the City, pensioners and/or their families may participate in the City's benefit program by paying the entire premium in full. Pensioners and/or their families are subject to the City's benefit program requirements as well as the City's administrative policies and requirements.

**Section 3.** For the duration of this Agreement, the City shall maintain the term life and accidental death and dismemberment insurance policies to provide coverage in the same amount that is provided to civilian employees, but in no event in an amount of not less than \$15,000.00 for employees, and \$2,000.00 for the employee's spouse and \$1,000.00 for the employee's dependent children 14-days of age, but less than 19 years, unless the dependent is a full time student under 25 years of age.

**Section 4.** A temporary employee after sixty (60) days service shall be entitled to and receive all insurance benefits as set out in this Article.

**Section 5.** The City shall employ a person with insurance expertise who will, among his other duties, assist employees who, having filed their claims, have complaints or conflicts. He will also be responsible for counseling employees preparing for retirement, or survivors of deceased pensioners or employee of their entitlement for Health, Life or Dental benefits.

**Section 6.** The Association shall have the right to place one member on an Advisory Insurance Committee as established by the City Council. Should the City fail to establish or maintain such a committee, the City agrees to meet with the Association during the term of this Agreement regarding Health Benefits.

## **ARTICLE XV MILEAGE REIMBURSEMENT**

**Section 1.** An employee required to use his private automobile for Fire Department business or as a necessity in changing stations shall be compensated at the current rate established by the Internal Revenue Service.

**Section 2.** The Chief will establish the mileage between the stations.

**Section 3.** The City will accumulate sums earned by each employee pursuant to this Article for a period not to exceed six (6) months and pay such accumulated sums in a lump sum in June and December of each year.

## **ARTICLE XVI HOLIDAYS AND VACATIONS**

**Section 1.** Employees covered by this Agreement shall receive the following holidays: New Year's Day, Martin Luther King Birthday, Cesar Chavez Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Day, Employee's Birthday, and any day designated as a holiday by City Council, Ordinance No. 8064, or City Charter.

**Section 1a.** An employee shall have the option of taking his birthday holiday as provided in Section 4.5 of Ordinance No. 8064 or as part of his vacation. Employees may accumulate an unlimited number of birthdays over the course of their career and they will be paid separately for the total accumulation of these days apart from the vacation and holiday.

**Section 1b.** For 56-hour employees, the employee's birthday shall be treated as a full 24- hour holiday; all other holidays shall be treated as one day.

**Section 1c.** Whenever an employee changes from 112 hours biweekly to 80 hours biweekly, the employee's birthday holiday balance after conversion shall be reduced in half or when the employee changes from 80 hours biweekly to 112 hours biweekly, it shall be doubled.

**Section 1d.** A forty (40) hour employee will have the option of taking his vacation in increments of one-half (½) day or whole day as provided by Ordinance 8064. A one-half day increment for forty-hour employees who are assigned to work ten hours per day shall be defined as a five-hour increment (half shift).

**Section 1e.** A 56-hour employee shall be allowed to take his vacation time in ½-day (6 hour) increments as long as the time is within the prescribed maximum vacation spots set out by the Department.

**Section 2.** An employee shall accrue vacations in accordance with the following schedule:

<b>YEARS OF SERVICE</b>	<b>VACATION DAYS MONTHLY ACCRUAL</b>	<b>VACATION DAYS ANNUAL ACCRUAL</b>
0-10	1¼	15
10-15	1½	18
15-20	1¾	21
Over 20	2	24

For the purpose of this Agreement, a "day" shall be deemed to be 12 hours for 56-hour employees and an 8-hour period for employees working 40 hours per week.

**Section 2a.** Forty-four (44) vacation slots per shift shall be maintained for the purpose of allowing a minimum of thirty-two (32) vacation slots, four (4) birthday and eight (8) two-day vacation slots per shift. Unassigned vacation and birthday slots shall be made available for two- day vacations.

**Section 2b.** Two (2) shift supervisors at Communications shall be allowed on vacation during the same period. Distribution of all additional vacation slots within the various ranks will be made by the Chief as provided in the Departmental Rules and Regulations.

**Section 3.** An employee is expected to use some vacation during each anniversary year. For purposes of clarification, 56-hour employees shall have one additional day which may be accumulated. This additional day shall be the day described in Section 1b of this Article.

**Section 4.** Employees shall be permitted to accumulate up to seventy-five (75) days of vacation and holiday time combined. Any excess over such accumulation shall be lost if such excess exists during the pay period in which the anniversary date falls, but not prior to the anniversary date. No employee who has applied for, but was unable to obtain, a vacation due to staffing shortages as determined by the Fire Chief or his designee shall lose any excess vacation and holiday days; instead the employee shall be required to take the next available vacation period.

**Section 5.** An employee who has accrued vacation and holiday time to his credit at the time of death, dismissal, resignation, or retirement shall be paid his salary equivalent, the same as if the employee had worked, including longevity and incentive pay, to the accrued vacation and holiday time. The following formula shall be utilized for eight (8) hour personnel in computing vacation and holiday time accrual upon death, dismissal, resignation, or retirement:

$$8.57 \text{ times vacation days accrued times hourly wage} = (8.57) \times D \times \$H.$$

$$8.57 \text{ times holiday days accrued times hourly wage} = (8.57) \times D \times \$H.$$

**Section 5a.** An employee who is assigned to a forty-hour position at the time of death, dismissal, resignation, or retirement shall be paid 16 hours for each 8 hours of birthday holiday accrued upon death, dismissal, resignation, or retirement.

**Section 6.** Vacation and holiday assignments shall be assigned as set out in the Departmental Rules and Regulations. It shall not be prohibited for the officer and driver of the same company to be off on vacation, birthday, or holiday simultaneously on the same shift.

**Section 7.** For 56-hour employees, vacation and holiday period shall be for 24-hour increments (one shift) or increments thereof with the following exceptions: Occasionally, some employees may be faced with circumstances that would require them to report to duty at midnight or be relieved at midnight (examples would be Funeral Leave and Military Leave). In any circumstance where an employee may be required to either report at midnight or be relieved at midnight, the employee shall have the option of taking a one-day vacation. For 40-hour per week employees, vacation and holiday period shall be for one-day or half-day increments or increments thereof. Vacation and holiday periods for 56-hour employees shall be for any two-day period or multiple thereof.

**Section 8.** All days off for vacation or holidays shall be assigned on regularly assigned work days.

**Section 9.** Regular vacation periods shall, if applicable, consist of forty-one consecutive three-shift periods. Employees shall be allowed to take up to a maximum of four (4) consecutive periods, if available, in any combination.

**Section 10.** An employee who has been assigned a regular vacation in the preference time periods as set forth by mutual agreement of the Fire Chief and the Association of at least three (3) shifts, shall have no preference two-day vacations during those periods of time. These preference time periods shall be set forth each year prior to assignment of vacation. An employee who has not been assigned a regular vacation in the above referred to periods or has been assigned less than three (3) shifts in those periods shall be allowed only three (3) preference shifts in those time periods.

Two-day vacations shall be assigned in the following manner:

One Deputy Chief One Battalion  
Chief One Captain  
One Lieutenant/Medical Lieutenant One FST/Fire  
Paramedic  
Two Fire Fighters

It is the intent of this Section to allow a member who has been assigned less than three (3) shifts in the above-referred- to time periods to retain his seniority until such time as the employee has received a total of three (3) shifts vacation in the preference time periods and shall in no way be affected by birthday holidays.

## **ARTICLE XVII SICK LEAVE**

### **Section 1. Sick Leave Usage.**

This Article is intended as a comprehensive approach, in accordance with federal and state law, to minimizing the use of sick leave to only those bona fide circumstances as provided for in Section 4a of this Article. In order to be effective, two major thrusts have been incorporated into the Article: an incentive approach, and a disincentive approach.

**Section 1a.** From the effective date of this agreement until the cutoff date provided in Sec. 2(a), an employee shall accumulate sick leave at the rate of one and one-quarter (1 ¼) days per month from the first day of employment.

**Section 1b.** It is agreed by the parties that employees qualifying for FMLA leave must utilize all available FMLA leave before being eligible to receive an additional leave of absence provided in this Article. When an employee is eligible for FMLA qualifying leave, the FMLA leave begins on the first day of absence. It is agreed and understood FMLA leave shall apply to occupational injuries and occupational diseases.

**Section 1c.** It is agreed and understood that any of the leaves of absence defined in this Article may not be granted or extended after 12 consecutive months or for a combined period in excess of 24

months within an employee's tenure with the City. This provision does not include leave taken in accordance with FMLA and shall not apply to leave of absence granted for military service.

**Section 2. Sick Leave Allotment.**

**Section 2a.** After the cutoff date each year, which shall be the last day in the payroll period which includes November 1<sup>st</sup>, 56-hour employees shall be allotted one hundred and eighty (180) hours of sick leave for use in the next twelve (12) months as set forth herein. Forty-hour employees shall be allotted one hundred and twenty (120) hours of sick leave.

**Section 2b.** Probationary employees shall be allotted sick leave on a pro-rated basis for the remainder of the year (as defined in section 2a) starting after graduation from the Training Academy.

**Section 2c.** Employees who change from working 56 hours to 40 hours and vice-versa, will have their sick leave allotment adjusted on a pro-rata basis. In the event that an employee whose allotment is reduced on a pro-rata basis under this section does not have sufficient leave remaining in his allotment for the reduction, sick leave will first be deducted from the Extended Sick Leave Time Bank, and in the event that the employee does not have adequate sick leave remaining in his Extended Sick Leave Time Bank, then it will be deducted from his Vacation Leave.

**Section 2d.** Employees may use their annual sick leave allotment at one hundred (100%) percent of their current salary in accordance with Section 4a of this Article.

**Section 3. Extended Sick Leave Time Bank.**

**Section 3a.** An employee who has used all of his annual sick leave allotment may be permitted to use the time as may be accrued in his Sick Leave Time Bank only when necessary due to an illness, injury, or other circumstances consistent with Section 4a of this Article. Such a request must be approved by the Fire Chief or designee, and such approval shall not be unreasonably denied. Upon approval, an employee may use his accumulated Extended Sick Leave Time Bank to supplement an individual, short-term absence (i.e., exceeding one (1) hour but less than six (6) shifts) beyond the annual sick leave allotment, until such time as his accumulated Extended Sick Leave Time Bank is depleted. Extended sick leave shall be defined as a single sick leave occurrence extending beyond the annual sick leave allotment or occurring after the employee has utilized his annual sick leave allotment.

**Section 3b.** The Extended Sick Leave Time Bank shall consists of sick leave time that is automatically transferred into each employee's Extended Sick Leave Time Bank at the date of the first cut off period of this Article and the sick leave that each employee may designate from the annual unused portion of his annual sick leave allotment. No employee shall receive any sick leave payout under this Article unless the employee has a minimum balance of 180 hours for 56 hour employees and 120 hours for 40 hour employees of sick leave in his Extended Sick Leave Time Bank. All payouts and transfers shall be made in accordance with the provision in Section 4b of this Article.

**Section 3c.** An employee who requires extended sick leave and has utilized all of his sick leave allotment and all of the leave in his Extended Sick Leave Time Bank may use vacation time in

accordance with established Department policies. The decision to allow the use of vacation time under this section shall additionally be in the sole discretion of the Fire Chief or his designee.

**Section 3d.** An employee who is on extended sick leave at the time of the annual award of a new sick leave allotment shall be required to use his new sick leave allotted time at one hundred (100%) percent of his current salary before he can submit a request to use any additional sick leave as may be in his Extended Leave Time Bank.

**Section 3e.** Persons employed prior to the effective date of the 1976 Agreement and Fire Medical Personnel who had, pursuant to the terms of Section 4.4 of Ordinance No. 8064, "special sick leave" available to them shall retain such time as "special sick leave" pursuant to the Ordinance as was in effect at the applicable time, but no such time shall ever be subject to the payment provisions of Section 6 of this Article. Any employee who has such special sick leave may request to use it for the same purposes for which sick leave use may be requested from the Extended Sick Leave Time Bank, and such time may only be used when the employee's sick leave allotment and Extended Sick Leave Time Bank have both been exhausted.

#### **Section 4. Approved Sick Leave Use**

**Section 4a.** Sick leave shall be used on an hour for hour basis by employees for the following reasons provided, that the condition is not job related:

- (1) Incapacitation due to illness or injury.
- (2) Attendance would jeopardize the health of co-workers due to exposure to a contagious illness/disease.
- (3) Prescribed medical treatment that falls on duty days.
- (4) Care of next of kin as defined in the FMLA, residing with the employee for whom the employee is rendering medically related assistance, and there is no other person available to care for said individual.
- (5) Hospitalization of a family member.
- (6) Routine medical, dental, or optical examination or treatment obtained by a 40- hour employee.
- (7) Emergency medical, dental or optical examinations or treatment obtained by any employee.
- (8) Pregnancy and maternity/paternity leave.
- (9) Emergency leave and funeral leave.
- (10) Any absence not described above that prior authorization is received.

#### **Section 4b. Incentives**

- (1) The last day in the pay period that includes November 1<sup>st</sup> will be the cut-off date for use of the sick leave allotment, and the balance, if any, of sick

leave allotment will be frozen as of that date.

- (2) Beginning with the cut-off date in November 2012 and each subsequent cutoff date, fifty-six hour employees who have a minimum of 180 hours in their Extended Sick Leave Time Banks and 40-hour employees who have a minimum of 120 hours in their Extended Sick Leave Time Banks shall receive a payout for the unused portion of their annual sick leave allotment, which shall, as each employee shall designate, be paid for on an hour for hour basis at the employee's basic hourly rate of pay, including permanent. Employees who have the requisite minimum balance may, prior to November 1<sup>st</sup> and in lieu of receiving the payout, designate some or all of their annual sick leave allotment to be placed in their Extended Sick Leave Time Banks, and to receive the payout only for the remaining balance of sick leave allotment. Such designation shall be in writing.
- (3) The remaining balance, if any, of the annual sick leave allotment of employees who do not have the requisite minimum balance in their Extended Sick Leave Time Banks shall be transferred to the employee's Extended Sick Leave Time Bank.
- (4) Employees will be credited with their next annual sick leave allotment beginning on the next pay period after the cut-off date. Any sick leave taken before the cutoff date which was not processed prior to that date will be deducted from the next year's allotment. All eligible employees shall receive their sick leave payout on the first payday in December of that calendar year. Such payout shall be paid for an hour for hour basis at the employee's basic hourly rate of pay including permanent assignments.
- (5) An employee who resigns, retires, dies or otherwise leaves employment at any date other than the cut-off date and has a remaining balance in his annual allotment of sick leave shall receive any payout provided for under this Agreement only for such sick leave as determined to have been earned by recalculating the amount of sick leave earned on a pro-rata basis of 1 1/4 days of sick leave per month worked.

#### **Section 4c. Disincentives**

- (1) For the purposes of this Article, occurrences will be calculated on a 12 month period beginning December 1<sup>st</sup> through November 30<sup>th</sup>. Employees who have five (5) or more sick leave occurrences during the time beginning on December 1st through November 30th of the following year may be subject to disincentive actions as indicated below. Any employee receiving a disincentive pursuant to the schedule in consecutive years shall be subject to having prior years disincentive carried over for the purposes of progression. For example: an employee receiving a 7<sup>th</sup> occurrence in one 12 month period shall commence at the 8<sup>th</sup> occurrence level in the next 12



month period once the employee arrives at the first disincentive level in the next year.

**NUMBER OF OCCURRENCES    DISINCENTIVES**

5 <sup>th</sup> Occurrence	Formal Counseling.
6 <sup>th</sup> Occurrence	Loss of time trade privileges (180 calendar days); Unscheduled Evaluation and Mandatory EAP Referral.
7 <sup>th</sup> Occurrence	6 <sup>th</sup> occurrence disincentives; and loss of voluntary overtime privileges (180 calendar days.)
8 <sup>th</sup> Occurrence	7 <sup>th</sup> occurrence disincentives; and 1 day suspension.
9 <sup>th</sup> Occurrence	8 <sup>th</sup> occurrence disincentives; temporary loss of promotional ability; and 2 day suspension. (Temporary shall be defined as 180 calendar days from the time disincentive occurs.)
10 <sup>th</sup> Occurrence	9 <sup>th</sup> occurrence disincentives; and 4 day suspension. (Temporary shall be defined as 180 calendar days from the time disincentive occurs.)
11th Occurrence	10th occurrence disincentives; 6 day suspension; and Fitness for Duty Evaluation at the employee's expense. (Temporary shall be defined as 180 calendar days from the time disincentive occurs.)
12th Occurrence	Termination.

- (2) Any absence under this Article, other than use of sick leave time during a leave protected by federal or state law or for funeral leave, shall be considered an occurrence when the employee has actually worked less than one-half (½) of the hours of the employee's normal shift, or used sick leave on various occasions which, when combined, totals one-half (½) of the employee's normal shift, with or without an excuse. By way of examples, a twenty-four (24) hour employee, who on four (4)

occasions, uses three (3) hours of sick leave each time, will be charged with one (1) occurrence, and an employee who uses sick leave time in conjunction with a lengthy illness that causes the employee to miss entire consecutive shifts will be charged with one (1) occurrence.

- (3) Except as stated in this Article, all disincentives for a specific occurrence shall remain in effect until the occurrence for which the disincentives were imposed drops off. Upon request of an employee, the Fire Chief may review and waive occurrences on a case-by-case basis.

#### **Section 4d. Sick Leave Procedure**

- (1) It shall be the employee's responsibility to notify the Department in accordance with established policy prior to the start of the shift with :
  - (a) the reason for his absence;
  - (b) the station, which he is assigned to;
  - (c) and the name of his Supervisor.
- (2) Sick leave may be used on an hour for hour basis, in quarter hour increments, for all employees.
- (3) Employees may return to work at any time after calling in sick. However, they may only return to work one time during a shift and shall notify the Deputy Chief prior to returning to work to receive their station assignment.
- (4) If, in the opinion of the immediate Supervisor, an employee is believed to be unfit for duty, the Supervisor shall report the situation through his chain of command. The Battalion Chief and Deputy Chief, in conjunction with the Human Resources Department, shall determine the proper course of action, which may include sending the employee home. If an employee is deemed unfit for duty and involuntarily sent home by his supervisor, the absence will not count as an occurrence.
- (5) Upon returning to work, all employees shall submit to their immediate supervisor an employee leave request form which shall include an affirmation that the employee's use of sick leave was consistent with this Article.
- (6) Any employee requesting sick leave in a manner or for reasons which are not consistent with this Article shall be denied leave time and such an improper request will constitute just cause for disciplinary action and the employee may be subject to disciplinary action up to and including termination. The granting of a leave request by a person other than the Fire Chief shall not bar the Fire Chief from making a later determination that the request was improper or not consistent with this Article.

**Section 5.** The employee, his heirs, or legal representative shall be compensated in cash for any unused accumulation of sick leave up to the maximum of 75 days at the employee's basic hourly rate of pay, at the time of his death, resignation, termination, or retirement. In the case of any unused accumulation of sick leave in excess of 75 days, an employee, his heirs, or legal representative shall

be compensated in cash for such days of unused sick leave in excess of 75 days, up to a maximum of 140 days, in an amount equal to one (1) day's pay for every four (4) days of unused, accumulated sick leave at the employee's basic hourly rate of pay, at the time of his death, resignation, termination, or retirement. The following formula shall be utilized in computing unused sick leave accrual for 8- hour personnel upon death, resignation, termination, or retirement:  
(8.57) times accrued sick leave times hourly wage.

**Section 6.** Any employee who is entitled to receive accumulated sick leave cash compensation under this Article shall have the option to be paid the same in a lump sum payment.

## **ARTICLE XVIII ACCIDENT WITH PAY LEAVE**

This Article applies to occupational injuries and occupational diseases occurring on and after August 27, 1996. Occupational injuries and occupational diseases occurring before such date, will be governed by the applicable Ordinance and collective bargaining agreement in effect at the time of the date of injury or disease.

**Section A. Accident With Pay Leave (AWP)** is separate and distinct from and in addition to the weekly workers' compensation payment. While on AWP leave, absence from the job as a result of an occupational injury or illness is not deducted from the employee's accrued sick or annual leave balances.

**Section B. Eligible Employees.** An employee, including one on probation, who sustains an injury or suffers an occupational disease or illness arising out of and in the course of employment as defined by the Texas Workers' Compensation Act is eligible to request Accident With Pay (AWP) leave, beginning on the first day of occupational disability. Temporary employees, part- time employees, contract employees, independent contractors, and volunteers are not eligible for AWP leave.

### **Section C. Procedure.**

1. To be granted AWP leave the employee must submit through the Chief a properly completed AWP Leave Request Form as prescribed by the Human Resources Director and accompanied by a medical report from the treating physician indicating that any lost time is due to the employee's on-the-job injury or occupational disease. Medical documentation must correspond in time with the number of days or hours of AWP leave requested.
2. The Human Resources Director, upon recommendation of the Chief or upon independent finding, may grant AWP leave for a initial period of time not to exceed thirty calendar days. Extensions of AWP leave beyond this initial grant are granted as provided in Section H.
3. An employee denied AWP leave may, within ten (10) calendar days of receipt of notification from the Human Resources Director, notify the Human Resources Director that the employee wishes to appeal the decision to a Hearing Officer of the Civil

Service Commission. Upon receipt of such notification, the Human Resources Director will assign the appeal to a Hearing Officer. The Hearing Officer shall hear and decide such appeal within twenty (20) calendar days of assignment or as soon as practical after assignment. The final decision regarding the granting or denial of AWP rests with the Hearing Officer whose decision shall be final and binding on both parties, and shall not be appealable to either City Council or the Civil Service Commission.

**Section D. Grounds for denial and termination.** Upon recommendation of the Chief or upon independent finding, the Human Resources Director will deny or terminate AWP leave to any injured employee who:

1. Fails to report the occupational injury or disease within 48 hours of its occurrence to any supervisor. For purposes of this ordinance, the employee has 48 hours from the date of occurrence on which the employee knew or should have known that the disease may be job-related.
2. Is injured as a result of:
  - a. the employee breaking of rules, regulations, or laws, including any safety rules adopted by the City for the prevention of accidents and injuries;
  - b. the gross negligence of the employee; or
  - c. any other unreasonable or culpable conduct of the employee as determined by the Human Resources Director;
3. Fails to use department-mandated safety equipment or follow department-mandated safety procedures when the injury was sustained;
4. Refuses to submit to any independent medical examination or treatment required by the City in accordance with Texas Workers' Compensation laws;
5. Refuses to return to regular or restricted duty after being released for regular or restricted duty by a treating physician or other physician performing an independent medical examination for the City;
6. Fails to act in a manner that is conducive to or consistent with being off work convalescing from a job-related injury;
7. Submits a workers' compensation claim which is controverted;
8. Submits an AWP leave request previously denied based upon the merits of this article for the same injury; or,
9. Fails to follow the procedural process as contained in this article.

Denial of AWP status will not affect an employee's eligibility, if any, to receive workers' compensation benefits.

**Section E. Suspension or Termination of AWP Leave.**

1. Eligibility for AWP leave will terminate upon any of the following occurrences:

- a. One year from the date of injury or occupational disease, except for an extension requested and granted under Section F of this Article;
  - b. When the workers' compensation claim is controverted or disputed under the Texas Workers' Compensation law; or,
  - c. Upon a finding by the Human Resources Director of any of the occurrences defined under Section D of this Article.
2. Eligibility for AWP leave will be suspended upon any of the following occurrences:
- a. The employee's treating physician releases the employee to return to work; A physician performing an independent medical examination for the City releases the employee to return to work;
  - b. The employee's failure to provide timely physician certificates;
  - c. The employee does not submit a properly completed AWP leave request to the Chief within two (2) working days prior to payroll closing, unless the employee can show good cause for the delay; or,
  - d. The employee fails to follow the procedural process as contained in this section.

If AWP leave is suspended under subsections 2 c, d, or e, of this Section and is reinstated upon compliance by the employee, such reinstatement of benefits will not be retroactive unless the employee can show good cause for the delay in compliance.

**Section F. Eligibility For AWP Leave Beyond the One Year Anniversary Date of Injury.**

In those cases where an employee submits a written request to the Chief for AWP leave beyond the one year anniversary date of injury and that employee has either not used AWP leave or has not utilized the maximum amount of AWP leave during the one year period allowed or had used it intermittently and not for the allowed maximum amount, the employee may be granted AWP leave, provided that the following conditions are met:

1. The employee is and had been receiving continuous treatment by a licensed physician for the same on-the-job injury or occupational disease for which AWP leave was originally granted ("Continuous treatment" is defined as regular examinations or treatments by a licensed treating physician or a licensed physician to whom the treating physician has referred the employee); and
2. A licensed treating physician or a licensed physician to whom the treating physician has referred the employee recommends surgery, because all other treatments have not been successful; and
3. The employee obtains the written recommendation of the Chief; and
4. The employee has not exhausted or utilized the maximum amount of AWP leave allowed under this Article for the occupational injury or disease for which he is requesting the extension; and
5. The employee has complied with the requirements of Section C of this Article. If the above requirements are met, AWP leave may be granted after the one year anniversary of date of injury addressed in Section D for the time period necessary for surgery and

recovery there from, as designated by a licensed physician, until the maximum amount of AWP leave allowed under this Article is used.

**Section G. AWP Supplement to Worker's Compensation Weekly Benefit.** In addition to the weekly workers' compensation benefits payable under law, the eligible employee granted AWP leave may receive a supplement to such workers' compensation benefit equivalent to the difference between any workers' compensation weekly benefit and the employee's pre-injury take-home pay. In no event shall the total of the AWP supplement and the workers compensation weekly benefit exceed the employee's pre-injury take home pay and benefits. If the weekly workers' compensation benefit equals or exceeds the take-home pay, there shall be no AWP supplement, but the absence from work will not be deducted from the employee's accrued leave balances. For purposes of this ordinance:

1. Take home pay means base pay, longevity pay, special merit pay, incentive and certification pay, less mandatory deductions required by law. The work schedule the fire fighter was on at the time the eligible injury occurred will be the basis for determining the take-home pay and the original AWP supplement.
2. Mandatory deductions means income tax withholdings, FICA and Medicare, if applicable.
3. Payroll deductions (FICA, Medicare and FWT) will NOT be taken out of the weekly workers' compensation benefits, but WILL be taken out of the supplement portion.
4. Section 125 benefit payments will be taken out of the supplement portion, if available. If funds are not available to cover some or all of these payments, the City will send a notice to an employee that there are insufficient funds to cover these payments.

In all situations, but in particular in the situation in which the City has sent the employee a notice pursuant to Section G 4, it is the responsibility of the employee to make inquiry directly with the Firemen and Policemen Pension Fund to determine whether any portion of the employee's pension contribution remains unpaid due to the unavailability of adequate funds and whether the employee needs to pay any unpaid pension contribution if he wants service credit.

**Section H. Maximum Duration of AWP leave.** An employee who while in the course and scope of his employment, receives an injury or illness while in the line of duty, may additionally be granted AWP extensions in thirty calendar-day increments, if he provides current medical evidence which indicates such employee has a recoverable injury or illness. Current medical evidence will be provided to the Chief and will reflect any change in the employee's status. A "recoverable injury or illness" means that, when the employee is released to return to work, he will be able to perform the essential functions of his position which were required at the time of the injury or illness. Any employee receiving disability retirement benefits shall not be eligible for any such extensions.

**Section I. Temporary and Intermittent Absence from Employment.** AWP leave may also be granted for an employee's temporary and intermittent absence from his employment due to seeking and receiving treatment for his injury (doctor's and therapy appointments) provided that the employee submits the required medical documentation. AWP leave is not available for an employee's temporary and intermittent absence from his employment without medical documentation. An extension of AWP leave beyond the one year anniversary of the date of injury or illness is not allowed for an employee's temporary and intermittent absence from employment due to seeking and receiving treatment.

**Section J. Initial Seven Days of Disability** If AWP leave is approved, AWP leave will be available for the first calendar seven (7) days of disability not initially paid by workers' compensation benefits. The fire fighter will not be required to use his annual or sick leave for the first seven days of disability.

**Section K. Supplementation of Weekly Workers' Compensation When AWP Leave is Not Available**. In the event AWP leave is not available, but the employee is receiving weekly workers' compensation benefits, pursuant to §504.052 of the Texas Labor Code, the employee may supplement his weekly workers' compensation benefits with accrued sick leave, annual leave and special sick leave. In no event, will the amount of this optional supplement to the weekly workers' compensation benefit and the weekly workers' compensation benefit cause the employee to receive in excess of his pre-injury take-home pay. Only the utilized pro-rata amount of this optional supplement will be deducted from the employee's accrued leave balances. Payroll deductions for FICA, Medicare, and FWT will be deducted from this optional supplement portion. The employee must request this optional supplement through the Chief.

**Section L. Leave Balances**. While on AWP leave, the fire fighter continues to accrue sick and annual leave.

**Section M. Pension Fund Contributions**. Any pension fund contributions shall be made by the employee and employer in accordance with the employee's applicable pension plan, if any. In the event the employee's weekly workers' compensation benefit is greater than his pre-injury take-home pay and thus not receiving an AWP supplement to his weekly workers' compensation benefit or the AWP supplement is insufficient to cover the employee's pension contribution, the employee will need to pay his pension contribution if he wants service credit.

**Section N. Overpayment of Workers' Compensation Benefits or Supplement Payments**. In the event the employee receives overpayment of workers' compensation benefits or AWP supplement payments, the employee shall cooperate with the Human Resources Department to correct and repay any payment errors in a manner prescribed by the Human Resources Director. Such repayment includes assignment and repayment from the employee's future wages or by reduction of any accrued leave balances. The employee will be notified of the overpayment. The employee will be notified 30 calendar days before any repayment from the AWP supplement and/or employee's future wages or reduction of any accrued leave balances occurs.

Any overpayment will be repaid by an employee at an amount no less than \$100.00 per paycheck until the overpayment is repaid. Employees may elect to pay the entire amount of the overpayment in one payment or in payments larger than \$100.00 per paycheck at their option. The repayment will begin when the employee returns to work from injury. Interest will not be calculated on this repayment. In the event the employee retires, is terminated or voluntarily terminates his employment with the City prior to the overpayment being paid in full, the balance of the overpayment becomes immediately due in full to the City. Employees may elect to pay the balance of the overpayment out of any vacation or sick leave balances that are due as provided in this Agreement.

## **ARTICLE XIX SHARED SICK LEAVE**

**Section 1.** All Association members will contribute hours of sick leave time to a pool. Time will be deducted by the City from all dues paying members when directed by the President and are not to exceed once every quarter. The number of hours to be deducted by the City shall be designated to the City in writing by the President. Said amount shall be uniform and not less than (2) hours per dues paying member. The sick leave hours deducted from all dues paying members shall be credited to the sick leave bank first, before any other use of hours is permitted.

**Section 2.** A sick leave committee will be established composed of the president of the bargaining unit, as chairman, and the members of the executive board for a total of 6 members. The committee will review all requests for benefits. The decision of the committee shall be final.

**Section 3.** At least 4 members of the board must be present at each review and chairman will appoint a designee in his absence.

**Section 4.** Any Association member with 3 months service as a firefighter will be eligible for the sick leave bank

**Section 5.** Maximum time of benefit from the Shared Sick Leave Bank will be 2304 hours/ 11 months.

**Section 6.** Upon the exhaustion of all leave balances, the member will be eligible for the sick leave bank. Employees who are receiving workers compensation benefits but who are not receiving AWP may utilize the sick leave bank as a supplement, provided however, employees may not receive compensation contrary to state law.

**Section 7.** The committee will meet once a month when benefits are in use to review each case for extension or termination. However, the committee may convene at any time to consider beginning, extending, or terminating of benefits.

**Section 8.** Members must notify the committee in writing as soon as he is able to return to work. The committee chairman will then notify the Human Resources department that the benefit is to be terminated. In the event of an extended illness benefit, sick bank papers may be turned in monthly or quarterly.

**Section 9.** Members receiving benefits must have a doctor's letter stating his condition at each review. If the committee, after review, has reasonable doubt as to the validity of an injury or illness, the matter will be brought to a special meeting of the executive board for final disposition.

**Section 10.** A prorated amount of the individual's yearly allotment (15 hours per month sick leave) that an employee earns while drawing sick bank benefits will be returned to the shared sick bank.



**Section 11.** A member, or his legal representative, can choose to donate up to and no more than 300 hours at the time of death, termination or retirement of excess unused, accumulated sick leave at the rate of one (1) to one (1). Or the member or his legal representative may choose to sell excess, unused, accumulated sick leave in an amount equal to one (1) day's pay for every four (4) days in accordance with Article XVII, Section 5. At no time will the excess leave donated or sold be more than the total amount allowed under Article XVII, Section 5.

## **ARTICLE XX FUNERAL LEAVE**

**Section 1.** Funeral leave shall be as set out in the Civil Service Rules at the time of the execution of this Agreement, unless otherwise amended herein. In addition to the immediate family as defined in the Civil Service Rules, the immediate family for the purpose of leave for death in the family shall include grandparents, grandparents-in-law, grandchildren, brother-in-law, sister-in-law, and any relative living in the household of the employee.

**Section 2.** Subject to compliance with departmental administrative procedures, an employee shall also be granted time off actually necessary to attend funerals of other relatives, but leave with pay in such cases shall under no circumstances exceed more than one day (12 hours, in the case of 56-hour employees).

**Section 3.** No more than five employees may be off work on funeral leave under Section 2 at any one time. Subject to the needs of the Department, an employee shall be granted time off to attend a funeral under Section 2 on a first-come, first-served basis.

**Section 4.** Time taken off with pay pursuant to this Article shall be treated as, and charged to, sick leave, vacation, holiday, or birthday as determined by the employee.

**Section 5.** In the event of death in the immediate family of the employee, leave with pay shall be provided as follows:

**Section 5a.** For 56-hour employees, funeral leave shall commence on the day of death, through one day after the date of the burial. Travel time shall commence after the above-mentioned day. The employee has the option to take a one-day vacation under Section 5c of this Article.

**Section 5b.** For 40-hour employees, funeral leave shall commence on the day of death, through one day after the date of burial. Travel time shall commence after this period.

**Section 5c.** In any circumstance where an employee is required to report at midnight or be relieved at midnight due to funeral leave, the employee will have the option to take a one-day (leave hours taken from vacation, holiday, or sick leave) or increments thereof.

## **ARTICLE XXI EMERGENCY LEAVE**

**Section 1.** In the event of a sickness or injury of a member of an employee's immediate family or household that requires the employee's personal care or attention or other personal emergency that requires the employee's personal care or attention, the employee shall be granted emergency leave with pay not to exceed one (1) working shift in the case of 56-hour employees and two (2) working days in the case of 40-hour per week employees. Emergency leave is to commence immediately upon approval by the immediate supervisor, and notification or appeal, if denied, through the chain of command up through Deputy Chief.

**Section 2.** Time taken off with pay pursuant to this Article shall be treated as and charged to sick leave. The City shall not be obligated to pay an employee who has no accrued sick leave.

## **ARTICLE XXII SHIFTS AND HOURS OF WORK**

**Section 1.** Line personnel shall work 24-hour shifts, according to the Shift Schedule attached hereto as Appendix B. The parties hereto agree that, if an employee works the Schedule contained herein in Appendix B, for purposes of this Agreement, the employee shall be deemed to have worked 56 hours per week, even though the employee will necessarily work more than 56 hours in some weeks and fewer than 56 in other weeks.

**Section 2.** Personnel assigned to the Communications Division shall work an average of 40 hours per week, according to a Schedule designated by the Chief or designee.

**Section 2a.** The officers assigned to work at the Communications Center will change shift fifteen (15) minutes prior to the shift change of the Public Safety Dispatchers in order to allow for proper transfer of information. This section is not intended to increase nor reduce the scheduled forty (40) hours per week. These provisions will apply as long as uniformed employees are assigned to the Communications Division. After uniformed employees cease to be assigned the Communications, Sections 2 and 2(a) of this Article will be automatically deleted from the Articles of Agreement.

**Section 3.** Personnel assigned to work a 40-hour week will have schedules posted five (5) days prior, except in case of emergency.

**Section 3a.** An employee assigned to work an average of forty hours per week, may, with the Fire Chief's approval, agree to work four (4) ten-hour days, according to any schedule approved by the Fire Chief. The Fire Chief may, in his discretion, assign 40-hour operations employees to work two (2) 20-hour shifts, according to any schedule designated by the Fire Chief. Nothing in this Agreement shall constitute a guaranteed minimum or maximum number of hours worked in any day or week.

**Section 3b.** The City shall continue to permit the practice of "trading time" by shift employees subject to the restrictions contained in this Section. When time is traded pursuant to the provisions of

this Section, the traded hours shall be deemed to have been worked by the employee originally assigned to work; similarly, if, for any reason, the City is required to pay another employee for such time at the rate of one and one-half (1½) that employee's regular straight-time hourly rate of pay, the employee originally scheduled to have worked the hours shall be docked for such time at one and one-half (1½) of the employee's regular straight-time hourly rate of pay. All traded time must be paid back within twelve (12) months following the date of the traded shift. No employee may "owe" other employees more than three (3) shifts at any one time. The employee originally scheduled to work shall be responsible for notifying the Chief or his designee of the proposed trade, including the name of the employee who has agreed to work the shift, and such notification shall be made to the Chief or his designee at least 72 hours prior to the beginning of the shift in question, except in cases of unforeseeable emergency. The Chief or his designee retains the right to disapprove any request for trading time, but such approval shall not be unreasonably withheld. The employee who works the traded shift shall receive no compensation from the City for doing so, even if the employee originally assigned to work should terminate his employment with the City for any reason without paying back the traded time.

**Section 4.** An employee is expected to be in uniform and fully prepared to assume his duties at the beginning of his assigned shift, and the employee shall remain on duty until the end of that shift, unless the employee is permitted by the employee's commanding officer to be relieved prior thereto for good cause shown. For pay purposes, the employee permitted to leave early shall be deemed to have completed the shift, and the employee who agreed to report early in the other employee's place shall be deemed to have commenced work at 1145 hours.

**Section 5.** Except as noted in Section 6, an employee shall be deemed to be tardy if the employee reports after 1145 hours and will be subject to disciplinary action as deemed appropriate by the Chief. If the employee reports after 1210 hours, the employee will be recorded as being AWOL for the time of the tardiness. If an employee calls in prior to 1145 hours with an excuse acceptable to the commanding officer and another employee agrees to hold over until the late employee arrives, the foregoing sentence shall be waived. In such case, for pay purposes, the employee who agrees to hold over shall be deemed to have ceased work at 1145 hours and the employee who is late shall be deemed to have commenced work at 1145 hours.

**Section 6.** Deputy Chiefs and Battalion Chiefs shall commence work at 1000 hours and shall remain on duty until 1000 hours the following day.

## **ARTICLE XXIII EXAMINATIONS AND PROMOTIONS**

**Section 1.** Within sixty (60) days after a vacancy occurs in the ranks of FST, Fire Paramedic, Fire Lieutenant, Medical Lieutenant, Captain, or Battalion Chief, the City shall fill the vacancy. Examinations for FST, Fire Paramedic, Fire Lieutenant, Medical Lieutenant, Captain, or Battalion Chief will be given within thirty (30) days after the expiration of the current eligible list. All other vacancies will be filled within ninety (90) days of the vacancy. Examinations will be given only when a vacancy occurs or is anticipated. At least thirty (30) days prior to such examination, a bibliography will be posted. All eligible lists will be in effect for two (2) years from the date the list is approved by the Human Resources Director. When a list is exhausted prior to its expiration date, the thirty (30)

and sixty (60) day provisions of this section are not applicable, but those provisions shall be for a period of not to exceed one hundred twenty (120) days, as long as, in extreme cases, such as the Battalion Chief's examination, the parties can agree to extend the one hundred twenty (120) days, if necessary.

**Section 1a.** During the first week of each year, the Department will issue bibliographies of all potential materials from which promotional examination questions may be taken, and they will be posted for examinations to be administered within the one-year period beginning the following April. Each material posted in the bibliography will be used to formulate one or more questions for the examination.

**Section 2.** All examinations for promotion to Captain or the equivalent and below shall be by written examination. An assessment center will be given for FS6 and FS8 classifications. The City will weigh oral assessment centers as 40% of the total score for FS6, and 50% for FS8 classifications. A maximum of 16 passing scores on the Battalion Chief examination will be admitted to an assessment center and a maximum of 8 passing scores for Deputy Chief. Promotion lists shall remain in effect for a period of two years, unless exhausted sooner.

**Section 3.** The Civil Service Provisions of the City Charter adopted January 24, 1984 and the Civil Service Rules adopted pursuant thereto, as amended, and Ordinance 8064, as amended, shall in all respects govern in promotions, except as amended in this Agreement.

**Section 3a.** Three points will be added to the score of an applicant taking a promotional exam for a local certification as a paramedic.

**Section 3b.** To the scores of the applicants for promotion of FS2 through FS8 shall be added a maximum of seven (7) credits or points for the first seven (7) years in grade and shall be prorated on a basis of .083 points per month. These points will be based upon the applicant's time since he attained the grade specified in the minimum qualifications for the tested position.

**Section 3c.** Points will be added to the score of an applicant taking the promotional exam for FS-2 through FS-8 for one degree as follows:

- (a) Associates degree 2-points.
- (b) Bachelor's Degree 4-points.
- (c) Master's Degree 6-points.

An employee holding more than one degree shall designate which single degree will be used to calculate the educational points awarded. Degrees from an accredited college or university qualify for the purpose of awarding the higher number of educational points as set forth above.

**Section 3d.** Except as provided in Section 13 of this Article, an employee applying for a promotion must also meet the following criteria as of the closing date for the written examination.

Fire Suppression Technician (FS2)

- (a) Texas Commission Certification as a Driver/Operation Pumper.

Fire Lieutenant (FS4)

- (a) Successful completion of strategy and tactics, and supervision course from an accredited college, university or state recognized institution.
- (b) Texas Commission on Fire Protection Certification as Fire Instructor I.
- (c) Texas Commission on Fire Protection Certification as Fire Officer I.

Fire Captain (FS5)

- (a) Texas Commission on Fire Protection Certification as Fire Officer I.
- (b) Texas Commission on Fire Protection Certification as Fire Instructor II.
- (c) 2-year degrees (Associates Degrees) or 63 credit hours that are applicable in a singular Bachelors degree program.

Fire Battalion Chief (FS6)

- (a) Texas Commission on Fire Protection certification as a Fire Officer II.
- (b) Bachelor's Degree

Fire Deputy Chief (FS8)

- (a) Bachelor's Degree

**Section 4.** All promotions to the rank of Assistant Chief (FS9) shall be exempt from competitive examinations and shall be made instead by appointment by the Fire Chief. All Assistant Chiefs will be exempt employees under the FLSA. Only those employees who have been certified fire fighters with the El Paso Fire Department for a minimum of twelve (12) years, and, at the time of appointment, held the rank of FS6 or above, shall be eligible for such appointment. Members so appointed shall possess a minimum of a Bachelor's degree and shall serve at the pleasure of the Chief and may be demoted from said position at the Chief's discretion. Any Assistant Chief so demoted shall be returned to the class grade from which he was appointed and shall retain all benefits, including service time and salary increases, to which he would have been automatically entitled had he continuously remained in that class grade. No more than three (3) positions shall be subject to the terms of this Section.

**Section 5.** Employees who meet the basic requirements will be eligible to take promotional examinations for positions considered to be "lateral" with their current position, those positions to which there would not necessarily be an increase in salary. A Medical Lieutenant is eligible to take a promotional examination for Fire Lieutenant, if all the minimal requirements for the position have been met. A Fire Paramedic is eligible to take a promotional examination for the Fire Suppression Technician, if all the minimal requirements for the position have been met.

**Section 6.** Any employee who resigns his employment with the Fire Department for any reason, but is reinstated at a later date, shall have his name removed from any promotional eligibility list and shall not be eligible to take any promotional examinations for a period of two (2) years from the date of reinstatement.

**Section 7.** For examination purposes, an employee's date of employment shall be the date the employee graduated from the Training Academy.

**Section 8.** The time period an employee must serve in grade before he is eligible to take a

promotional examination for a higher position shall be two and one-half (2½) years.

**Section 9.** During the term of this Agreement, a committee consisting of representatives of the City and the Association shall meet diligently, at a minimum quarterly, to explore mutually satisfactory improvements in the educational requirements and examination procedures for all promotional examinations.

**Section 10.** Except as provided in Article XXV, Section 20 and its subsections, all routine vacancies below Grade FS9 shall be filled from existing eligibility lists, if a valid list exists.

**Section 11.** All copyrighted reference materials listed on the bibliography or used to formulate questions for a written exam shall have a copyright date of within ten (10) years of the date of the exam. All materials must be in print at the time the bibliography list comes out. The Department and the Association may agree on books with a copyright date older than ten years.

**Section 12.** On the day of the written examination, each applicant will be permitted to throw out five (5) questions of their choice. If in the event the applicant does not select a total of five (5) questions to be thrown out, the City shall automatically throw out up to a total of (5) five the last five (5) questions of the examination. The remaining 100 questions will be those graded and scored for the applicant. There will be no challenge to the examination process, even though employees will be allowed to review their own test questions and answers. All written exams shall be 105 questions in length, prior to the five (5) questions being thrown out.

The results of any Assessment Center shall not be subject to grievance or the Arbitration process, but may be subject to the protest procedure of the Civil Service Commission Rules and Regulations or city policy in place at the time of the signing of this Agreement.

**Section 12a.** The City will conduct an item analysis of the written examination in those instances where forty (40%) or more of the individuals taking the examination miss a question, said questions will be reviewed to determined that the key was properly scored and the proper stem was selected for that answer. If corrections are appropriate then the stem will be corrected, and the scores will be adjusted accordingly.

**Section 13.** Upon receipt of a requisition to fill the vacancy of a uniformed position, the highest name on the proper eligible list shall be certified for the vacancy. If more than one vacancy exists, then the next highest name on the eligible list will also be certified for each additional vacancy. All persons on a certification list will be interviewed and considered for the uniformed position. The Fire Chief retains the right to non-select any person on the certification list and request that the next highest name on the eligible list be certified in accordance with the Civil Service Rules and Regulations.

**Section 14.** An employee on an eligibility list who is passed over for selection will be provided a written reason for non-selection. A pass over is defined as the appointing authority selecting someone who is ranked lower on the eligibility list than the employee who is passed over. A pass over does not include an employee who submits a waiver prior to the appointing authority's announcement

of its selection.

**Section 14a.** An employee on an eligibility list who is passed over for selection a second time to the rank of Battalion Chief or above may appeal the appointing authority's decision to an arbitrator. The appeal must be submitted within 10 working days of notification of non-selection. Within 10 working days of receipt of written notice from Local 51 of the intent to appeal, the City and Local 51 shall select a local arbitrator. If Local 51 and the City cannot agree on an arbitrator, then the Parties shall request that the Texas Arbitration Mediation Services submit a list of seven (7) arbitrators. Within ten (10) working days after receipt of the list of arbitrators, each party shall alternate in striking a name from the list until only one name remains. The remaining arbitrator shall act as the arbitrator and hear the appeal. The fee and expenses of the arbitrator shall be borne equally by the City and the Association. The standard of review for the appeal is arbitrary and capricious. The decision of the arbitrator is binding on all parties and is not appealable.

**Section 14b.** An employee on an eligibility list who is passed over for selection a third time to the rank of Captain or below may appeal the appointing authority's decision to an arbitrator. The appeal must be submitted within 10 working days of notification of non-selection. Within 10 working days of receipt of written notice from Local 51 of the intent to appeal, the City and Local 51 shall select a local arbitrator. If Local 51 and the City cannot agree on an arbitrator, then the Parties shall request that the Texas Arbitration Mediation Services submit a list of seven (7) arbitrators. Within ten (10) working days after receipt of the list of arbitrators, each party shall alternate in striking a name from the list until only one name remains. The remaining arbitrator shall act as the arbitrator and hear the appeal. The fee and expenses of the arbitrator shall be borne equally by the City and the Association. The standard of review for the appeal is arbitrary and capricious. The decision of the arbitrator is binding on all parties and is not appealable.

**Section 15.** Removal from Eligibility List on Account of Non-selection. An employee who is on an eligibility list and is passed over for appointment five times will be removed from the eligibility list.

## **ARTICLE XXIV SAFETY AND HEALTH**

**Section 1.** It is the desire of the City and the Association to maintain the highest standards of safety and health in the Fire Department in order to eliminate, as much as possible, accidents, death, injuries, and illness to fire fighters.

**Section 1a.** The City shall provide immunizations as recommended by the City Health Authority and the Occupational Safety and Health Administration.

**Section 1b.** Mandatory baseline physicals shall be provided for employees annually in accordance with Appendix D.

**Section 1c.** A mandatory physical fitness program shall be established by the City. Such program will be prescribed and monitored by a physician.

**Section 1d.** All fire stations constructed after the signing of this Agreement shall be designed and provided with provisions to ventilate emissions from fire apparatus to prevent exposure or contamination of living and sleeping areas to fire fighters.

**Section 1e.** The position of Safety Officer shall be maintained.

**Section 2.** Protective devices, wearing apparel, and other equipment required by state laws as necessary to properly protect fire fighters shall be provided by the City at no cost to the employees and shall conform to applicable standards.

**Section 2a.** All protective devices, wearing apparel, and other equipment currently being provided by the City for the safety and protection of fire fighters shall continue to be provided. Protective clothing shall be issued/replaced while personnel are on duty. A fire fighter who picks up his protective clothing during his normal off-duty hours shall not be deemed to be on duty by reason of the preceding sentence. Fire fighters shall be exempt from entering a hazardous environment if protective clothing does not meet accepted standards.

**Section 2b.** Seat safety belts, which shall be worn, shall be provided on all apparatus.

**Section 3.** The City shall provide each employee of the Fire Department and the employee's dependents with medical care in the event the employee is exposed to any communicable disease in the performance of fire fighting duties and as first responders on EMS calls. Members exposed to any communicable disease shall be compensated at one and one-half (1½) times his salary for time spent on follow-up exams as a result of possible exposure, when exams are performed off- duty.

**Section 4.** No employee shall work more than forty-eight (48) hours straight, without a twenty-four hour break, except for emergency incidents.

**Section 4a.** No employee shall work more than forty-eight (48) hours without exhausting all attempts to hire personnel of all ranks.

**Section 5(a).** A Safety Committee shall be maintained and function as follows:

- a. Meet at least monthly.
- b. Address matters of safety and health.
- c. Make recommendations to the Fire Chief.
- d. Keep minutes of all committee meetings and forward a copy to the Chief and the Association.
- e. The Committee shall consist of six (6) members, three (3) appointed by the Association and three (3) appointed by the Chief. In cases of a tie, the Chief or his designee shall break the tie.
- f. The City will provide relief for two Association Safety Committee members when the meetings are conducted while the members are scheduled for regular duty.

There must be a minimum of four Safety Committee members present to



constitute a quorum for a meeting.

**Section 5(b).** A Fitness Committee shall be maintained and function as follows:

- a. Meet at least monthly.
- b. Address matters of fitness.
- c. Make recommendations to the Fire Chief.
- d. Keep minutes of all committee meetings and forward a copy to the Chief and the Association.
- e. The Committee shall consist of six (6) members, three (3) appointed by the Association and three (3) appointed by the Chief. In cases of a tie, the Chief or his designee shall break the tie.
- f. The City will provide relief for two Association Fitness Committee members when the meetings are conducted while the members are scheduled for regular duty.
- g. There must be a minimum of four Fitness Committee members present to constitute a quorum for a meeting.

**Section 6.** Both the City and the Association believe that it is to their mutual benefit for Fire Department personnel covered by this Agreement to have available to them a stress management program. To this end, a program will be initiated. The program shall satisfy and conform to the following criteria:

- (1) The program shall have the elements of both continuity and individuality of counseling. To that end, the City, after consultation with the Association would, on an independent contract basis, engage the service of an expert in stress management whose office will be located in the City of El Paso.

The expert's duties will be to devise, implement, and operate an El Paso Fire Department counseling program covering the identification and treatment of stress.

- (2) There shall be four (4) methods of entry into the program:

- (a) Behavioral-cause investigation
- (b) Supervisory referral
- (c) Voluntary participation
- (d) Post-trauma referral

The behavioral-cause investigation is an after-the-fact referral made when the Chief orders a behavioral-cause investigation be made of a fire fighter who has been the subject of an internal investigation immediately prior thereto.

The supervisory referral results when a supervisor detects behavioral patterns which indicate to him that the fire fighter requires the intervention of the program. The supervisor can recommend that his subordinate be required by the Chief to go to the expert, or agent, for evaluation and recommendation and such treatment as may be deemed necessary by the expert. To this end,

supervisory personnel shall be trained in the recognition of stress.

The voluntary participation method involves any fire fighter who, after evaluation, the expert determines needs to be in the program.

Post-trauma referral occurs where there has been the death of another individual or when the fire fighter has been exposed to any incident including, but not limited to, situations where another may have suffered injury or death, wherein the immediate supervisor of the fire fighter involved is of the opinion that such referral is in the best interests of the Department or the fire fighter.

In cases where a fire fighter, in the performance of duties, has been involved in a death, the expert and another person of the fire fighter's choice will immediately be notified and allowed immediate access to the fire fighter involved.

- (3) All conversations between the fire fighter and the expert employed in connection with the program and records maintained by the program shall be considered privileged. When the expert has concluded that a fire fighter constitutes a clear danger to himself or others, the expert shall immediately notify the Chief of said danger. In cases where a fire fighter is referred to the program by order of the Chief, the expert shall report to the Chief only compliance or noncompliance with treatment by the expert. The expert shall also, at the appropriate time, report to the Chief that no further participation by the fire fighter is required.
- (4) The stress management program should be designed so as to include physical as well as mental well-being.
- (5) This program shall be designed to provide assistance to the fire fighter in order to manage problems of stress affecting the ability to effectively perform the duties of fire fighter. If, in order to handle problems of stress peculiar to the fire fighter, it becomes necessary, in the sole opinion of the expert, to include significant other persons in order to properly handle the fire fighter's counseling, the same may be done. It is not the intent of this program to engage in counseling services in areas other than that which directly affect the fire fighter.
- (6). If a firefighter has a positive drug test, the use of controlled substances by a person to whom they have not been legally prescribed meets the definition of illegal drug use. Impairment on duty shall be determined by a Medical Review Officer or a qualified medical professional subject to the Chief's discretion on relevant circumstances. All disputes regarding the disciplinary actions taken under this Article will be considered a contract grievance and will be subject to the disciplinary procedure in Article XXVI of the Collective Bargaining Agreement. The Association of Fire Fighters proposed the following consequences if a fire fighter tests positive on a drug test. A fire fighter who has a verified, confirmed positive drug test will get a "second chance rehabilitation opportunity."

Random Drug Testing Policy Appendix G.

## **ARTICLE XXV MISCELLANEOUS PROVISIONS**

**Section 1.** The City shall provide a copy of this Agreement to each permanent work station within the Fire Department. The City shall provide to the Association a current copy of Ordinance No. 8064, the current City Charter, Civil Service Commission Rules, along with all future change supplements, and amendments pertaining to the El Paso Fire Department.

**Section 2.** The City shall provide each employee of the Fire Department with a booklet describing all of the benefits of his employment.

**Section 3.** All major painting, remodeling, and renovations of City Fire Department buildings shall be the responsibility of the City, and no member of the Bargaining Unit shall be required to do any of the above.

**Section 3a.** Quality of life items such as bathroom facilities, heating and cooling, and cooking facilities shall be repaired within a reasonable period of time under existing circumstances.

**Section 4.** The City shall provide for insuring fire fighters within the performance of their duties against liability to third persons arising out of the operation, maintenance, or use of any motor vehicle owned or leased by the City.

**Section 5.** All supplies required for the operation, maintenance, and upkeep of fire stations, including, but not limited to, office supplies, cleaning supplies, etc., shall be delivered to the stations.

**Section 6.** All administrative papers, including vacation, birthday, and sick leave papers shall be brought to an employee's work station for his signature. Electronically-available administrative papers shall be deemed to satisfy this requirement.

**Section 7.** Employees at any new station shall be permitted to have installed one or more private telephone lines for personal use. The business phone will not be used for personal matters, except in cases of emergency. The City shall reimburse the reasonable installation charge for one telephone to such employees, provided that the employees remain at all times responsible for any and all other charges and expenses thereafter incurred, including, but not limited to, monthly and long distance charges, special assessments, equipment costs, repair, replacement, maintenance, transfer, and other administrative charges.

**Section 8.** Any employee working 2245 hours to 0645 hours shift at the Communications Division who is summoned to jury duty shall be released from duty at the Communications Division on all shifts after the date the employee is scheduled to appear, until the shift following the day the employee is released from said jury duty; provided, the first or last shift for which the employee was released is not the employee's day off.

**Section 9.** The parties agree that any right or duty of the Chief or Assistant Chief provided in this Agreement may, in the Chief's sole discretion, be delegated to any other person or persons.

**Section 10.** The City shall annually furnish to each first line and reserve fire company up-to-date maps of the City.

**Section 11.** The employer shall provide, without cost to employees on duty, adequate parking spaces adjacent to all Fire Department facilities, fire stations, and work sites.

**Section 12.** All employees must participate in a direct deposit system with banks and credit unions for payroll checks.

**Section 13.** Employees suspended up to a maximum of ten (10) working days may, upon the employee's request and approval by the Chief, forfeit vacation equal to the suspension. The provisions of this Section shall apply solely to suspensions which are agreed to by the employee and no appeal to the Commission may be instituted on suspensions where the employee has agreed to the suspended time. This option must be exercised within seven (7) days upon notification of the suspension.

**Section 14.** The City shall allow the Association to erect an Association bulletin board at each workstation location for legitimate Association business. The Fire Chief shall approve the bulletin board size. The City shall not interfere with said bulletin board erected by the Association, except that the Fire Chief shall approve the content of the bulletin board. Such approval will not be unreasonably withheld. The House Captain shall be permitted to approve the location of the bulletin board within the station. If the bulletin boards are used for any other purpose, the material will be removed by the Chief or his designee

**Section 15.** Fire Department employees who are members of the ARFF Unit will be allowed to qualify for and attend the Fire Training Academy to obtain certifications as structural fire fighters. Employees who do not successfully complete the Academy will be allowed one additional opportunity to attend after every other employee has had the initial chance to attend.

**Section 16.** Fire Department employees who are forty-hour operations personnel (former FMS employees) will be allowed to qualify for and attend the Fire Training Academy to obtain certification as structural fire fighters. The Fire Chief will determine the number of employees who may attend each scheduled Academy. Selection will be based on seniority. Forty- hour operations personnel who do not successfully complete the Academy will be allowed one additional opportunity to attend after every other FMS employee has had the initial chance to attend.

**Section 17.** A Battalion Chief who is assigned to a 40-hour position will be designated as a Staff Battalion Chief. Vacancies in the position of Staff Battalion Chief will be filled by virtue of assignment, not by competitive examination. The ultimate goal, in accordance with the provisions of the following subsections, will be to replace each such rank with an employee in the rank of Battalion Chief.

**Section 17a.** For the duration of his assignment, a Battalion Chief who is assigned to a Staff Battalion Chief position will be paid at the same step on the FS7 pay scale to which he would otherwise be eligible on the FS6 pay scale. At the conclusion of his assignment, the Staff Battalion Chief will

return to appropriate step on the FS6 pay scale. A Battalion Chief's anniversary date will not be reset when he is assigned to a Staff Battalion Chief position nor when he is reassigned to a Battalion Chief position.

**Section 18.** All ranks assigned to a 40-hour position, with the exception of Battalion Chief, will be paid an amount equal to 5% more than the annual rate pursuant to the Wage Scales set forth in Appendix A, for the time assigned to the 40-hour position. At the conclusion of the assignment to the 40-hour position, the employee will no longer receive the additional 5% in pay. Employees temporarily assigned to any 40-hour position for 30 days or longer will be entitled to the 5% increase. An employee who is serving in a temporary assignment at the time of signing of this agreement and has already been assigned for more than 30 days will receive the 5% increase. Employees assigned to transitional duty or for performance or disciplinary reasons will not receive the 5% increase.

**Section 19.** The ranks of Fire Medic, Fire Paramedic, and Medical Lieutenant shall be eliminated through attrition, as the incumbents leave these ranks. The Chief, at his sole discretion, will assign an employee from the rank of FS8 and above to perform the duties and functions of fire marshal, as may be required by state law or city ordinance.

**Section 20.** A onetime payment of \$3,600.00 will be made to any employee who, on his own time, initiative and cost, successfully completes an off-duty paramedic course and passes both the national registry paramedic examination and becomes a locally credentialed paramedic.

## **ARTICLE XXVI GRIEVANCE PROCEDURE**

**Section 1.** All appeals of employee disciplinary matters, including reprimands, suspensions, demotions, and/or termination, and appeals of all other types heretofore heard by the Civil Service Commission (except as the jurisdiction of the Civil Service Commission is limited by another express provision of this Agreement) shall continue to be heard exclusively by the Commission. The decision of the Civil Service Commission shall be final and binding upon the employee(s) involved, the City, and Association, subject to such limited rights of appeal as existed prior to the execution of this Agreement. The following rules shall be applicable to arbitration as well as to appeals to the Civil Service Commission. For the purposes of this Article and Article XXIII, Sections 14 through 14b, inclusive, a "day" shall be defined as a day that City Hall is open to the public for business.

**Section 1a.** Upon request of either party addressed to the opposing party at least twenty (20) days prior to the date of the hearing, the parties shall exchange the names of witnesses expected to be called at the hearing. Such exchange shall be completed no later than ten (10) days prior to the date of the hearing.

**Section 1b.** During the arbitration or hearing of an appeal, the parties shall have the right to have a representative of their choosing sit at the counsel table. Such representative shall have the right to testify at any time during the hearing, and neither the arbitrator nor the Civil Service Commission shall designate the manner in which either grievant or the City calls its witnesses for testimony; provided, however, the arbitrator or the Civil Service Commission may designate which party has the duty to proceed.

**Section 2.** The Association or any employee covered under this Agreement may file a grievance as hereinafter defined and shall be afforded the full protection of this Agreement. Grievances involving the application, interpretation, or enforcement of this Agreement shall, subject to the foregoing Section, be resolved in the following manner:

**Step 1a.** Any grievance filed by the Association shall be filed in writing delivered to the Fire Chief within ten (10) days after occurrence of the grievance. The written grievance shall indicate the employee or employees affected and/or the specific articles allegedly violated and shall proceed directly to the Fire Chief.

**Step 1b.** If the grievance is filed by an employee, the aggrieved employee shall, within five (5) days after the grievance arises, discuss the grievance with his immediate supervisor and attempt to resolve the matter. The supervisor involved shall give an oral answer with respect to the grievance immediately, if possible, but not later than three (3) days following the end of the discussion.

**Step 2.** If the immediate supervisor's oral answer does not settle the issue, the employee shall, within five (5) days following receipt of the oral answer provided for in Step 1b, present the grievance in writing and signed by the employee to the Association's Grievance Committee, with a copy to the Chief. The Grievance Committee shall have full authority to determine whether to proceed further with any employee's grievance. If the Grievance Committee decides not to proceed with the grievance, it shall be deemed to be "withdrawn"; if the Committee decides to proceed with the grievance, it shall, within five (5) days following the referral to the Grievance Committee present the written and signed grievance to the Assistant Chief. The Assistant Chief shall, within ten (10) days thereafter, meet with the aggrieved employee and, if the aggrieved employee desires, a member of the Association's Grievance Committee, to discuss the matter. Within five (5) days following said meeting, the Assistant Chief shall submit a response in writing to the Committee.

**Step 3.** If the grievance is not settled to the Grievance Committee's satisfaction in Step 2, the Committee shall submit the grievance in writing to the Fire Chief within five (5) days following its receipt of the Assistant Chief's written answer. The Fire Chief, the aggrieved employee, and a member of the Grievance Committee shall, within five (5) days, meet to discuss or confer about the grievance. Within ten (10) days following that meeting, the Chief shall submit a response in writing to the Committee.

**Step 4.** If the grievance is not settled to the Grievance Committee's satisfaction in Step 3, the Association may, within ten (10) days following the conclusion of Step 3, notify the City Manager in writing that it desires to submit the matter to final and binding arbitration.

**Section 3.** The time limits set forth in Section 2 are jurisdictional, but all time limits referred to therein may be extended by mutual Agreement of the parties in writing.

**Section 4.** Upon notification that the Association desires to proceed to arbitration under

Section 2, Step 4 of this Article, the parties shall endeavor to select a mutually agreeable neutral arbitrator. If after five (5) days the parties are unable to agree upon a neutral arbitrator, they shall then request that the American Arbitration Association submit a list of seven (7) arbitrators. Within ten (10) days after receipt of the list of arbitrators, each party shall alternate in striking a name from the list until only one name remains. The remaining arbitrator on the list shall act as the neutral arbitrator. The hearing will be held, if possible, within sixty (60) days after selection of the neutral arbitrator. The arbitrator shall, if possible, render the decision in writing within thirty (30) days of the hearing date or of his receipt of timely post-hearing briefs submitted by the parties, if any. The Association and the City may, by mutual agreement, waive the filing of post-hearing briefs.

**Section 5.** The neutral arbitrator to whom any grievance shall be submitted in accordance with the provisions of Section 4 of this Article shall have the authority to interpret the Agreement, to make conclusions of fact based upon the evidence submitted to the arbitration proceeding and to apply the contractual provisions to said facts. The jurisdiction of the arbitrator is limited in that the arbitrator has no authority to add to, subtract from, amend, or otherwise change or in any way modify the provisions of this Agreement. The fee and expenses of the arbitrator shall be borne equally by the City and the Association. If either party desires a transcript of the arbitration hearing, it shall so notify the other party at least 48 hours in advance of the start of the hearing. The full cost of the transcript shall be borne by the party ordering the transcript, and copies of the transcript shall be made available only to that party and the neutral arbitrator unless, prior to the start of the hearing, the other party agrees to assume half the cost of the transcript (including court reporter's fees), in which case copies of the transcript shall be made available to each party and to the neutral arbitrator.

**Section 6.** Time spent by the aggrieved employee and the member of the Grievance Committee in meeting with the Assistant Chief and/or Fire Chief in Steps 2 or 3 of Section 2 shall be regarded as time worked by the aggrieved employee and the Grievance Committee member if, but only if, said meeting occurs during hours in which the employee would otherwise have been scheduled to work, and the Assistant Chief and Fire Chief are free to schedule said meetings at any reasonable time, including when either or both of the employees are not scheduled to work. The City shall not be obligated to pay the aggrieved employee nor any representative of, nor witness for, the Association for time spent in any arbitration hearing under this Article.

**Section 7.** The decision of the arbitrator, rendered in accordance with the provisions of Section 5 of this Article, shall be final and binding upon the Association, all bargaining unit employees, and the City.

## **ARTICLE XXVII NONDISCRIMINATION**

**Section 1.** Membership in the Association is voluntary. Each employee has the right to join and maintain membership in the Association; the employee likewise has the right to refrain from joining, or to withdraw from membership in, the Association, as the employee sees fit. Neither the Association nor the City shall exert any pressure against any employee covered by this Agreement in regard to such matters.

**Section 2.** The City and the Association agree that the provisions of this Agreement shall be applied to all employees within the bargaining unit without regard to membership or non- membership in the Association, or activity or lack of activity on its behalf.

## **ARTICLE XXVIII ASSOCIATION DUES**

**Section 1.** Upon receipt of a voluntarily-signed authorization slip for dues, the City will deduct from the pay of each employee who has executed an authorization slip, membership dues levied by the Association in accordance with its Constitution and By-Laws. The City agrees to deduct from such employee's earnings, and to pay to the Association each month during the life of this Agreement, a lump sum payment upon sixty (60) days' notification by the Association to the City Comptroller's Office, including certification of notice to membership, by the Association. The City further agrees to deduct from such employee's earnings and to pay to the Association any special assessments in a lump sum payment in an amount to be determined by the Association. Said deductions shall be made from the first paycheck of each month and shall be remitted to the Association not later than five (5) working days following such pay day.

**Section 2.** The authorization slip shall contain, as a separate paragraph thereof, the following language:

"The authorization for this deduction is entirely voluntary on my part. It shall be effective until I revoke this authorization with a termination slip provided to the City Comptroller's Office."

**Section 3.** The Association will defend, save, hold harmless, and indemnify the City from any and all claims, demands, suits, or any other form of liability which may arise out of the compliance with Sections 1 and 2 of this Article that are initiated by any member of the bargaining unit.

## **ARTICLE XXIX TIME OFF FOR ASSOCIATION BUSINESS**

**Section 1.** On or before each January 1st, the City shall assess from each person covered by the Collective Bargaining Agreement who is an Association member, four (4) hours of accrued vacation leave time from Association members who work forty (40) hours a week and six (6) hours of accrued vacation leave time from Association members who are 56-hour employees to be placed in an Association business leave pool. The Association shall be allowed to debit the pool during the calendar year when Association officers or designees are required to administer the contract; represent the Association at meetings or events; represent members at disciplinary hearings, grievances, or on other job-related matters; attend seminars or training programs; conduct any business associated with collective bargaining; or conduct other Association business. The Association shall notify the Fire Chief at least 48 hours in advance of such time off. The pool shall be cumulative during the term of this Agreement. The City is only required to make an individual assessment from Association members who have at least four (4) hours, if the employee works forty hours a week, and six (6) hours, if the employee is a 56-hour employee, of accrued vacation time at the time the City makes the assessment. The Fire Chief must give his express written approval to any Association request to use



the pool for more than ten (10) members at any one time. If the Fire Chief declares an emergency, he may order the Association President or any Association officers on Association business leave time to report to work for the pendency of the emergency. An emergency is an unexpected happening or event or unforeseen situation or crisis that calls for immediate action and requires the Fire Chief to order the Association President or officers to report to work. When an employee is using the Association Pool, for purposes of leave accrual and pension contributions, the time is treated as time worked.

**Section 2.** Prior to the beginning of collective bargaining negotiations, the Association shall designate not more than six employees who shall constitute its bargaining team. For each of the six employees so designated, the Association shall debit the Association Leave Pool for time spent in actual collective bargaining negotiating sessions with the City's bargaining team, during which said employee was otherwise scheduled to work.

**Section 3.** Members of the Association's Executive Board shall be permitted to use the Association Leave Pool to conduct elections relating to Association business. The President of the Association shall give 72 hours' prior notice to the Fire Chief as to the time and place for such election, and the names of the members of the Executive Board who will be conducting the election.

**Section 4.** Within ten days after the execution of this Agreement, the Association shall notify the Chief in writing as to the names of the members of the Association's Executive Board. The Association shall thereafter promptly notify the Chief of any change in the composition of its Executive Board. To the extent that any designated member(s) of the Association's Executive Board is otherwise scheduled to work, the employee shall be permitted to attend the monthly Association membership meeting and the monthly Association Executive Board meeting, provided that the Association Leave Pool is debited for such time.

**Section 5.** An Association representative may be allowed to visit work stations in his Battalion/Division, provided that the Association representative is either off duty or debits the Association Pool, if on duty. Such visits must be approved by the Fire Chief in advance and shall be requested at least one week in advance. Any meeting for the exchange of Association information may be called by authorized Association Representative and may be held on city property after 1800 hours, provided that the Association representative is off duty or, if on duty, debits the Association Pool. Such visits must be approved by the Fire Chief in advance and shall be requested at least one week in advance.

**Section 6.** The Association shall be given the opportunity to orient new employees on the history, purpose, objective, and benefits of the El Paso Association of Fire Fighters. The time and date of the presentation will be determined by the Fire Chief. Such material to be presented by the Association to such employees shall be mutually agreed to by the Fire Chief and the Association president. The Association may pass out enrollment cards during the presentation. Such presentation shall not be for more than four hours and, if the Association speaker is on duty during the time of the presentation, the Association Leave pool shall be debited.

**Section 7.** The City agrees that the President of the Association will be placed on special assignment during the term of his presidency. The special assignment of working from the Association

office will give the Association President the latitude to deal with the duties of his presidency and contractual responsibilities while retaining the privileges of his current employment, while the Fire Chief retains the right to recall him to duty during any emergency or special event involving an overriding need for the protection of the citizens of El Paso.

**Section 7a.** The Association President as part of his Association duties, reserves the right, as in the past, to mitigate grievances at all informal and formal levels in order to reduce the number of complaints and, in all cases, reserves the right to speak and visit members of the bargaining unit, as well as to tour existing fire facilities and to review existing equipment toward a goal of improving the quality of work life for the Fire Fighters of the City of El Paso whom he represents.

**Section 7b.** It is understood that the President of the Association shall suffer no loss of longevity, seniority or pension, days off, or any other benefits as a result of and during the term of such special assignment. Provided however, the President shall be entitled to educational and/or certification pay if applicable, but shall not be entitled to premium assignment or incentive pay (i.e. overtime) unless directed by the Chief to perform Fire Fighter duties that call for payment of said premium pay. When the term of the President expires, the President shall be eligible to return to his previously assigned shift and duty assignment, provided any certificate that is required has been maintained. The position vacated by the President of the Association, if it is above the grade of FS5 shall not be filled by promotion or assignment during said term based on the needs of the department.

## **ARTICLE XXX IMPASSE PROCEDURE**

**Section 1.** Negotiations for a new contract shall commence in accordance with Chapter 174 of the Local Government Code. If impasse should be reached as defined in Chapter 174, either party may request mediation, and, upon such request, the parties shall immediately proceed to choose one mediator as provided herein. The function and powers of the mediator shall be as specified in Section 174.151. The mediation shall be extended for fourteen (14) calendar days, or such other period as is mutually agreeable to the parties.

**Section 2.** If no Agreement is reached through mediation, upon request of either party, the parties shall submit the dispute to one fact finder, chosen as provided herein. The fact finder shall conduct a full and fair hearing on all unresolved issues. The hearing shall be informal and strict rules of evidence shall not apply. After hearing all evidence offered by the parties and any evidence requested independently by the fact finder, the fact finder shall render a written decision making findings of fact and recommendations as to all matters in dispute. In the opinion, the fact finder shall state the reasons for the findings of fact and recommendations. In rendering such finding and recommendations, the fact finder shall exercise independent judgment and shall not attempt to "split the difference."

In making the findings of fact and recommendations, the fact finder shall consider, inter alia, the following evidence submitted by the parties or obtained at the fact finder's direction: The overall compensation in the current contract, including direct salary and fringe benefits; the income available

to the City and demands on that income; a comparison of wages, hours, and conditions of employment of El Paso Fire Fighters with the wages, hours, and conditions of employment of other public and private employees performing similar services and with other employees generally in public and private employment in comparable communities and in El Paso; the hazards of employment, physical, education, and mental qualifications, job training, and skills required of an El Paso Fire Fighter; the cost of living in El Paso for the preceding twelve (12) month period using localized data to the fullest extent feasible; and any current national or state policies or guidelines with respect to compensation.

**Section 3.** The selection of the mediator and the fact finder shall occur as follows: When either party requests mediation or fact finding, the parties may agree to choose any mediator or fact finder or method of choosing same. If no Agreement occurs within five (5) days from the request, the parties shall request a list of seven neutrals from the American Arbitration Association (AAA). Upon receiving the list, the parties shall select the mediator or fact finder by alternately striking names. The request to AAA shall state the dates on which the neutrals must be available. The mediator and the fact finder shall be selected within five (5) days after the receipt of the list from the AAA. The fee and expenses of the mediator and the fact finder shall be split equally between the City and the Association. All other expenses, including witness fees, shall be paid by the party incurring the expense or calling the witness.

**Section 4.** If, within seven (7) days after the fact finding, the parties have failed to agree to a contract, the major, unresolved issues shall be submitted to the qualified voters of El Paso in a referendum election according to the following procedure. The election shall be held on the first date permissible under state law. By agreement, the parties may submit any issue or issues to the voters. If no such agreement is reached, then each party shall be entitled to submit two (2) issues to the voters, each issue on a distinct topic. For example, each of these constitutes a distinct issue: Salary, dependent health insurance coverage, promotional procedures, political activities. Each party will submit its two issues, and its alternatives to the other party's issues, so that the voters will vote on four distinct issues. Each voter will have the option of voting for all the issues of one party, or for some issues of one party and some of the other. The issues submitted to the voters will appear on the ballot exactly as each respective party would have them appear in the contract. The decision on each issue by a majority of the voters voting on the issue at the referendum election shall be binding on the parties, subject to the laws of Texas, and shall be adopted as part of the collective bargaining Agreement. In the absence of agreement of the parties to the contrary, the term of the provisions adopted by the voters shall be the same as the term of the entire contract entered into by the parties, or, in absence of such a contract, shall extend until the next September 30 following the election or until a new contract is agreed upon. The Association shall pay the cost of printing the ballots. All other costs of the election shall be paid by the City. The place of the respective parties on the ballot shall be determined by coin flip.

## **ARTICLE XXXI SEPARABILITY**

Should any provision of this Agreement be rendered or declared invalid by reason of any applicable existing or subsequently-enacted legislation or regulation or by reason of the decree of a court of competent jurisdiction, such invalidation of part or parts of this Agreement shall not invalidate the remaining portions thereof and said remaining portions shall remain in full force and effect for the

duration of the Agreement.

## **ARTICLE XXXII COMPLETE AGREEMENT**

**Section 1.** The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining regarding the employees covered by this Agreement and that the understandings and agreements arrived at between the parties hereto, after the exercise of that right and opportunity, are fully set forth in this Agreement. Therefore, the City and the Association, for the life of this Agreement, each voluntarily and unqualifiedly waives its right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter whether or not specifically referred to or covered by this Agreement, even though the subject may or may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement.

**Section 2.** The parties further agree that any mutual agreements or understandings which are reached during the term of this Agreement shall be reduced to writing.

**Section 3.** Nothing contained in this Article shall preclude the parties' entering into negotiations regarding contract provisions to become effective after the expiration date of this Agreement.

## **ARTICLE XXXIII AUTHORITY AND TERM**

**Section 1.** The City and the Association have, by these presents, reduced to writing the Collective Bargaining Agreement resulting from negotiations entered into by the City and the Association.

**Section 2.** This Agreement shall be in effect from September 1, 2022 through August 31, 2026, and shall be automatically extended from year to year until replaced by a successor Agreement.

**Section 3.** It shall be the obligation of the Association to serve written notice of a request for collective bargaining upon the City at least 120 days before the conclusion of the current fiscal operating budget. The fiscal operating budget concludes on August 31 of each year.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

THE CITY OF EL PASO, TEXAS

LOCAL 51, INTERNATIONAL  
ASSOCIATION OF FIRE FIGHTERS, INC.

\_\_\_\_\_  
Tomás Gonzalez  
City Manager

\_\_\_\_\_  
Paul Thompson  
President, Local 51

ATTEST:

\_\_\_\_\_  
Laura Prine, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Eric Gutierrez  
Assistant City Attorney

City Of El Paso Fire Pay Schedule  
First pay period following September 1, 2021

Current Pay Schedule

		Step Two	Step Three	Step Four	Step Five	Step Six	Step Seven	Step Eight	Step Nine	Step Ten	Step Eleven
FS1 Fire Fighter Fire Medic	Annual	44,993.48	47,246.97	49,605.90	52,093.00	54,693.15	57,428.93	60,300.33	63,315.35	66,480.34	69,804.36
	Monthly	3,749.46	3,937.25	4,133.83	4,341.08	4,557.76	4,785.74	5,025.03	5,276.28	5,540.03	5,817.03
	4-Weeks	3,461.04	3,634.38	3,815.84	4,007.16	4,207.16	4,417.62	4,638.48	4,870.42	5,113.88	5,369.56
	Biweekly	1,730.52	1,817.19	1,907.92	2,003.58	2,103.58	2,208.81	2,319.24	2,435.21	2,556.94	2,684.78
	Hour-8	21.631481	22.714889	23.848990	25.044712	26.294784	27.610063	28.990543	30.440072	31.961702	33.559788
	Hour-12	15.451058	16.224921	17.034993	17.889080	18.781988	19.721473	20.707531	21.742909	22.829787	23.971277
FS2 Fire Suppression Technician Fire Paramedic	Annual		52,093.00	54,693.15	57,428.93	60,300.33	63,315.35	66,480.34	69,804.36	73,294.60	76,959.39
	Monthly		4,341.08	4,557.76	4,785.74	5,025.03	5,276.28	5,540.03	5,817.03	6,107.88	6,413.28
	4-Weeks		4,007.16	4,207.16	4,417.62	4,638.48	4,870.42	5,113.88	5,369.56	5,638.04	5,919.96
	Biweekly		2,003.58	2,103.58	2,208.81	2,319.24	2,435.21	2,556.94	2,684.78	2,819.02	2,959.98
	Hour-8		25.044712	26.294784	27.610063	28.990543	30.440072	31.961702	33.559788	35.237788	36.999707
	Hour-12		17.889080	18.781988	19.721473	20.707531	21.742909	22.829787	23.971277	25.169849	26.428362
FS3 <u>(RESERVED)</u>	Annual		54,693.15	57,428.93	60,300.33	63,315.35	66,480.34	69,804.36	73,294.60	76,959.39	80,807.47
	Monthly		4,557.76	4,785.74	5,025.03	5,276.28	5,540.03	5,817.03	6,107.88	6,413.28	6,733.96
	4-Weeks		4,207.16	4,417.62	4,638.48	4,870.42	5,113.88	5,369.56	5,638.04	5,919.96	6,215.96
	Biweekly		2,103.58	2,208.81	2,319.24	2,435.21	2,556.94	2,684.78	2,819.02	2,959.98	3,107.98
	Hour-8		26.294784	27.610063	28.990543	30.440072	31.961702	33.559788	35.237788	36.999707	38.849745
	Hour-12		18.781988	19.721473	20.707531	21.742909	22.829787	23.971277	25.169849	26.428362	27.749818
FS4 Fire Lieutenant Fire Medical Lieutenant	Annual						69,804.36	73,294.60	76,959.39	80,807.47	84,847.82
	Monthly						5,817.03	6,107.88	6,413.28	6,733.96	7,070.65
	4-Weeks						5,369.56	5,638.04	5,919.96	6,215.96	6,526.76
	Biweekly						2,684.78	2,819.02	2,959.98	3,107.98	3,263.38
	Hour-8						33.559788	35.237788	36.999707	38.849745	40.792221
	Hour-12						23.971277	25.169849	26.428362	27.749818	29.137301
FS5 Fire Captain	Annual						76,959.39	80,807.47	84,847.82	89,090.15	93,544.30
	Monthly						6,413.28	6,733.96	7,070.65	7,424.18	7,795.36
	4-Weeks						5,919.96	6,215.96	6,526.76	6,853.08	7,195.72
	Biweekly						2,959.98	3,107.98	3,263.38	3,426.54	3,597.86
	Hour-8						36.999707	38.849745	40.792221	42.831803	44.973221
	Hour-12						26.428362	27.749818	29.137301	30.594145	32.123729
FS6 Battalion Chief Staff BN Chief	Annual					84,847.82	89,090.15	93,544.30	98,221.53	103,136.68	108,293.49
	Monthly					7,070.65	7,424.18	7,795.36	8,185.13	8,594.72	9,024.46
	4-Weeks					6,526.76	6,853.08	7,195.72	7,555.50	7,933.60	8,330.26
	Biweekly					3,263.38	3,426.54	3,597.86	3,777.75	3,966.80	4,165.13
	Hour-8					40.792221	42.831803	44.973221	47.221889	49.584942	52.064178
	Hour-12					29.137301	30.594145	32.123729	33.729921	35.417816	37.188698
FS7 <u>(RESERVED)</u>	Annual						93,544.30	98,221.53	103,136.68	108,293.49	113,700.19
	Monthly						7,795.36	8,185.13	8,594.72	9,024.46	9,475.02
	4-Weeks						7,195.72	7,555.50	7,933.60	8,330.26	8,746.16
	Biweekly						3,597.86	3,777.75	3,966.80	4,165.13	4,373.08
	Hour-8						44.973221	47.221889	49.584942	52.064178	54.663553
	Hour-12						32.123729	33.729921	35.417816	37.188698	39.045395
FS8 Deputy Chief	Annual						98,221.53	103,136.68	108,293.49	113,700.19	119,385.17
	Monthly						8,185.13	8,594.72	9,024.46	9,475.02	9,948.76
	4-Weeks						7,555.50	7,933.60	8,330.26	8,746.16	9,183.48
	Biweekly						3,777.75	3,966.80	4,165.13	4,373.08	4,591.74
	Hour-8						47.221889	49.584942	52.064178	54.663553	57.396716
	Hour-12						33.729921	35.417816	37.188698	39.045395	40.997655
FS9 Assistant Chief	Annual						108,293.49	113,700.19	119,385.17	125,354.47	131,622.16
	Monthly						9,024.46	9,475.02	9,948.76	10,446.21	10,968.51
	4-Weeks						8,330.26	8,746.16	9,183.48	9,642.66	10,124.78
	Biweekly						4,165.13	4,373.08	4,591.74	4,821.33	5,062.39
	Hour-8						52.064178	54.663553	57.396716	60.266572	63.279885
	Hour-12						37.188698	39.045395	40.997655	43.047552	45.199918
C - 1 ARFF Technician I	Annual	41,941.19	43,746.21	45,692.37	47,627.90	49,568.75	51,551.54	53,829.17	56,520.60	59,346.65	
	Monthly	3,495.10	3,645.52	3,807.70	3,968.99	4,130.73	4,295.96	4,485.76	4,710.05	4,945.55	
	4-Weeks	3,226.24	3,365.10	3,514.80	3,663.68	3,812.98	3,965.50	4,140.70	4,347.74	4,565.12	
	Biweekly	1,613.12	1,682.55	1,757.40	1,831.84	1,906.49	1,982.75	2,070.35	2,173.87	2,282.56	
	Hour-8	20.164034	21.031832	21.967486	22.898029	23.831130	24.784394	25.879409	27.173365	28.532043	
	Hour-12	14.402881	15.022737	15.691061	16.355735	17.022236	17.703139	18.485292	19.409547	20.380031	

## APPENDIX B

56-hour employees covered by this Agreement shall work nine 56-hour shifts in a 27-day period according to the following schedule:

<b>Days of Cycle</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>
Shift	A	B	A	B	C	B	C	A	C	A	B	A	B	C

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<b>Days of Cycle</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>
Shift	B	C	A	C	A	B	A	B	C	B	C	A	C

## **APPENDIX C**

<b>Class Title</b>	<b>Grade</b>
Fire Fighter	FS 1
Fire Medic	FS 1
Fire Suppression Technician	FS 2
Fire Paramedic	FS 2
Fire Suppression Technician II	FS 3
Fire Lieutenant	FS 4
Medical Lieutenant	FS 4
Fire Captain	FS 5
Fire Battalion Chief	FS 6
Staff Battalion Chief	FS 6
Fire Division Chief	FS 6
Assistant Fire Marshal	FS 6
Fire Deputy Chief	FS 8
Fire Marshal	FS 8
Fire Assistant Chief	FS 9
ARFF Technician I	C-1



## **APPENDIX D**

### **BASELINE PHYSICALS**

The baseline physicals will include the following tests:

1. Blood Test
2. Urinalysis
3. Spirometry
4. EKG
5. Hearing Test
6. Stress Test
  - (a) if deemed necessary by physician
  - (b) for all members of the Haz/Mat entry team

## **APPENDIX E**

### **Anniversary Dates For ARFF Employees**

<b>Title</b>	<b>Name</b>	<b>Anniversary Date</b>
ARFF Technician I	L. Gomez	11/30

**APPENDIX F**  
**HEALTH BENEFIT PLAN**

**PPENDIX G**  
**RANDOM DRUG TESTING POLICY**

## Appendix G: Random Drug Testing Policy

### Section 1. General.

Section 1a. It is agreed that efficiency and safety in the work place is necessary and required in order to carry out the mission of the Fire Department. Both parties support the proper and responsible implementation of this Article in the interests of public safety and the safety of Fire Fighters.

Section 1b. Therefore, it is understood that the use of alcohol, drugs, or other controlled substances, including improper use of legally prescribed drugs, by employees while on duty or in the work place is detrimental to the operation of the Department and is clearly prohibited by this Agreement and the rules and regulations of the Fire Department.

Section 1c. The City and the Union have a mutual interest in ensuring that drug and alcohol impaired employees do not perform Fire Department duties. The City and the Union are committed to the principle that the mandatory drug and alcohol testing policy for employees is designed and shall be administered to result in disciplinary action only against those employees who have violated the Fire Department's rules, regulations, policies and procedures.

Section 1d. The City and the Union agree that employees may be called upon in hazardous situations without warning, and that it is imperative to the interest of the employees and the public to ensure that no employee is substance impaired. In order to further their joint interest in protecting employees and the public, effective one year after the ratification of this agreement, the City and the Union agree to mandatory random drug and alcohol testing as described in this Article.

Section 1e. Testing conducted under this Article shall be by urinalysis for drug tests and by appropriate evidence breath testing device protocols for alcohol.

Section 1f. All samples will be collected as split-samples and will be handled in accordance with the standards in 49CFR part 40 as amended, as outlined in the Drug and Alcohol Testing Procedures.

Section 1g. The City has developed a Fire Department Drug and Alcohol Policy with procedures and protocols, which follow the requirements of SAMHSA/CAP FUDT. The El Paso Fire Department Drug and Alcohol Testing Policy currently in effect will remain unchanged during the life of this Agreement, except as modified herein, or if changes are necessary to comply with developments in the law or modification of the Medical Review Officer Manual. The parties agree that the current fire department policy, attached as Appendix H, is consistent with this Article and contains additional procedural and substantive requirements, and further agree that the City is entitled to continue the implementation of drug testing under the provisions of this Article and policy.

Section 1h. The Section of the Fire Department Drug and Alcohol Policy dealing with mandatory drug testing and the consequences thereof is subject to amendment by the City only as the City determines is necessary to follow the requirements SAMHSA/CAP FUDT.

## Section 2. Random Testing.

Section 2a. All sworn employees of the El Paso Fire Department, including the Fire Chief, are subject to random drug and alcohol testing. Between 10 and 50 percent of the authorized staffing levels identified each fiscal year shall be subject to mandatory drug and alcohol testing during that fiscal year. The employees shall be chosen on a fair and impartial statistical basis (in which each employee has an equal chance of being selected) by a computerized program operated and certified as non-discriminatory by an independent firm hired by the City. This creates the possibility that the same name(s) could be selected once or more in a year, or not at all. The City will also contract a qualified vendor to conduct the testing. This testing will entail 10 panel testing and breath alcohol concentration testing. A violation will occur when an employee has a confirmed positive drug test or a confirmed breath alcohol concentration test level of .04 or greater.

Section 2b. Drug testing will be unannounced and will occur at unpredictable times with employees being tested upon randomized computer selection. All testing shall be conducted during the employee's normal working hours. If an employee is selected during a period where that employee is not on duty, the Human Resources representative shall ensure that the employee is notified immediately upon returning to duty to report for testing. The timing and number of the random tests shall be controlled by the HR representative in order to ensure that the proper percentage of the department is tested. The integrity and security of the list shall be ensured by the Human Resources representative.

Section 2c. Upon notice of selection for random testing, the employee shall be escorted to the testing laboratory and shall provide a urine and breath sample in accordance with the policy or protocol established by the testing laboratory. Failure to provide a sample shall be considered refusal to submit to a drug test.

## Section 3 Post-Accident Testing and Reasonable Suspicion:

Post-accident and reasonable suspicion testing will entail 10 panel testing and alcohol testing. A violation will occur when an employee has a confirmed positive drug test or a breath alcohol concentration confirmation test level of .04 or greater.

### Section 3a. Post-Accident:

1. The parties agree to require post-accident mandatory alcohol and drug testing under the testing guidelines set forth in this Article of any Fire Fighter involved in a vehicular accident in a City vehicle where any of the following conditions exist:
  - (a). An employee while driving a City vehicle becomes involved in a vehicular accident which results in a human fatality.

- (b). An employee while driving a City vehicle becomes involved in a vehicular accident and the employee receive a moving traffic violation arising from the accident.
  - (c). An employee while driving a City vehicle becomes involved in a vehicular accident from which any involved vehicle requires towing from the scene.
  - (d). An employee while driving a City vehicle becomes involved in a vehicular accident from which any person involved is transported from the scene for medical treatment.
2. The City agrees to conduct post-accident drug and alcohol testing of any employee involved in a vehicular accident in a City vehicle that voluntarily requests testing, regardless of whether the above conditions are met.

#### Section 3b. Reasonable Suspicion Testing:

1. The Union acknowledges and recognizes the right of the City to investigate possible alcohol or drug abuse by employees which may impair job performance, as well as off-duty conduct which results in reasonable suspicion. Examples of off-duty conduct that could result in reasonable suspicion include, but are not limited to, arrest for possession of, use, or being under the influence of drugs or alcohol. It is understood that the City shall adequately train its supervisory personnel in the detection of the symptoms and effects of alcohol and/or controlled substance abuse so that they may properly investigate cases of on-duty reasonable suspicion. When reasonable suspicion has been identified (on-duty or off), the suspected employees will be required to submit to drug and alcohol screening in accordance with the terms of this Agreement.
2. Reasonable suspicion is defined as the actions, appearance or conduct of an employee which are indicative of or consistent with the use and/or presence in the employee's body of a controlled substance or alcohol. Reasonable suspicion is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.
3. Reasonable suspicion testing is not limited by this Article except to the extent that any urine testing utilized shall be in accordance with the lab testing protocol below. Reasonable suspicion testing may involve urine or blood, or other biological samples or tissues as determined under existing legal standards. A fire fighter will not be required to take more than one of these tests.

#### Section 4 Testing Standard

Section 4a. The City has developed a Fire Department Drug and Alcohol Policy with procedures and protocols which follow the requirements of SAMHSA/CAP FUDT. The section of the Fire Department Drug and Alcohol Policy dealing with mandatory drug testing and the

consequences thereof is subject to amendment by the City only as the City determines that it is necessary to follow the requirements of SAMHSA/CAP FUDT.

Section 4b. Nothing in this Article shall be construed to abolish the existing authority and practice of the City to conduct drug testing for:

- a. Pre-employment.
- b. Reasonable suspicion.
- c. Upon return to duty after an absence of 30 calendar days or more.
- d. Post-accident.
- e. Pre-assignment testing where required by law.
- f. Post firearm discharge.

#### Section 5. Threshold Levels Revealed by Testing

The parties have agreed that the procedures identified in 49 CFR part 40, as amended, shall be the guidance for any drug and alcohol testing administered under this Article. The only modification from the CFR guidance will be that all drug testing shall be conducted using a 10 panel test.

Section 5a. A positive test is defined as one where there is a confirmed quantifiable presence of one of the prohibited substances in an amount that meets or exceeds the thresholds included as Appendix I.

Section 5b. A positive test for alcohol shall be one where the breath alcohol concentration is confirmed to be .04 or greater.

Section 5c. Refusal to submit to a drug or alcohol test shall be treated as a confirmed positive test.

#### Section 6. Notification and Reporting

Section 6a. All drug and alcohol testing under this Article shall be conducted while the employees are on duty. Upon notification of selection for random testing, order to report for post- accident, or for cause the employee shall be escorted to the testing facility to provide the appropriate sample.

Section 6b. In all drug and alcohol testing under this Article, only conclusive results are to be reported to the City. Both tests must be positive or the results are considered inconclusive thereby causing a negative test to be reported to the City.

Section 6c. Concentrations less than the thresholds listed herein, or initial positives not confirmed by the confirmatory testing shall be disregarded by the City and may not be used at any time for any employment or disciplinary purpose whatsoever by the City.



Section 6d. Once the employee has been notified of a drug test under any provision of this Article, an employee does not have any right to self-report use or impairment under this Article, and thereby escape the consequences of violating the Departmental Rules and Regulations. It shall be within the Chief's discretion to permit self-reporting and to withhold or suspend discipline based upon all relevant facts and circumstances.

## Section 7. Alcohol Related Guidance

Alcohol Testing Shall be as Follows:

Section 7a. Alcohol testing shall be conducted by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing Device (EBT). The employee will provide a breath sample. If the employee's alcohol concentration is greater than or equal to .04, a second confirmation test shall be performed in accordance with established EBT protocol.

Section 7b. An employee's failure or refusal to provide a breath sample shall result in a determination that the employee's alcohol concentration is greater than or equal to .04.

Section 7c. Confirmation that an employee's alcohol concentration is greater than or equal to .04 shall result in disciplinary action according to this article.

Section 7d. The guidance under 49CFR Part 654 regarding safety sensitive positions shall be adhered to including removing an employee from duty for an alcohol test of .02 or greater but less than .04. Although this is not considered a positive test, the employee will be placed on sick leave and may not return to duty until the start of the employee's next regularly scheduled shift. This will not be deemed an occurrence.

Section 7e. Tests that yield a concentration below .02 are considered negative with no consequences under this article.

## Section 8. Discipline for Positive Drug and Alcohol Tests.

Section 8a. 1st positive result:

The employee shall be suspended from the Fire Department for a period of time not to exceed thirty (30) days. The employee shall further be required to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem. Specifically, the employee must successfully complete an appropriate rehabilitation program as determined by a drug and/or alcohol abuse evaluation expert. The employee may utilize sick leave, vacation or unpaid administrative leave as necessary to complete the rehabilitation program. Verification of the employee's successful completion of the program must be provided to the City by the rehabilitation facility no later than six (6) months from the date of the initial positive result and constitutes a condition precedent to the employee's return to work. Prior to returning to duty the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.04 and/or controlled substance test with a verified negative result. In addition, the City may continue to monitor any employee under this provision by conducting unannounced follow-up testing not

to exceed twenty four (24) months following the employee's return to work. An employee's failure to meet the requirements to return to duty herein shall automatically be considered a 2<sup>nd</sup> positive test result.

Section 8b. 2<sup>nd</sup> positive result:

Under this article, a 2<sup>nd</sup> positive test result at anytime will result in termination of the employee with no appeal to the Civil Service Commission.

Section 9. Drug and Alcohol Abuse Treatment.

Section 9a. The El Paso Fire Department encourages any employee who has an alcohol or other drug problem to seek treatment before the problem manifests itself in a violation of this policy and before the employee has a positive test result. To encourage employees to maintain a safe, healthy, and productive work environment, the City of El Paso provides an Employee Assistance Program as an option for an employee seeking treatment. An employee who self-reports an abuse problem, which has not violated department policies and rules and regulations, may self-report and seek treatment. Employees may not be disciplined for entering a treatment program under these circumstances. An employee may not self-refer once notification of a drug test has been made.

Section 9b. The City shall implement a drug and alcohol abuse education program. As part of that program, information shall be provided on the availability of any EAP services under City programs or other outside service providers.

Section 10 Union Representation of Members.

Section 10a. While it is understood that the Union is unequivocally opposed to the use of alcohol or drugs in the work place, as well as the abuse of such substances under any condition, and further agrees to cooperate toward the prevention of such abuse and strongly supports the prohibition of the use of drugs or alcohol in the work place and the proper enforcement of the Department's rules and regulations, the Union, retains the right to fairly and properly represent any aggrieved member of the bargaining unit by reason of the application of this Article, including but not limited to what the Union may consider as unwarranted or unreasonable investigations, search or the imposition of discipline.

Section 11 EAP/Drug committee

Section 11a. The City agrees to form an employee assistance drug committee with the Association. The Fire Chief and the Association President shall designate two (2) individuals to serve on the committee; the committee shall assemble and prepare materials to inform Fire Fighters of the issues and dangers of substance abuse to the employee, their colleagues in the department, the public, and their families. The materials shall include an inventory and presentation of available community and City resources for dealing with emotional issues, depression, family conflict, domestic violence, alcohol abuse, substance abuse, and other mental and medical issues which are a part of the substance abuse paradigm. The committee shall make materials and presentations available to all Fire Fighters.

Section 12. Confidentiality.

Section 12a. All records pertaining to the department required drug and/or alcohol tests shall remain confidential to the extent allowed by law, unless offered in evidence in a disciplinary appeal. Drug test results and records shall be stored in a locked file under the control of the Human Resources Representative or his designee. The Chief will maintain original copies submitted by the laboratory. No access to these files shall be allowed without written approval of the Chief.

**APPENDIX H**  
**EL PASO FIRE DEPARTMENT DRUG & ALCOHOL TESTING POLICY**

## **El Paso Fire Department Drug & Alcohol Testing Policy**

**Purpose and Scope:** The El Paso Fire Department (EPFD) believes employees have a right to work in a drug and alcohol free environment. Persons under the influence of drugs and alcohol may pose serious safety, health and security risks to the public and to other Department employees. In addition to the City's Drug-Free Work Place Policy, this policy provides directives to all sworn employees of the EPFD concerning procedures for drug and alcohol testing. Nothing herein shall replace or supersede any provision of the Drug and Alcohol Testing article in the Collective Bargaining Agreement between the City of El Paso, Texas and the Local 51, International Association of Fire Fighters Inc. (hereinafter referred to as the "CBA").

### **I. Random Testing:**

All sworn employees of the El Paso Fire Department, including the Fire Chief (hereinafter referred to in this policy as "employee" or "employees") are subject to random drug testing. Between 10 and 50% of the authorized staffing levels identified each fiscal year, shall be subject to mandatory random drug testing during that fiscal year in accordance with the Collective Bargaining Agreement (CBA).

#### **A. Selection of Employees for Random Testing:**

Employees shall be subject to random testing on a fair and impartial statistical basis. The fair and impartial statistical basis (in which each employee has an equal chance of being selected) shall be by a computerized program operated and certified as non-discriminatory by an independent firm hired by the City, and the employee shall be tested upon being selected by the computer. The firm shall generate a list upon request by the EPFD Human Resources Manager (HRM).

1. The random list will be delivered to the HRM or designee by email, or hand delivered letter.
2. The HRM or designee will issue a written directive to each employee on the list, ordering them to submit to drug testing at the specified date, time, and location, and will provide the reason for the test (post-accident, random or reasonable suspicion).
3. Except when in actual use, possession of and access to the list of names will be limited to the HRM and/or designee.

#### **B. Notification to and Reporting by Employees for Random Testing**

The El Paso Fire Department HRM will coordinate with the testing vendor concerning the date, time, location, and number of employees to be tested. The collection dates will not be announced to the affected employee(s) in advance.

1. The HRM will verify that the employees randomly selected have reported to duty prior to making the notification to report for testing.

2. The HRM will provide the appropriate supervisor with a list of names of the employees selected for testing.
3. The appropriate supervisor, or Professional Standards Chief, will ensure that all selected employees are ordered to report for testing both orally and by written directive using the Notification to Report Memo. The use of the Notification to Report Memo serves as a direct order by the authority of the HRM on behalf of the Fire Chief to provide the necessary sample at the specified location.
4. The HRM shall coordinate the testing process to coincide with an employee's regularly scheduled workday.
5. Supervisors will make every effort to ensure their employees are escorted to the testing facility immediately upon notification. If the appropriate supervisor cannot escort the employee, they shall contact the Professional Standards Chief to arrange to have the employee escorted to the testing facility. Once the notification has been made to the employee, they shall not be left unescorted until the sample has been provided.
6. An employee who refuses, fails, or is unable to provide an adequate specimen, shall be considered to have a positive test and will be subject to discipline as outlined in the CBA.

## **II. Collection Procedure**

Collection and analyses of the necessary samples will be conducted by a contracted, qualified and independent firm/laboratory that complies with requirements of SAMHS/CAP FUDT, in accordance with the CBA. All samples will be collected as split samples and will be handled in accordance with the standards of 49 CFR Part 40. After arriving at the specified collection location, employees will comply with instructions received from screening personnel. Screening will only be done for prohibited drugs and/or alcohol. No other substances will be screened, nor will any other medical tests be conducted or performed.

- A. The collection dates will not be announced in advance.
- B. Employees will be required to present their El Paso Fire Department identification card at the collection location.
- C. The samples will be provided in maximum feasible privacy.
- D. Appropriate chain of custody procedures will be followed at all times at the collection facility and at the laboratory that performs the analysis.

- E. Personnel who are summoned to provide a specimen for analysis will remain at the collection location in view of collection personnel until an adequate sample can be produced.
- F. Employees will have a maximum of 4 hours in which to provide the sample. Failure to provide a sample in that timeframe shall be considered refusal to submit to a drug test.

### **III. Positive Test Results**

- A. If the initial screening indicates a positive test result, a second test of this specimen will be performed.
  - 1. A confirmed positive report will only be made after this second test also comes back positive.
  - 2. A confirmed positive test report will be maintained by the HRM in a secure area.
- B. Once the HRM has received the initial notification from the drug-testing vendor that an employee has a confirmed positive test result, the HRM will notify the Fire Chief and the Professional Standards Chief.
- C. Upon notification of a positive test result, the Discipline for Positive Drug and Alcohol Tests, Section 8 of Appendix G: Random Drug Testing Policy will be followed.
- D. Within two working days after receiving notification from his/her department director of the initial positive test result, the employee will have the opportunity, at his own expense, to request that a re-test be performed manually, utilizing the original split sample.
- E. If the employee's sample comes back with a negative result, the original test result shall be deemed inconclusive and, therefore, disregarded by the City.
- F. The sample will be maintained for a period of one (1) year.
- G. Drug tests results will be made available to the affected employee upon written request, subject to applicable rules, regulations and legal considerations.
- H. In accordance with applicable privacy laws, drug test results and documentation about drug testing results, other than disciplinary reports, shall be maintained in a secured (locked) cabinet in the office of the HRM. A separate, confidential file will be maintained for each employee who submits to drug or alcohol testing.

- I. Impairment on duty shall be determined by a Medical Review Officer or a qualified medical professional subject to the Chief's discretion on relevant circumstances. All disputes regarding the disciplinary actions taken under this policy, in accordance with the CBA, will be considered a contract grievance and will be subject to the grievance procedure.

#### **IV. Reasonable Suspicion Testing**

- A. "Reasonable Suspicion" shall be defined in accordance with the CBA.

- B. Procedures for Reasonable Suspicion Testing

If a supervisor reasonably suspects that an employee subject to this policy is under the influence of a prohibited drug, prohibited inhalant, alcohol, or appears impaired due to the abuse of a prescription drug, the supervisor will:

1. Immediately remove the employee from performing regular duties, and, when possible, bring the employee to a private area away from the observation of coworkers and/or the public.
  2. Notify the appropriate level supervisor to confer regarding the observations leading to the suspicion.
  3. If the observations leading to suspicion are confirmed, notify the HRM to make arrangements for the employee to be taken for testing. If the HRM is not available, notify the appropriate Deputy Chief who will coordinate the scheduling of the testing. Document the observations leading to suspicion appropriately and provide a copy of this documentation to the HRM.
  4. Upon completion of the testing, arrangements will be made for the employee to be taken home. They will then be placed on paid administrative leave pending the receipt of the test results.
  5. Collection procedures defined in Section II above will be followed.
- C. Upon notification of a positive test result, the Discipline for Positive Drug and Alcohol Tests, Section 8 of Appendix G: Random Drug Testing Policy will be followed.

#### **V. Post- Accident/Firearm Discharge Testing**

Conditions for Post- Accident/Firearm Discharge:

- A. In accordance with the City's Drug Free Policy, any sworn employee that is involved in a motor vehicle accident or firearm discharge may be subject to a mandatory drug test.
- B. Collection procedures defined in Section II above will be followed.



- C. Supervisor will contact the HRM to make notification.
- D. Should the employee be hospitalized, the employee may also choose to authorize the HRM to conduct drug and alcohol tests on the blood tests obtained from the hospital; provided hospital policy allows for it. If not, the HRM will coordinate drug and/or alcohol testing within 48 hours after the following incidents.
- E. Post-Firearm Discharge testing shall be applicable only to personnel who are appointed by the Department as sworn peace officers and will be conducted under either of the circumstances listed below. This will entail 10 panel testing and alcohol testing.
  - 1. Discharge of a firearm, on or off duty, whereby a person was the intentional or accidental object of the shooting. This will include injury and non-injury shootings.
  - 2. Discharge of a firearm on or off duty, while performing a law enforcement function. The following are exceptions: discharge during training, discharge during weapon maintenance, approved shooting of an animal, approved shooting of an object.
- F. Post- Accident testing will be conducted under any of the circumstances listed below and will entail the 10 panel testing and alcohol testing.
  - 1. A sworn employee while driving a City vehicle becomes involved in a vehicular accident which results in a human fatality.
  - 2. A sworn employee while driving a City vehicle becomes involved in a vehicular accident and the employee receives a moving traffic violation arising from the accident.
  - 3. A sworn employee while driving a City vehicle becomes involved in a vehicular accident from which any involved vehicle requires towing from the scene.
  - 4. A sworn employee while driving a City vehicle becomes involved in a vehicular accident from which any person involved is transported from the scene for medical treatment.
- G. If determined that a test will be conducted based on the listed parameters, the appropriate supervisor shall notify the HRM to make arrangements for the employee to be taken for testing. If the HRM is not available, notify the appropriate Deputy Chief who will coordinate the scheduling of the testing.

- H. Upon completion of the testing, arrangements will be made for the employee to be taken home. They will then be placed on paid administrative leave pending the receipt of the test results.
- I. Upon notification of a positive test result, the disciplinary guidance outlined in Article X of the CBA will be followed.

**VI. Responsibility for Reporting Legal Prescription Drug Use & Accidental Drug Exposure**

- A. If the medically approved and appropriate use of a prescription or over-the-counter drug adversely affect any El Paso Fire Department employee's work performance or the safety of the employee or others, the employee must bring this fact to the attention of his/her immediate supervisor.
- B. The immediate supervisor will then inform the appropriate on-Deputy or Division Chief and HRM. The HRM will make a determination whether to question the employee's fitness for duty, and whether to limit, suspend or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect.
- C. As part of this process, the employee may be requested to provide medical documentation of his/her ability to safely and effectively perform the essential functions of the position.
- D. Any information about the employee's medical condition obtained by a supervisor or manager is confidential, and will be shared only on a need to know basis. Any documentation of such medical information must be kept in the employee's confidential file.
- E. Employees subjected to the accidental exposure of any illegal drug must immediately notify the supervisor on duty.
  - 1. The supervisor will handle all accidental exposures as required by departmental policy. Additional information that should be included are:
    - a. the substance the individual was exposed to;
    - b. the period of exposure; and
    - c. a brief statement explaining the necessity for exposure.
  - 2. A copy will be forwarded to the El Paso Fire Department HRM who will maintain this documentation for use if needed in the drug-testing program.

## **VII. Drug and Alcohol Abuse Treatment**

The El Paso Fire Department encourages any employee who has an alcohol or other drug problem to seek treatment before the problem manifests itself in a violation of this policy and before the employee has a positive test result. To encourage employees to maintain a safe, healthy and productive work environment, the City of El Paso provides an Employee Assistance Program as an option for an employee seeking treatment. An employee may not self-refer once notification of a drug test has been made.

- A. Employees are encouraged to voluntarily seek assistance for alcohol or other drug problems.
  - 1. All inquiries about assistance will be kept strictly confidential and will be disclosed only to those persons with a legitimate business need to know.
  - 2. Information regarding the Employee Assistance Program is available from the El Paso Fire Department's HR Department.
  - 3. The El Paso Fire Department will maintain the confidentiality of any request for such information by an employee or family member.
- B. Any employee who voluntarily seeks rehabilitation and treatment shall be entitled to the same leave and benefits that are otherwise applicable under leave policies.
- C. Nothing in this policy is intended to conflict with the provisions of the Family and Medical Leave Act (FMLA) or ADAAA, and in the case of any conflict, the provisions of the FMLA and ADAAA prevail.

**APPENDIX I**  
**DRUG TESTING CONFIRMATION THRESHOLDS**

## Appendix I: Drug Testing Confirmation Thresholds

The following thresholds will be used when conducting the 10 panel drug testing under this agreement:

Substance Abuse Panel:	Initial Test Level	Confirmation Test Level
<b>Amphetamines</b>	<b>1000 ng/ml</b>	<b>500 ng/ml</b>
<b>Barbituates</b>	<b>300 ng/ml</b>	<b>300 ng/ml</b>
<b>Benzodiazepines</b>	<b>300 ng/ml</b>	<b>300 ng/ml</b>
<b>Cocaine Metabolites</b>	<b>300 ng/ml</b>	<b>150 ng/ml</b>
<b>Marijuana Metabolites</b>	<b>50 ng/ml</b>	<b>15 ng/ml</b>
<b>Methadone</b>	<b>300 ng/ml</b>	<b>300 ng/ml</b>
<b>Methaqualone</b>	<b>300 ng/ml</b>	<b>300 ng/ml</b>
<b>Opiates</b>	<b>2000 ng/ml</b>	<b>2000 ng/ml</b>
<b>Phencyclidine</b>	<b>25 ng/ml</b>	<b>25 ng/ml</b>
<b>Propoxyphene</b>	<b>300 ng/ml</b>	<b>300 ng/ml</b>