and

LOCAL 623 INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS

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COLLECTIVE BARGAINING AGREEMENT

PURPOSE OF AGREEMENT

It is the intent and purpose of this Agreement, entered into by and between the City of San Antonio, Texas, hereinafter referred to as the "City" or "Employer" and International Association of Fire Fighters Local 624 hereinafter referred to as the "Union" or "Bargaining Agent", to achieve and maintain harmonious relations between the parties, to establish benefits, compensation and other terms and conditions of employment and to provide for the equitable and orderly adjustment of grievances which may arise during the term of this Agreement.

ARTICLE 1.

RECOGNITION

The City recognizes the Union as the exclusive bargaining agent for all permanent paid employees of the City of San Antonio Fire Department, with the sole exception of the Chief of the Department. It is understood that this bargaining unit does not include civilian personnel, including Fire Fighter Trainees enrolled in the initial Fire Academy.

ARTICLE 2.

DEFINITIONS

1. "Employer" means the City of San Antonio.

2. "City" means the City of San Antonio.

3. "Union" means the International Association of Fire Fighters Local 624.

4. "Bargaining Agent" means the International Association of Fire Firefighters Local 624.

5. "Agreement" means the Collective Bargaining Agreement negotiated by and between the Employer and the Union.

6. "Employee" "Fire Fighter" "Bargaining Unit Member" means any full time, permanent, paid employee who has been hired in substantial compliance with Chapter 143 of the Local Government Code.

7. "Civil Service Commission" means the Firefighter and Police Officer Civil Service Commission of the City of San Antonio.

8. "Grievance" is defined as a dispute or disagreement involving the interpretation, application or alleged violation of any provisions of this Agreement, and/or, of any state or federal statute, rule, or regulation dealing with the employer/employee relationship, except as otherwise provided for herein.

9. "Probationary Period" means the twelve (12) month period immediately following the initial date of employment in the Department (excluding time spent on leave in excess of 30 consecutive days) in accordance with Chapter 143 of the Local Government Code.

10. "Regular Rate of Pay" means an employee's salary plus longevity, incentive, educational, and/or assignment pay.

11. "Chapter 143 of the Local Government Code" means Vernon's Texas Code Annotated, Local Government Code, Title 5, Matters Affecting Public Officers and Employees, Chapter 143, Municipal Civil Service.

12. "Base Pay" means an employee's monthly salary as shown in Article 13, Wages of this Agreement.

13. "Employee's Anniversary Date" shall mean the employee's date of employment (in the Academy) in the Department.

14. "Gender". Reference to the male gender throughout this Agreement shall have equal force and include reference to the female gender.

ARTICLE 3.

MANAGEMENT RIGHTS

Section 1. The Union recognizes the management of the City of San Antonio and the direction of the Fire Department are vested exclusively in the City, subject to the terms of this Agreement, and nothing in this Agreement is intended to circumscribe or modify the existing rights of the City. These rights include:

A. Direct the work of its employees to include the scheduling of overtime work.

B. Hire, promote, demote, transfer, assign, and retain employees in positions within the City, subject to Civil Service regulations and/or terms of this Agreement.

C. Suspend or discharge employees for just cause, subject to Civil Service regulations and/or the terms of this Agreement.

D. Maintain the efficiency of governmental operations.

E. Relieve employees from duties due to lack of work, subject to Civil Service regulations and/or the terms of this Agreement.

F. Utilize the Fire Department in emergency situations to protect life and property.

G. Use civilians in the Fire Department to perform duties which do not require a sworn certified Fire Fighter. In this regard, the City is authorized to civilianize the following positions or units:

1. Fiscal Management

2. Personnel

3. Clerical

4. Emergency Management

5. Delivery

6. Fire Services/Vehicle Maintenance (with exception of not less than one (1) Fire Captain or higher position)

7. EMS Supply (provided the City hires a civilian that has some medical background and/or holds a paramedic certification.)

8. Building Maintenance

9. Information Systems

10. The Union recognizes the City's existing right to transfer personnel who currently are assigned to the Fire Marshall's Office, performing plan checking and review tasks for sprinkler and fire alarms, under the Uniform Building and Fire Codes. Neither the City nor the Union concedes any aspect of its position on civilianization with respect to other tasks or positions as a result of this compromise. This agreement will not be considered a precedent and is not admissible as evidence in any other controversy or proceeding involving civilianization.

Civilians performing duties which do not require a sworn certified Fire Fighter, and civilians performing duties civilianized pursuant to the position/unit list contained herein are not subject to the terms of this Agreement.

H. Determine the methods, processes, means, and personnel by which operations are to be carried out.

THE UNION UNDERSTANDS AND AGREES THAT:

Section 2.

A. Every duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that all such duties relating to the present mission and concept of the Fire Department, as a public safety organization of the City, shall be performed by the employees.

B. The City shall have exclusive authority to transfer any City operation now conducted by it to another unit of government, and such transfer shall not require any prior negotiations or the consent of any group, organization, union or labor organization whatsoever. However, the City does agree that prior to any such transfer they will meet and confer with the Union and that the Union may register any objections they have with the City Manager and City Council.

C. Except as otherwise specifically provided in this Agreement, the City, acting through the City Manager and the Fire Chief, shall retain all rights and authority to which by law it is their responsibility to enforce.

ARTICLE 4.

RULES AND REGULATIONS, SPECIAL DIRECTIVES AND ADMINISTRATIVE ORDERS

Section 1. The Union recognizes the City's right to establish and enforce reasonable Rules and Regulations, Special Directives and Administrative Orders to conduct the mission of the Fire Department. Likewise, the City recognizes the responsibility of management to a consistent interpretation and application of such Rules and Regulations, Special Directives and Administrative Orders, which governs the conduct of employees on the job. The interpretation and application of Rules and Regulations, Special Directives and Administrative Orders shall be subject to the Grievance and Arbitration procedure.

Section 2.

A. The parties established a joint committee which completed the revision and redrafting of the Department's Rules and Regulations and recommended the same to the Chief. The Union shall receive the Fire Chief's final proposal of the Rules and Regulations not less than 15 days prior to the Civil Service Commission meeting. If the Chief's final proposed Rules and Regulations differ from the committee's recommendation, the Union shall be entitled to inform the Commission of the differences of the two versions. The Rules and Regulations of the Department will be submitted by the Chief to the Civil Service Commission, and if approved, shall supersede all Department

Rules and Regulations. The violation of one of said rules and/or regulations by an employee of the Department shall constitute "cause" for disciplinary action.

B. If, as some time after the implementation of the Fire Department Rules and Regulations in reference in Section 2 (A) of this Article, the Fire Chief decides to revise a substantial portion of said Rules and Regulations, a joint labor-management committee shall undertake the revision of the Department's Rules and Regulations and recommend the same to the Chief. The Union shall receive the Fire Chief's final proposal of the Rules and Regulations not less than 15 days prior to the Civil Service Commission meeting. If the Chief's final proposed Rules and Regulations differ from the committee's recommendation, the Union shall be entitled to inform the Commission of the differences between the two versions. The Rules and Regulations of the Department will be submitted by the Chief to the Civil Service Commission and if approved, shall supersede all Department Rules and Regulations.

C. The City shall be obligated to provide each station and employee with a copy of the Rules and Regulations of the Department approved by the "Civil Service Commission". As Rules and Regulations, Special Directives, Temporary Orders, and/or Administrative Orders are promulgated and/or amended from time to time hereafter, a copy will be provided to the affected employee and to the Union. When providing a copy to the employee, acknowledgment of receipt shall be the burden of the superior officer.

Section 3. It is mutually agreed by the parties that the rules and regulations of the Department and/or amendments thereto that are hereinafter approved by the Civil Service Commission shall be made a part hereof and therefore are not subject to Maintenance of Standards as provided for elsewhere herein.

ARTICLE 5.

CITY PROTECTION FOR FIRE FIGHTERS

Section 1. The City will defend in or out of court any Fire Fighter who incurs a charge or lawsuit as a result of the lawful performance of his duties pursuant to the provisions of City guidelines as adopted and approved under City Ordinance No. 83927, passed and approved April 18, 1996, attached hereto and incorporated herein for all purposes as Attachment I, save and except Section 3 of said Ordinance which is revised to read as follows:

Defense and Settlement

(a) The City will represent and defend any claim or suit against a Fire Fighter or former Fire Fighter that results from conduct performed in the course and scope of employment for the City occurring prior to termination of the Plan even if the suit is groundless or fraudulent except as follows:

1. The City has neither the duty to defend or indemnify the Fire Fighter if there has been a finding either by the City, through a disciplinary proceedings, internal investigation, or a Court of Law prior to suit being filed that the conduct of the Fire Fighter falls under an Excluded Action.

2. If in the course of defense of the lawsuit, the City identifies a potential conflict between the City and the Fire Fighter because there is a question of whether the conduct of the Fire Fighter falls under an Excluded Action, the City will select and pay for a separate defense of the Fire Fighter with a reservation of rights letter identifying the potential conflict and limits of indemnification.

3. The City's determination shall be final with respect to both representation and indemnification of the Fire Fighter. However, if defense has been denied and the member is successful in his defense of the claim, the City will reimburse reasonable legal expenses incurred by the member.

(b) The City will notify the Fire Fighter of any potential for a judgement against the Fire Fighter in excess of the City's indemnification obligations, The Fire Fighter may hire, at the expense of the Fire Fighter, the Fire Fighter's own attorney in addition to the provided counsel to protect against any personal liability above the indemnification limits. The provided counsel will, however, remain lead attorney. And any attorney's fees thus accrued are the responsibility of the Fire Fighter and will not be reimbursed.

(c) The City may investigate, negotiate, or settle any claim as the City determines necessary or appropriate.

(d) Said representation and defense of the Fire Fighter, as provided in Sections 1 through 3 above, shall be done in accordance with Ordinance No. 83927, passed and approved April 18, 1996, attached hereto and incorporated herein for all purposes as Attachment I.

Section 2. The City will seek to recover for damaged or lost property of any employee in any suit or claim that is asserted by the City as to its public property, pursuant to procedure established by the Chief and the City Attorney. It is our understanding that the ordinance adopting the proposed contract will reference the HAZ-MAT ordinance. The purpose of this section is to enhance and broaden its range of coverage. The ordinance authorizing execution of this contract will amend the existing HAZ-MAT ordinance to authorize such action by the City Attorney.

ARTICLE 6.

UNION ACTIVITY

Section 1. Union Activity on Department Property.

Union members or officers shall not conduct Union business on City time except as specified by this Agreement or as further authorized by the City Manager or the Fire Chief. The Union may hold meetings pertinent to Union business on Fire Department property, provided that permission for such meeting is obtained in advance from the Fire Chief or his designated representative.

Union officers and committee members may conduct Union business on City time at their work location as long as such business does not interfere with their Fire Department duties.

Notwithstanding the provisions hereof, political activity shall not be conducted by the Union or any of its members on City time and/or Fire Department property pursuant to this Section.

The determination by the Fire Chief that Union meetings on Fire Department property or the work of an individual Union member on City time as provided herein shall be binding unless or until it has been determined through the Grievance Procedure found in Article 29, of this Agreement that the Chief has unreasonably exercised his authority granted pursuant to this Article. The Union will be allowed a scheduled four (4) hour orientation class with Fire Cadets within the first two (2) weeks of entering the Fire Academy. The Union shall submit an outline of their presentation to the Chief in advance.

Section 2. Negotiating Committee.

A maximum of three (3) members of the Union Negotiating Committee shall be granted time off with pay (excluding additional pay) for the purpose of attending negotiating meetings between the City and the Union when such meetings occur during the regularly scheduled working time of the employees. Time off shall only be for reasonable transportation time to and from the meeting site, direct route, and the actual time required in the meeting itself. An employee on such administrative leave shall be compensated as though the employee was at work on his regularly-scheduled assignment so that the employee will suffer no reduction in his normal, weekly pay for having participated in negotiations (and/or meetings directly relating thereto and actual travel time--direct route--to and from said meetings) at his regular rate of pay and applicable scheduled FLSA overtime.

Section 3. City Facilities.

Nothing in this Article is intended to prohibit or prevent the Union from utilizing City facilities, available to private organizations on a rental basis, under the same conditions that they are made available to other such private organizations.

Section 4. Union Leave Pool

A. Effective the first full pay period after October 1, 2002, in accordance with Article 17, Section 2, three (3) additional hours vacation leave per filled Firefighter position per year will be deducted to establish and maintain a pool of leave hours. This leave will establish a pool of paid time to be granted to individuals selected by the Union to conduct Union business hereinafter referred to as "Union Leave." Leave usage will be governed by the following guidelines:

1. No carry over of leave pool hours.
2. Limit to the number of persons off any given time: Fire-3, EMS-2, and 1 each from Services, Arson, Fire Prevention, Training, and Communications.
3. Limit to the number of persons off per Firefighting company-1.
4. Not more than six (6) persons off at the same time.
5. Leave increment must be equal to or greater than eight (8) hours for Firefighting or EMS divisions and four (4) hours for all forty (40) hour divisions.
6. Where leave increments are above the minimum hours, said increments must be not less than two (2) hours.
7. Request for leave must be made by the Union President or his designee.
8. Request for leave must be directed to the Fire Chief or his designee, via e-mail or fax.
9. Request for leave must be received at the Fire Chief's Office prior to 12:00pm, (noon), of the shift prior to the shift of leave usage.
10. Request for leave must be in writing, signed by the Union President or his designee, include the names and assignments of employees selected to be on Union Leave and indicate the duration of leave requested for each employee.
11. Employees participating in initial specialized training, (Paramedic or Arson), shall not be authorized to utilize Union Leave while participating in said training.
12. The number of hours an individual employee may be off on Union Leave in any given calendar year shall be limited as followed: Treasurer, 1st Vice-President, Grievance Chair, Legislative Chair, and PR Chair-20% of their scheduled annual hours; All other members-10% of their scheduled annual hours.
13. The Fire Chief may deny a request for Union Leave where said request is for an employee assigned to the following positions: Special Projects, Professional Standards, Personnel, Training, Services, Fire Prevention, Arson, Special Teams Coordinator, Safety Officer, and personnel performing special projects receiving higher classification. However, members of the Union Executive Board in any such position shall be subject to Section 4.A.14. of this Article.

14. The Fire Chief may deny a request for Union Leave where approval of said request would be operationally detrimental to the Department. In the event that the Chief denies such a request, the Union may request the reason for the denial. If this occurs the Fire Chief shall explain the reason for said denial in writing.
15. The Fire Chief retains the right to recall employees to duty during an emergency or special event involving an overriding need for protection of the citizens of San Antonio.

B. Nothing in this Article has any effect on rights and prerogatives of the Union, employees, or the Fire Chief with respect to employees attending meetings, conventions, conferences, seminars, or other Union functions on the employee's own time or Union lay-off time.

Section 5. Bulletin Boards.

The City shall allow the Union to use the Fire Department bulletin board at each location. These boards shall be used only for the following notices:

a. Recreation and Social Affairs.

b. Union Meetings.

c. Union Elections.

d. Reports of Union Committees.

e. International Association of Fire Fighters and State Association Notices.

f. Legislative enactments and judicial decisions affecting employees.

g. Minutes of Union meetings which do not violate the provisions of the following paragraph.

h. Shall not contain any personal caricatures.

i. Union endorsements of political candidates shall be in accordance with the provisions of the following paragraph:

Notices of announcements, including reports of Union committees shall not contain anything reflecting upon the City, any of its employees, or any labor organizations among its employees. The notice of Union endorsement of political candidates shall consist of a simple, straight-forward listing of the candidates, without editorializing their merits and void of any remarks about their opponents.

The Union President or his designated representative shall be responsible for the contents of the above notices; any violation of the provisions of this article shall entitle the City to revoke this concession and such revocation is subject to the grievance procedure.

Section 6. Radio, MDT, and Electronic Mail Announcements.

The Union will be allowed use of these medias for the purposes of pertinent information, i.e., Union Meetings, Special Announcement, etc. All announcements shall first be approved by the Chief or his designee, which approval shall not be unreasonably withheld if the announcement complies with the provisions of Section 5 above.

Section 7. The City agrees to provide the Union President with the written copy of announcements intended for dissemination generally to department employees. Copies of such announcements shall be placed in a mail slot to be maintained for the Union President at the Department's Administrative Offices.

ARTICLE 7.

PAYROLL DEDUCTIONS

Section 1. Union Dues.
The City agrees that on each pay day, it shall deduct Union dues from each member of the Union in the amount certified to be current by the Financial Secretary of the Union and the Director of Finance. Dues shall be set in accordance with the Constitution and By-laws of the Union and shall be authorized by each member pursuant to state law. The President and Financial Secretary shall notify the Director of Finance in writing of any certified dues increase election. Within thirty (30) days following notification of approval, the City shall change dues deductions to the notified amount.

Section 2. Special Assessments.

With the sole exception of the Union's death benefit, the City shall deduct special assessments which are duly authorized pursuant to the Constitution and By-laws of the Union and are voluntary and individually authorized by the member. A single authorization shall be utilized for all deductions of the death benefit.

Section 3. Indemnification.

The City will be obligated to remit to the Union only those sums deducted as dues and assessments pursuant to this Section. The Union agrees to promptly refund to the City any amount paid to it in error upon presentation of satisfactory proof by the City. The Union agrees to indemnify, and hold the City harmless from any cause of action instituted by any individual as a result of the City's deduction of dues and special assessments.

Section 4. Application.

This Article shall apply only to payroll deductions authorized for the payment of dues and fees to Local Union No. 624, to the exclusion of any other organization or of deductions for any other purpose provided, however, that no present deduction will be changed or affected.

Section 5. Administrative Fees.

The City shall have the right to charge an administrative fee to recover the cost associated with the administration of any new special assessment(s) or deduction(s) implemented after the effective date of this Agreement requested by the Union. This shall not apply to existing Union dues and PAC contributions. It is also understood and agreed that an increase or decrease in Union dues and/or PAC contributions are not a change under this paragraph. The Director of Finance shall have the right to develop such fee and amend it annually based on any change in the cost of administration. The City shall notify the Union of any change in the administrative charge at least thirty (30) calendar days prior to the implementation of the change. Such administrative charge shall be withheld from the amount collected and remitted to the Union. The fee shall include the actual cost to set up each deduction plus 15 percent, not to exceed $300.00.

ARTICLE 8.

SPECIAL ASSIGNMENT OF UNION PRESIDENT

The City agrees that the President of the Union will be placed on special assignment during the term of his presidency. The special assignment will give the Union President the latitude to deal with the duties of his presidency while retaining the privileges of his employment, while the Fire Chief retains the right to recall him to duty during an emergency or special event involving an overriding need for the protection of the citizens of San Antonio.

The Fire Chief reserves his existing authority to revoke special assignment for the Union President during emergencies or when the welfare of the citizens of San Antonio is placed in jeopardy. The Union President, as part of his Union 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, visit with the men and women who are members of the Union, as well as to tour existing fire facilities and to review existing equipment toward the goal of improving the quality of worklife for the Fire Fighters of the City of San Antonio whom he represents. In addition, he will participate as the duly-elected representative of men and women of the Union in any discussion that may affect the quality of worklife, health, and well-being of any Union member.

It is understood that the President of the Union shall suffer no loss of longevity, seniority, 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.

ARTICLE 9.

MAINTENANCE OF STANDARDS

All standards, privileges and working conditions enjoyed by the City of San Antonio Fire Fighters at the effective date of this Agreement, which are not included in this Agreement shall remain unchanged for the duration of this Agreement.

ARTICLE 10.

NO STRIKES, NO LOCKOUTS

The Union shall not cause, counsel, or permit its members to strike, slow down, disrupt, impede or otherwise impair the normal functions of the Department, nor to refuse to cross any picket line by whomever established, where such refusal would interfere with or impede the performance of the employee's duties as an employee of the City. The City shall not lock out any employee.

ARTICLE 11.

NON-DISCRIMINATION

Section 1. Both the City and the Union agree that neither shall willfully discriminate against any employee, member, or prospective member, because of race, color, religion, national origin, sex, age, or disability if otherwise qualified to fulfill the duties of the position.

Section 2. Alleged violations of Section 1, as well as claims of discrimination made under Federal and/or State law, shall not be subject to the grievance/arbitration procedures of this Agreement.

ARTICLE 12.

LABOR MANAGEMENT RELATIONS

Section 1. The Chief of the Department and the President of the Union shall meet monthly (if requested by either) for the purpose of conferring over issues relating to labor relations, health and safety, and other such matters. Neither shall be required to meet unless a minimum of seven (7) calendar days advance notification be made, in writing, stating the purpose of the meeting and the topics to be discussed.

Section 2. In the interest of Labor/Management relations, the Chief of the Department and the President of the Union shall convene a Labor/Management Committee Meeting at either party's request. The Fire Chief shall grant administrative leave for up to three (3) committee members. The Union President shall designate personnel for administrative leave that will not create higher classification pay. This shall apply to no more than one (1) meeting per month. Nothing herein shall preclude the Fire Chief and Union President from having additional labor/management meetings. However, these additional meetings shall not be applicable to the administrative leave allowed herein. At no time shall more than one (1) committee member be qualified for this administrative leave from each of the following Divisions/Sections: Fire Suppression, EMS, Communications, Fire Prevention, Training, Services and Arson. Employees that are on duty and requested by the President to attend such meetings shall be allowed to continue to utilize Union lay-off time. Committee members who are not on duty shall attend on their own time.

Section 3. The parties hereto shall be authorized to jointly appoint other necessary committees with specific goals and objectives of mutual benefit and concern, including, but not limited to, a vehicle accident committee, occupational safety and health committee, and such other committees as the parties shall choose to establish.

Section 4. Any committees designated shall meet at times and places authorized by the Chief so as to cause the least possible interference with existing duties. Every reasonable effort will be made to schedule meetings at times agreeable to all members of the Committee. The work of said committees shall be conducted on City time without loss of pay by committee members; except that meetings which are scheduled at times when Union members who work shifts are not on duty, such employees shall attend on their own time.

Section 5. In addition to the establishment of committees, the Chief and the President shall be at liberty to discuss pending grievances and/or issues of mutual interest and/or concern, even where the same involves an individual claim or claims of one or more employees of the Department.

Section 6. This Article shall not impair the Chief's rights under Article 3. Management Rights.

ARTICLE 13.

WAGES

Section 1. Monthly Base Salaries

A. Fire Fighter Rank Step Schedule

Step A - Fire Fighters, from Probation through eighteen (18) months after date of employment.

Step B - Fire Fighters, from the 19th month after date of employment through completion of 60th month after date of employment.

Step C - Fire Fighters, from the 61st month after date of employment until eligible for Fire Fighter Step D.

Step D - Fire Fighters with at least ten (10) years seniority in rank and an Associates Degree or higher or Fire Fighters with fifteen (15) years seniority in rank shall be eligible for Fire Fighter Step D.

Step E - Fire fighters with at least fifteen (15) years seniority in rank and an Associates Degree or higher or Fire Fighters with twenty (20) years seniority in rank shall be eligible for Fire Fighter Step E.

	Step A	Step B	Step C	Step D	Step E
Effective 10/01/01	$3,069	$3,407	$3,472		
Effective 10/01/02	$3,162	$3,509	$3,576	$3,648	
Effective 10/01/03	$3,256	$3,615	$3,684	$3,757	
Effective 10/01/04	$3,354	$3,723	$3,794	$3,870	$3,947

B. Fire Apparatus Operator (FAO) Rank Step Schedule

Step A - FAOs with less than five (5) years seniority in rank.

Step B - FAOs with five (5) or more years of seniority in rank.

Step C - FAOs with at least five (5) years seniority in rank and an Associates Degree or higher or FAOs with ten (10) years seniority in rank shall be eligible for the FAO Step C.

Step D - FAO's with at least ten (10) years seniority in rank and an Associates Degree or higher or FAOs with fifteen (15) years seniority in rank shall be eligible for the FAO Step D.

	Step A	Step B	Step C	Step D
Effective 10/01/01	$3,735	$3,806		
Effective 10/01/02	$3,847	$3,920	$3,924	
Effective 10/01/03	$3,962	$4,038	$4,042	
Effective 10/01/04	$4,081	$4,159	$4,163	$4,246

C. Lieutenant Rank Step Schedule

Step A - All Lieutenants not eligible for Lieutenant Step B.
Step B - Lieutenants with at least five (5) years seniority in rank and an Associates Degree or higher or Lieutenants with ten (10) years seniority in rank shall be eligible for Lieutenant Step B.

	Step A	Step B
Effective 10/01/01	$4,269	
Effective 10/01/02	$4,397	
Effective 10/01/03	$4,529	$4,620
Effective 10/01/04	$4,665	$4,759

D. Captain Rank Step Schedule

Step A - All Captains not eligible for Captain Step B.
Step B - Captains with at least five (5) years seniority in rank and an Associates Degree or higher or Captains with ten (10) years seniority in rank shall be eligible for Captain Step B.

	Step A	Step B
Effective 10/01/01	$4,880	
Effective 10/01/02	$5,027	
Effective 10/01/03	$5,177	$5,281
Effective 10/01/04	$5,333	$5,439

E. District Chief Rank Step Schedule

Step A - All District Chiefs not eligible for District Chief Step B.
Step B - District Chiefs with at least five (5) years seniority in rank and a Bachelors Degree or higher or District Chiefs with ten (10) years seniority in rank shall be eligible for District Chief Step B.

	Step A	Step B
Effective 10/01/01	$5,586	
Effective 10/01/02	$5,753	
Effective 10/01/03	$5,926	$6,044
Effective 10/01/04	$6,104	$6,226

Section 2. Longevity.

In addition to wages as set forth in the pay schedule above, each Fire Fighter's base pay shall be increased by three percent (3%) for each five (5) years of his longevity, to a maximum of thirty (30) years, i.e., a thirty-year veteran would receive an additional payment not to exceed eighteen percent (18%). On each Fire Fighter's anniversary date which is not a multiple of five (5), he shall receive an eight dollar ($8.00) increase in his longevity pay per month, and the eight dollar ($8.00) interim monthly adjustments will not increase any fifth year levels. The eight dollar ($8.00) payment as noted herein shall be in lieu of the four dollar ($4.00) per month per year of service payment called for in Chapter 141.032 Local Government Code.

ARTICLE 14.

OVERTIME

Section 1. All employees shall be paid at the rate of time and one half (1-1/2) that of their regular rate of pay for all hours worked over their regular scheduled working hours.

Section 2. All employees who are called back to work when they are off duty shall be paid a minimum of two (2) hours at time and one-half (1-1/2) and shall be paid at the rate of time and one-half (1-1/2) for all hours worked over two (2) hours.

Section 3. All Fire Suppression employees who are assigned a fifty-six (56) hour work week schedule shall receive time and one-half (1-1/2) their regular rate of pay for all hours worked in excess of one hundred fifty nine (159) hours per twenty-one (21) day work cycle. Accordingly, for each additional hour, or portion thereof, actually worked by said

employee in excess of one hundred fifty nine (159) hours during the twenty-one (21) day cycle, that employee shall receive overtime pay based on the following: 1.5 times the number of hours actually worked in excess of 159 hours times the quotient of 159, divided into the employee's three week gross regular salary. Under a twenty-one (21) day cycle, each employee shall lose no more than twenty-seven (27) hours of overtime pay per year as a result of scheduled vacation leave being counted as productive time for F.L.S.A. purposes. For the purpose of computing eligibility for F.L.S.A. overtime and application of the twenty-seven (27) hour limit in this paragraph, all other types of leave will take priority over vacation leave in application of this provision (i.e. when vacation and any other form of leave is used in the same 21 day cycle, the loss of F.L.S.A. overtime shall not apply to the twenty-seven (27) hour maximum. It is intended that a Firefighter will lose only one cycle of F.L.S.A. overtime per scheduled vacation, even if a vacation period splits two cycles. F.L.S.A. overtime will be charged against the first three (3) vacation periods taken in that calendar year. Employees shall, however, be allowed to exempt use of one shift of sick leave each calendar year from the provisions of this paragraph.

Section 4. When two or more types of overtime or premium compensation are applicable to the same hours of work, only the higher rate(s) of compensation shall be paid. In no event shall overtime or premium compensation be pyramided.

Section 5. The provisions of this Collective Bargaining Agreement are subject to the final outcome on appeal in the pending litigation styled Anthony Rogers, et al v. City of San Antonio, No. SA-99-CA-11100G. In the event that the final outcome on appeal sustains the initial District Court decision in whole or in part, this Agreement will be subject to reopener to conform any affected provisions of the Agreement to the outcome of said litigation. In the event that the City does not appeal the initial District Court decision within the time limits of applicable federal law after rendition of final judgement, this Agreement will be subject to reopener to conform any affected provisions of this Agreement to the requirements of such final judgement.

ARTICLE 15.

HOURS

Section 1. General.

The following shall be the regular established work schedule for the employees covered by this Agreement and shall remain in effect, except that the Chief may make no more than one change per section per contract, and then only after sixty (60) days notification in writing to the Union unless exemption to notification is provided herein. Any additional changes must be made by mutual consent between the City and the Union. During a sixty (60) day notification period, the Union shall be given the opportunity to meet and confer with the Chief and register any objection it may have to the change of hours.

Section 2. Emergency Medical Technicians (Regular) and Communications.

Emergency Medical Technicians and Emergency Medical Service Communications Division personnel shall work the following regular hours.

A. An average 42 hours work week.

B. The work period is four (4) consecutive weeks or twenty-eight (28) days beginning at 7:00 a.m. Sunday and ending twenty-eight (28) days later. The work shift shall begin at 7:00 a.m. and end at 7:00 a.m. the following day, consisting of twenty-four (24) consecutive hours.

42 Hour Work Week - Schedule for One Employee

S	M	T	W	TH	F	S
17	7	OFF	OFF	17	7	OFF
OFF	17	7	OFF	OFF	17	7
OFF	OFF	17	7	OFF	OFF	17
7	OFF	OFF	17	7	OFF	OFF

One (1) work shift shall equal two (2) twelve (12) hour working days for administrative purposes (sick leave, annual leave, disciplinary action, military leave, etc.)

Personnel may not work more than twenty-four (24) continuous hours, except if personnel are on a response at shift change. Personnel must have twenty-four hours off prior to working. This applies to overtime and trading time.

Vacation scheduling must be equalized throughout the year.

C. The Chief shall have the right to schedule a separate group of employees on a power shift schedule provided that the schedule does not exceed an average forty-two (42) hour work week. No individual power shift work shift shall exceed twelve (12) hours. No more than four (4) power shift work shifts will be scheduled in any seven (7) calendar day week period. The Chief's right to implement such a shift shall be limited to or by the following conditions:

1. The Fire Chief and the Union shall negotiate on the specific shift schedule to be implemented and the impact of such a schedule. In the event the Fire Chief and the Union do not reach a full agreement on the schedule, the unresolved issues shall be submitted to a binding arbitration procedure as provided in the statutory provision of Sections 174.154, 174.155, and 174.157 through 174.164 (Texas Local Government Code) as such sections exist at the date of this contract. No other

provisions in said Chapter shall be applicable to the partial re-opener provided for in this Article;

2. Additional EMS units must be placed into service by the City beyond twenty-three (23) units prior to establishing a permanent power shift schedule pursuant to this section; and

3. All slots must represent new positions, and shall be filled from volunteers, or from promotions.

Each paramedic actually working a power shift schedule pursuant to this section and on a straight time basis for one- half (1/2) or more of any calendar month shall be entitled to shift differential pay in the amount of $350 for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month. Time taken by an employee on Sick Leave or LOD Leave while assigned to a power shift work schedule shall not be counted as time working for the purpose of eligibility to receive shift differential pay.

Nothing in this section shall preclude the Fire Chief from establishing or continuing any power shift or peak period staffing schedule on an overtime basis.

Section 3. Specified Employees in the Fire Department Repair Shops.

For employees assigned to the Fire Department Repair Shops, the work day shall begin at 7:45 a.m. and end at 4:30 p.m. each work day, Monday through Friday, with forty-five (45) minutes for lunch, and two (2) 15 minute breaks, one (1) in the morning and one (1) in the afternoon.

Section 4. Fire Fighting.

Employees assigned to the Fire Fighting Division or Aviation Division, shall work the following regular hours:

An average fifty-six (56) hour work week. The work period is three (3) consecutive weeks or twenty-one (21) days beginning at 12:00 noon Sunday and ending twenty-one (21) days later. The work shift shall begin at 12:00 noon and end at 12:00 noon the following day, consisting of twenty-four (24) consecutive hours. One (1) work shift shall equal two (2) working days.

56 Hour Work Week - Schedule for One Employee

S	M	T	W	TH	F	S
12	12	OFF	12	12	OFF	12
12	OFF	12	12	OFF	12	12
OFF	12	12	OFF	12	12	OFF

Section 5. Arson Employees.

Employees assigned to the Arson Division shall work the following regular hours, with the exception of the Captain and Lieutenant assigned to Arson who shall work a forty (40) hour, five (5) day work week:

A. A forty (40)-hour, ten (10)-hour-per-day, four (4) day work week;

B. Said work week shall consist of two (2) shifts consisting of the day shift and evening shift. The shifts are broken down as follows:

Day shift 7 a.m. - 5 p.m. for 4 weeks total / 2 weeks Mon.-Thurs.
/ 2 weeks Tues.-Fri.

Evening shift 4 p.m. - 2 a.m. for 2 weeks total / 1 week Wed.-Sat.
/ 1 week Sun.-Wed.

C. Each employee shall work each shift for the specified number of weeks and then rotate to the next shift for a total of six (6) weeks. At the end of the 6th week the schedule repeats.

D. Employees assigned to Arson shall be allowed a thirty (30) minute lunch break. While on this lunch break, the employee shall be subject to call, and the missing of this lunch break because of the press of business shall not be grounds for overtime payment nor shall it be the basis for a grievance.

E. In the event an arson investigator is required when none is scheduled or when the scheduled personnel are not available to respond, he shall be called back to work on a rotating basis and compensated as specified by this Agreement.

F. The schedule provided herein may be changed or modified, provided the Chief and a majority of the employees assigned to Arson agree to the same. Such change shall not constitute the one (1) change permitted to be made by the Chief pursuant to Section 1 of this Article.

G. Arson investigators who are mandated to serve on scheduled stand-by shall be compensated at the rate of two (2) hours of overtime pay or actual time worked, whichever is greater. This provision applies whether or not the employee is actually called back to work.

Section 6. Employees Assigned to Specialized Training.

A. Employees assigned or detailed to Emergency Medical Training shall have their hours scheduled at the discretion of the Emergency Medical Service Director as long as the scheduled hours do not exceed a forty (40) hour work week over the duration of the training period. The Emergency Medical director may implement any schedule,

provided that it is in accordance with and permitted by the provisions of the Fair Labor Standards Act, and any regulations thereunder.

B. Employees assigned or detailed to specialized training, i.e., HazMat, National Fire Academy, E.M.T., etc., shall not lose any of their standard rate of pay, i.e., F.L.S.A. overtime, as per their regular assignment. Total hours worked may not exceed current F.L.S.A. cycle average and such employee's schedule will be adjusted to compensate for reasonable travel (most direct route and most expedient mode) and class time required while on specialized training.

C. Employees assigned or detailed to Paramedic Training are considered part of the E.M.S. Division and are covered by F.L.S.A. guidelines relative to a forty (40) hour work week.

Section 7. Fire Prevention, Airport Coordinator, and Other Uniformed Employees.

A. Fire Prevention, Airport Coordinator and all other uniformed employees not specifically mentioned before shall work the following hours: A forty (40) hour work week, Monday through Friday, beginning at 7:45 a.m. and ending at 4:30 p.m. each day, with forty-five (45) minutes for lunch and two (2) fifteen (15) minute breaks, one (1) in the morning and one (1) in the afternoon.

B. With regards to any of the employee groups mentioned in A. above, the Fire Chief may, at his discretion, authorize a four (4) day work week. In such an event, said employees shall be scheduled to work a forty (40) hour, ten (10) hours per day, four (4) day work week, from 7:00 a.m. to 5:00 p.m., which 4-day period shall be scheduled between Monday and Friday.

C. The Fire Chief's decision to authorize a 4-day work week to any or all of the employee groups mentioned in A. above, shall not constitute the "one change per section per contract" provision specified in Section 1 of this Article.

Section 8. Transfer from One Shift Schedule to Another.

An employee who is transferred and, as a result, changes from one shift assignment to another (e.g., twenty-four (24) hour shift to eight (8) hour shift) shall have a minimum of eighteen (18) hours off from the time he completes his last shift on his original schedule until the time he must report for duty on the new schedule to which he is assigned. No overtime shall accrue to any individual transferred in conformance with this section.

Section 9. The provisions of this Article can be changed by mutual agreement between the City and the Union.

ARTICLE 16.

WORKING OUT OF CLASSIFICATION

A. An employee who works in a higher classification shall be paid at the higher classification rate of pay for actual time worked in that classification.

B. Beginning October 1, 2002, the assigned FAO who works as a District Chief Aide shall be paid at the higher classification rate of pay for actual time worked only in the absence of a District Chief.

It is intended that higher classification pay be given to the FAO that is assigned as a District Chief's Aide only when the District Chief is off on some type of leave (i.e., vacation, sick leave, administrative leave, etc.) or upgraded to Assistant Chief and a Captain is receiving higher classification pay for performing the duties of the District Chief. The contractual wording, "...in the absence of the District Chief...," does not include time where the District Chief is not in physical proximity of the Aide but is otherwise on-duty and not being replaced by a Captain.

ARTICLE 17.

VACATIONS

Section 1. Vacation Accrual

A. **Non-Forty Hour Employees**: The following is a vacation accrual schedule which shall be implemented for non-forty hour employees covered by this Agreement: Employees will accrue vacation days according to the following schedule, minus any vacation days previously borrowed.

In Year 1 of the Contract:

Beginning of Probation through 14 years of completed Service - 15 days.

Beginning 15th year through 19th year of completed Service - 18 days.

Beginning 20th year of Service - 20 days.

In Year 2 of the Contract:

Beginning of Probation through 13 years of completed Service - 15 days.

Beginning 14th year through 18th year of completed Service - 18 days.

Beginning 19th year of Service - 20 days.

In Year 3 of the Contract:

Beginning of Probation through 12 years of completed Service - 15 days.

Beginning 13th year through 17th year of completed Service - 18 days.

Beginning 18th year of Service - 20 days.

In Year 4 of the Contract:

Beginning of Probation through 10 years of completed Service - 15 days.

Beginning 11th year through 15th year of completed Service - 18 days.

Beginning 16th year of Service - 20 days.

B. **Forty Hour Employees:** The following is a vacation accrual schedule which shall be implemented for forty-hour employees covered by this Agreement: Employees will accrue vacation days according to the following schedule, minus any vacation days previously borrowed.

In Year 1 of the Contract:

Beginning of Probation through 14 years of completed Service - 15 days.

Beginning 15th year through the end of the 15th year of completed Service - 18 days.

Beginning 16th year through the 19th year - 21 days

Beginning 20th year of Service - 23 days.

In Year 2 of the Contract:

Beginning of Probation through 13 years of completed Service - 15 days.

Beginning 14th year through 15th year of completed Service - 18 days.

Beginning 16th year through 18th year of completed Service - 21 days.

Beginning 19th year of Service - 23 days.

In Year 3 of the Contract:

Beginning of Probation through 12 years of completed Service - 15 days.

Beginning 13th year through 15th year of completed Service - 18 days.

Beginning 16th year through 17th year of completed Service - 21 days.

Beginning 18th year of Service - 23 days.

In Year 4 of the Contract:

Beginning of Probation through 10 years of completed Service - 15 days.

Beginning 11th year through 15th year of completed Service - 18 days.

Beginning 16th year of Service - 23 days.

Section 2. Additional Vacation Hours

In addition to the vacation accrual amounts outlined in Section 1 of this Article, beginning the first full pay period after October 1, 2002, each employee shall receive an additional 3 hours of vacation each fiscal year.

Section 3. Floating Vacation Shifts (FVS)

A. Except as provided in Section 3, Perfect Attendance Leave, an employee may request from his accrued vacation leave, up to three (3) shifts. This leave is to be taken from his scheduled vacation.

B. An employee must apply in writing no less than five (5) calendar days prior to the shift being taken. Selection will be made on a first-come, first-served basis, by log date and time entry (in 450's office for those assigned to Fire Suppression and 800's office for EMS).

C. There will be a maximum of the three (3) employees allowed off on FVS per shift (two (2) in Fire Suppression and one (1) in EMS), with the exception of holidays or the day before or after a holiday. If a person requests a floating vacation shift and is denied and the employee calls in sick for that shift, he must provide a physician's certificate signed by a physician upon his return to duty.

Section 4. Perfect Attendance Leave (PAL)

A. Any employee who achieves perfect attendance over a six (6) month period shall be entitled to utilize two (2) additional shifts of accrued vacation leave outside of scheduled vacation periods plus may convert one (1) shift of sick leave for use as a

floating vacation shift in accordance with the provisions of this section, hereinafter to be called "perfect attendance leave". Perfect Attendance Leave shall be used during the subsequent six (6) months.

B. The Chief shall provide a minimum of three (3) slots in Fire Suppression, two (2) slots in EMS, and one (1) slot in each other division which shall be available solely for perfect attendance leave. To utilize a slot, the employee shall provide a minimum of 15 days notification of the request. In the event more employees request use of leave than there are slots available, the slots shall be allocated in order of seniority in the department.

C. If the slots are not taken on or prior to the 15th day, based upon seniority, they shall be available on a first comes first entitled basis, provided that written notice shall be turned in to the proper authority, as designated by the Chief, prior to the beginning of the shift (or the work day, for 40 hour employees) prior to the one being requested.

D. "Perfect attendance" shall mean that the employee has not utilized any of the following types of leave:

1. sick leave,
2. emergency leave (provided that use of bereavement leave, although taken on an emergency leave basis, shall not be a disqualification under this section),
3. line of duty leave (provided that use of LOD leave for a portion of a shift, as to those employees that return to work on of the following shift, shall not be a disqualification under this section),
4. leave without pay, and
5. suspensions.

E. For purposes of this section, six (6) months shall be defined as consecutive calendar months, beginning the first shift hour in October, and the first shift hour in April.

Section 5. Bonus Days Leave.

A. Each employee shall be entitled to two (2) additional leave days for each six months of "perfect attendance".

B. Employees not working for one of the following reasons are not eligible to receive the two (2) days perfect attendance bonus:

1. sick leave,
2. LOD (provided that the use of LOD leave for a portion of a shift, as to those employees that return to work in the following shift, shall not be a disqualification under this section),

3. emergency leave,
4. military leave in excess of fifteen (15) days in a calendar year, (unless such loss of perfect attendance is prohibited by law),
5. leave without pay, and
6. suspensions.

C. The types of leave that will not adversely affect the employee's entitlement to the perfect attendance bonus are:

1. LOD (provided that the use of LOD leave for a portion of a shift, as to those employees that return to work on the following shift),
2. properly scheduled and authorized vacation days,
3. holidays,
4. compensatory time,
5. bereavement leave,
6. administrative leave, and
7. time restored by the commissioner or an arbitrator (hearing examiner).

D. Bonus day leave shall be taken at the employee's choice of either pay or FVS. If the employee elects to receive pay in lieu of time, the City shall pay the employee his amount at the same time each year as the City pays other City employees their sick leave buy back, but no later than Christmas Eve day. Beginning in Fiscal Year 2003, if the employee elects to receive pay in lieu of time, the City shall pay the employee his earned Bonus day leave at the employee's regular rate of pay. This amount shall be paid at the same time each year as the City pays other City employees their sick leave buy back, but no later than Christmas Eve day. If the employee elects to use Bonus Leave as time off, the employee must schedule the time off in accordance with Department policy. The City shall compensate each employee who received a Bonus Days Leave check in December, 2001 the difference between what the employee would have received if said payment had been calculated at the regular rate of pay instead of at base pay plus longevity.

E. The end of the fiscal year (September 30th) will be the cut-off for reporting bonus leave eligibility. If the employee has not chosen to take bonus days earned in a fiscal year as time off by October 15th of the next fiscal year, the employee will be paid for earned bonus leave. All bonus days earned in a fiscal year that have not already been taken as time off will be paid as outlined in Section 5 D. of this Article unless the employee elects to take the bonus days as time off in the following fiscal year.

ARTICLE 18.

HOLIDAYS

Section 1. All employees covered by this Agreement shall be granted twelve (12) legal holidays. All holidays shall be accrued and taken in accordance with departmental policy.

Section 2. Beginning October 1, 2004, all employees who work on a shift during a Premium Holiday listed below shall be paid an additional one-half (½) time that of his/her regular rate of pay for the actual hours worked during the Premium Holiday. Actual hours paid for both shifts working a Premium Holiday will not exceed 24 hours. Holiday pay shall not apply to those employees who are working an overtime opportunity.

Premium Holidays shall commence at 12:01 a.m. and end 24 hours later at 12:00 a.m. and shall include the following eight (8) holidays:

New Year's Day
Easter Sunday
Independence Day
Veteran's Day
Thanksgiving Day
Christmas Eve
Christmas Day
New Year's Eve

ARTICLE 19.

BEREAVEMENT LEAVE

Section 1. In the event of death in the immediate family of an employee who is otherwise assigned to duty, the employee shall be granted time off with pay as follows:

A. Employees working Fire Suppression, Communications and EMS employees working forty-two (42) hour work week shall be granted two (2) consecutive shifts off following the death.

B. Other employees shall be granted four (4) consecutive working days off following the death.

The immediate family shall be defined as the employee's mother, father, legal spouse, child, brother, sister, half-siblings, grandmother, grandfather, mother-in-law, and father-in-law, grandchildren, step-parent, step-children or other members of the immediate household.

Section 2. Employees in the Firefighting Division may use one (1) shift of Bereavement Leave without loss of FLSA overtime. However, employees who use their second bereavement leave shift shall lose FLSA overtime for both bereavement leave shifts.

Section 3. In the event an employee is on military leave during the occurrence of a death in the immediate family and, as a result, is required by the military to make up the time taken off from military leave, he shall be entitled to bereavement leave as provided in this Article.

Section 4. The Chief shall have discretion in cases that are found to be fraudulent requests or use of bereavement leave to deny any employee such bereavement leave provided, however, that such denial shall be subject to the grievance and arbitration procedures of this Agreement.

ARTICLE 20.

UNIFORM ITEMS AND PERSONAL PROTECTIVE EQUIPMENT

Section 1. Uniforms

A. Uniform Commissary

1. At the time of the signing of this Agreement, the parties acknowledge that the City has provided the employees an initial issue of uniforms, as such term is defined by the Commissary System Contract. The City agrees to make available uniforms to employees, on an as-needed replacement basis, in accordance with the generally prevailing operational policies and practices in effect at the time of the signing of this Agreement, except as specifically modified herein; and with the full understanding that the City would not be obligated for anything beyond such generally prevailing operational policies and practices in effect at the time of the signing of this Agreement, except as specifically modified herein; and with the full understanding that the City would not be obligated for anything beyond such generally prevailing operational policies and practices in effect at the time of the signing of this Agreement, except as specifically modified herein; and with the full understanding that the City would not be obligated for anything beyond such generally prevailing operational policies and practices in effect at the time of the signing of this Agreement unless expressly set forth in this article.

B. Resolution of Existing Disagreements

1. The parties have agreed to resolve all existing disagreements or disputes about the operation of the commissary with the transitional measures in this subsection, pending the changes to take effect October 1, 2002 as provided herein.

2. Beginning with the execution of this agreement, the reissue pool shall be discontinued.

3. No later than three (3) months after the signing of this Agreement, in addition to the generally prevailing operational policies and practices the City agrees to:
   a. make solid ball caps available as a replacement option to mesh caps;
   b. make athletic shorts available as a replacement option for sweat shorts;

C. Acquisition of Uniform Items

1. Beginning with the execution of this agreement and throughout its term, it is the City's responsibility to make uniform items available at the commissary location from 7:45 a.m. to 4:30 p.m., Monday through Friday, except City Holidays.

2. It is the employee's responsibility to acquire the necessary uniform items from the commissary or otherwise and present themselves properly attired for work under Department policies. The City shall have no duty to pick up or deliver uniform items to employees.

D. Transitional Year Commissary Utilization and Limit

1. Beginning October 1, 2002, the City shall continue to make available uniforms items previously issued and available, and in addition, will make available:

   a. higher quality brand t-shirts;
   b. a "Wellington" style boot of a higher quality, subject to approval by Martin's; and
   c. long sleeve t-shirts as an option.

2. Effective October 1, 2002, ownership of the uniform items not classified as PPE issued to the employee by the City shall be transferred to the employee.

3. Effective October 1, 2002, the commissary shall no longer be a replacement system. Each employee will have an individual limit of five hundred dollars ($500.00) for the fiscal year through September 30, 2003. There shall be no carry forward of any unexpended amounts. Any uniform cost or expense above the limit shall be the employee's sole responsibility.

E. Uniform Credit System

1. Effective October 1, 2003, the city shall establish a uniform credit system under a revised commissary contract whereby each employee shall have a five hundred dollars ($500.00) credit assigned to that employee to allow the employee to acquire and maintain his/her uniform items, not classified as PPE. Each employee shall be assigned a $500.00 credit each fiscal year thereafter. "Fiscal year" shall hereinafter refer to the period from October 1st through September 30th.

2. Existing minimum specifications for uniform items available to employees under the Commissary System in effect on September 30, 2002 shall remain available for purchase by the employee throughout the life of this agreement.

3. Uniform items not required by Department policy at the time of the signing of this Agreement, shall not be mandated unless by mutual agreement or legislative change.

4. In the event an employee enters the bargaining unit some time after October 1, 2002 or after October 1st of any fiscal years during the term of this Agreement, the employee will receive a limit or credit for a prorated amount of the designated limit or credit. The prorated amount shall be equal to one twelfth (1/12) of the designated limit or credit amount times the number of full or partial months left in the fiscal year on the date that them employee enters the bargaining unit.

5. Employees shall only use the designated credit to acquire and maintain uniform items used in the performance of their duties. All uniform items purchased by the employee using said credit must meet the requirements set forth in the Department's uniform policies.

6. In the event an employee's designated credit is exhausted during the fiscal year and said employee needs or is required to purchase a uniform item(s), the employee shall be responsible for acquiring the uniform item(s) at their own expense.

7. Any unused credit shall not be carried forward to the following fiscal year.

F. Cleaning of Uniform Items

The employee shall continue to be responsible for routine cleaning of uniforms items in accordance with generally applicable policies and operational practices in effect at the time of the signing of this Agreement; and with the full understanding that the City would not be obligated for anything beyond such generally applicable operational policies and practices in effect at the time of the signing of this Agreement unless expressly set forth in this article.

G. Modification of Amount

The parties have negotiated this Article in recognition of the City's interest in achieving fiscal certainty in its obligation under this Agreement. If changes in the law, rules or agency interpretation occur under this Agreement which result in new or increased City costs related to reclassifying current employee uniform items as of the signing of this agreement into PPE, the City shall be entitled to reduce the amounts of any limit or credit as follows:

1. Reclassification of uniforms shall reduce the amount by the actual increased cost resulting from reclassification but not more than $225 per year;

2. Reclassification of shoes shall reduce the amount by the actual increased cost resulting from reclassification but not more than $120 per year.

H. Each of the above provisions for resolution of disputes and a transitional commissary limit on commissary utilization are subject to negotiated modification of the existing agreement with the current commissary vendor in place at the time of the signing of this Agreement. Both parties to this Collective Bargaining Agreement have determined that such changes are more than likely feasible, and the City agrees to use its best efforts to accomplish those revisions.

I. The provisions for a new Uniforms Credit System to take effect October 1, 2003 will require the City to release a new Request for proposals seeking proposals or bids from vendors in compliance with same. The City's obligations are subject to completion of such a new agreement. In the event that no agreement is in place, employees shall be entitled to the credit amount upon presentation of actual expenses receipts for approval uniform items.

J. Each of the City's obligations in this Article which involve any change in existing agreements or funding levels are conditioned upon City Council approval of amended agreements and appropriation of funds in future fiscal cycles, and, absent same, such obligations shall not become effective or applicable. In the event that City Council fails to approve any agreements, employees shall be entitled to the credit amount upon presentation of actual expense receipts for approved uniform items.

Section 2. Personal Protective Equipment (PPE)

The City acknowledges and accepts its obligations under state and federal law pertaining to Personal Protective Equipment (PPE). The City agrees to meet or exceed the City's specifications for PPE in place on January 1, 2002. Any disputes concerning compliance with state or federal law shall be resolved by resorting to the appropriate state or federal agency. Any disputes concerning specifications for PPE shall be subject to the grievance and arbitration articles of this agreement as contractual issues.

ARTICLE 21.

PARKING

The City shall provide, without cost to the employees assigned to Fire Station Number 1, Fire Department Administration Building, Communications, and Arson, adequate parking space adjacent to or near those work locations.

ARTICLE 22.

INCENTIVE PAY

Section 1. Educational.

A. Fire Fighters holding certain Associates, Bachelors, or Masters degrees shall receive educational incentive pay. The degrees shall be from an accredited learning institution and shall have some relevance to the job performance of the employment. The Chief shall determine the appropriateness of the degree and such determination shall be final.

1. Fire Fighters holding an Associate's Degree shall receive one hundred fifty dollars ($150.00) per month.

2. Fire Fighters holding a Bachelor's Degree shall receive two hundred fifty dollars ($250.00) per month.

Effective October 1, 2002 and payable monthly on the first payday of the month:

1. Fire Fighters holding an Associate's Degree shall receive one hundred sixty dollars ($160.00) per month.

2. Fire Fighters holding a Bachelor's Degree shall receive two hundred sixty dollars ($260.00) per month.

3. Fire Fighters holding a Master's Degree shall receive two hundred eighty dollars ($280.00) per month.

Effective October 1, 2004:

1. Fire Fighters holding an Associate's Degree shall receive one hundred seventy dollars($170.00) per month.

2. Fire Fighters holding a Bachelor's Degree shall receive two hundred seventy dollars ($270.00) per month.

3. Fire Fighters holding a Master's Degree shall receive two hundred ninety dollars ($290.00) per month.

B. Employees receiving degrees after October 1 of each year shall not be eligible for the educational incentive payments until the beginning of the following fiscal year. Payments called for hereunder shall be made in accordance with current payroll policies of the City.

C. Beginning in FY 03, the City shall provide $20,000 each year to fund a Tuition Reimbursement Program. Beginning in FY 05, the City shall provide $48,000 each year to fund a Tuition Reimbursement Program. Tuition reimbursement funds shall not carry over to the next fiscal year. The Tuition Reimbursement Program shall be implemented and administered in accordance with Department policy or its successor. In the event that employees have received or will receive funding from another source such as grants, scholarships, etc., tuition reimbursement shall become a secondary source of funding and shall not serve as double payment for tuition expenses.

Section 2. HAZ-MAT Incentive.

Personnel assigned to the Hazardous Material (Haz-Mat Team) shall receive a $100.00 per month incentive during their active assignment.

Section 3. E.M.T. Certification Pay.

A. Employees holding a Basic E.M.T. certificate obtained from the State and as a result of having completed a City-approved course of instruction shall receive the following incentive payments based upon years of service as a Basic E.M.T. (EMT-B) with the City for as long as certification is maintained and the employee is authorized to perform by the Medical Director:

Beginning of certification through 4 years of service as a Basic E.M.T. $ 50.00 per month

Beginning of 5th year through 8th year of service as a Basic E.M.T. $100.00 per month

Beginning of 9th year of service as a Basic E.M.T. $150.00 per month

B. If a paramedic transfers out of paramedic duties in EMS, Communications or Aviation to function as a Basic E.M.T., and has continuously maintained his or her certification as a paramedic or obtains a Basic E.M.T. certification, then all prior service as a paramedic in EMS, Communications, or Aviation shall be counted toward determining the level of incentive to which he or she would be entitled.

Section 4. E.M.T. Training for Non-Certified Employees.

The City shall train sixty (60) employees in E.M.T. certification whose initial employment date was prior to January 1, 1979, or who do not currently possess an E.M.T. certification. Training will be offered in order of seniority and will be paid for by the City. The Chief shall have the right to adjust work schedules of employees receiving training in order to best accomplish this mission.

Section 5. Paramedic Certification Pay.

A. Effective October 1, 2003, employees attending the initial paramedic training course shall receive $50 per month until such time they become eligible for paramedic incentive pay. The employee must be assigned to the class for more than one-half of the month to qualify. No partial payment shall be made for attending one-half (1/2) or less of the first calendar month of the initial paramedic training course.

B. All employees who are certified by the State and as a result of having completed a City-approved course of instruction as Paramedics and who actually work in EMS, Communications, and/or Aviation, and maintain authorization by the medical director shall receive the following incentive payments based upon years of service as a Paramedic with the City:

Beginning of assignment through 4 years of service as a Paramedic $150.00 per month

Beginning 5th year through 8th year of service as a Paramedic $200.00 per month

Beginning 9th year of service as a Paramedic $250.00 per month

C. Unless otherwise specified in this Article, these amounts shall be paid to the Paramedic for so long as the individual is employed by the Department and actually works as a Paramedic in EMS, Communications, and/or Aviation. (The use of administrative leave shall not be cause to deny incentive pay under the previous sentence. However, a Paramedic who has expended all available sick leave and is thus either eligible for or actually utilizing the provisions of Article 24, Volunteering for Injured Firefighters, will no longer be entitled to receive incentive pay.)

D. Should a Paramedic transfer or be assigned to a position outside of EMS, Communications, and/or Aviation and yet maintains his Paramedic certification, he shall be entitled to E.M.T. certification pay but not Paramedic certification pay.

E. Should a Fire Fighter receive training on his own time and at his own expense at a City-approved school, he shall be eligible for E.M.T. certification pay.

F. If a Paramedic leaves EMS, Communications, and/or Aviation and later returns, and if said employee has continuously maintained his certification as a Paramedic, then all prior service as a Paramedic in EMS, Communications, or Aviation shall be counted toward determining the level of incentive to which he would be entitled.

G. Each E.M.T. or Paramedic assigned to EMS, Communications, or Aviation working an applicable shift for one-half (1/2) or more of any calendar month shall be entitled to the

incentive pay as previously provided for that assignment for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month.

Section 6. Authorization by the Medical Director and Maintenance of Certification.

A. Any EMT or Paramedic who scores less than that score set by the Medical Director on the State certification examination will be provided an opportunity to retake the examination. If the employee scores less than that score set by the Medical Director the examination on the second attempt, said employee shall no longer be entitled to EMT or paramedic incentive pay as of the date of scoring less than that score set by the Medical Director.

B. Any EMT or Paramedic who is de-authorized by the Medical Director shall no longer be entitled to EMT or paramedic incentive pay until such time he is re-authorized by the Medical Director.

C. The parties agree that any EMT or paramedic de-authorized by the medical director shall have the right to receive designated tutorial assistance, as designated by the medical director, on City time and expense.

D. Any paramedic transferred to fire suppression as a result of de-authorization shall lose years of service credits for the years of paramedic service, for the purpose of computing EMT incentive pay.

Section 7. Special Duty Pay.

A. The Fire Chief may assign personnel to special tasks or duties, i.e., computer analyst, video specialists, etc., and when doing so will agree to compensate them at the next-higher rank than the rank they occupy for the duration of the assignment. This special duty does not create a position.

B. The Fire Chief may assign an employee as airport coordinator; and, when doing so, will compensate him at the rate of the next higher rank above that held by that employee so designated for the duration of the designation.

This Section of the Agreement may not be used to eliminate classified positions (ranks).

Section 8. Arson Assignment Pay.

A. Effective October 1, 2003, all employees selected for assignment to the Arson Division shall receive $50 per month beginning the first full month after the start of the Police Training Academy program until such time they receive their arson investigator certification.

B. All certified arson investigators assigned to the Arson Division shall receive three hundred fifty dollars ($350.00) per month assignment pay during each month of actual assignment.

C. Each certified arson investigator assigned to Arson working an applicable assignment for one-half (1/2) or more of any calendar month shall be entitled to assignment pay for that assignment for the full month. No partial payment shall be made for working less than one-half (1/2) of the calendar month.

Section 9. Aviation Incentive.

A. Effective October 1, 2003, employees initially assigned to the Aviation Division or assigned to Station 22 in support of Stinson Municipal Airport, said employee shall receive $50 per month until such time they receive their Crash Rescue Fire Fighter certification The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month.

B. Each certified Crash Rescue Fire Fighter assigned to the Aviation Division or assigned to Station 22 in support operations at Stinson Municipal Airport shall receive a $100.00 per month incentive pay during his or her active assignment.

Section 10. Technical Rescue Team Incentive.

A. Effective October 1, 2003, employees initially assigned to the Technical Rescue Team shall receive $50 per month until such time the employee is deemed qualified by the Fire Chief. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month.

B. Each Fire Fighter assigned to the Technical Rescue Team determined to be qualified by the Fire Chief shall receive a $100 per month incentive during his or her active assignment.

Section 11. Training Instructors Incentive.

A. Effective October 1, 2003, employees initially assigned to the Training Division shall receive $50 per month until such time they receive their Instructors Certificate. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be made for working one-half (1/2) or less of the calendar month.

B. Each employee assigned to the Training Division who holds an Instructors Certificate shall be entitled to receive $350 per month incentive during his or her active assignment to Training.

Section 12. Fire Inspectors Incentive.

A. Effective October 1, 2003, employee initially assigned to the Fire Prevention Division shall receive $50 per month until such time they receive their Inspectors Certificate. The employee must be assigned for more than one-half of the month to qualify for this incentive. No partial payment shall be to employees made for working one-half (1/2) or less of the calendar month.

B. Each employee assigned to the Fire Prevention Division who holds an Inspectors certificate shall be entitled to receive $100 per month incentive during his or her active assignment to the Fire Prevention Division.

Section 13. Language Skills Pay.

Employees shall be entitled to Language Skills Pay upon satisfactory completion of the testing requirements for proficiency as set forth in Administrative Directive 4.38. The amount shall not be less than the amount payable to other City employees.

Section 14. Services Division Incentive

Each employee assigned to the Services Division shall be entitled to receive $100 per month incentive during his or her active assignment to the Services Division.

Section 15. Fire Certification Pay

Fire fighters who hold a Basic, Intermediate, Advanced or Master Certification issued by the Texas Commission on Fire Protection shall receive Fire Certification pay based on the following monthly schedule:

	Basic	Intermediate	Advanced	Masters
Effective June 1, 2002	$20	$20	$20	$20
Effective October 1, 2002	$30	$30	$30	$30
Effective April 1, 2003	$30	$40	$40	$40
Effective October 1, 2003	$40	$40	$40	$40
Effective April 1, 2004	$40	$60	$80	$80
Effective October 1, 2004	$50	$60	$80	$80
Effective April 1, 2005	$50	$80	$120	$160

Certification payments shall be made monthly at the same time that EMT and Paramedic incentive pays are made. The Fire Chief shall have the right to require the Fire Fighter to produce a copy of the certification or other valid verification prior to approval for the employee to receive such payment. In the event that the increased prefund contribution provision as outlined in Article 25. Benefit Plans, Section 2. B. 1. does not occur, the Fire Certification pay will be reduced by an amount equal to the pre-fund contribution outlined in the aforementioned article.

ARTICLE 23.

SICK LEAVE

Section 1. Definitions.

A. For purposes of this Article, the following definitions shall be used:

1. "undocumented absence" shall mean any absence due to sick leave without a physician's certificate, regardless of duration during any working day. When counting such absences, all or part of each working day or shift shall count as a separate absence.

2. "physician's certificate" shall mean a note provided by a physician licensed to practice medicine which states that he or she has examined the employee and that the employee was unable to work due to illness. It is the parties intent that the purpose of the information to be provided by the physician's certificate is to document the physician's determination that the employee has a bona fide illness, injury, or disability, which has existed for the entire period of the leave being claimed.

3. "physician licensed..." shall mean and include medical doctors (M.D.), osteopaths (D.O.) chiropractors (D.C.) and dentists (D.D.S.) who have met applicable licensing requirements, as the context of the condition or illness requires.

4. "voluntary overtime" shall mean overtime which is neither holdover time nor when an employee is ordered to work overtime.

Section 2. Circumstances Requiring Physician's Certificate

A. All employees shall be required to submit a physician's certificate under the following circumstances:

1. All twenty-four (24) hour shift employees using more than two (2) consecutive working days of sick leave shall be required to provide a physician's certificate. All other employees using more than three (3) consecutive working days of sick leave shall be required to provide a physician's certificate.

2. All employees who use sick leave by leaving during a shift and returning during that shift or by reporting for duty after the shift begins shall be required to provide a physician's certificate.

3. All employees who utilize sick leave in conjunction with his/her scheduled work day or work shift immediately preceding or following any other form of leave,

excluding Bereavement Leave, (i.e. annual leave, military leave, administrative leave, leave without pay) shall be required to provide a physician's certificate. Undocumented sick leave and military leave may not be taken together during the same shift.

4. All employees who utilize sick leave on the following holidays shall be required to provide a physician's certificate: New Year's Day, Independence Day, Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Eve.

5. Once an employee has had six (6) undocumented absences in a fiscal year, he/she is required to provide a physician's certificate for any absence thereafter for the remainder of the year unless the employee has sick leave accrued but unused in an amount equal to or exceeding 50% of the total amount of sick leave he/she has accrued during his/her service in the Fire Department.

Section 3. Timeliness of Issuance of Physician's Certificate

A. A physician's certificate must have been issued within 24 hours of the date on which the obligation arises.

B. If an employee is not successful in obtaining a physician's certificate issued within 24 hours from the time the obligation arises, the employee may elect to be treated under either of the following provisions. The election shall be made upon return to work, at the time the physician's certificate is provided:

1. Forfeiture of Annual or Holiday Leave

   a. In the event that the physician's certificate is not issued within 24 hours, as provided herein, each duty hour after the obligation arises -- until the time of issuance, shall be forfeited from either accumulated vacation time, or holiday leave equal to the number of hours.
   b. Failure to provide such documentation shall not be cause for discipline, other than loss of paid leave, unless it be shown that intentional misrepresentation has occurred.
   c. It is understood and agreed to that annual or holiday leave that is forfeited under this section may not be used as, or in lieu of, scheduled leave. Any employee who intentionally calls in sick for the purpose of taking unscheduled leave is in violation of this provision.

2. Verification of Attempt to See Physician Within 24 Hours

   a. If an employee attempts to see a physician within 24 hours, and is unable to do so, he or she may provide documentation from a licensed medical service provider to that effect to obtain approved leave.

b. In the event of a subsequent sick leave request during the same fiscal year that is not accompanied by a physician's certificate issued within 24 hours, the employee shall lose sick leave credit for both of the absences, which shall not qualify as sick leave, but shall be forfeited from either accumulated vacation time, or holiday leave equal to the number of hours which the employee was absent. If the period of absence exceeds one shift or one day, the leave forfeited shall be twice the shorter period of time.
c. Failure to provide such documentation shall not be cause for discipline, other than loss of paid leave, unless it be shown that intentional misrepresentation has occurred.

Section 4. Additional Doctor's Certification and Confidentiality of Medical Information

A. Upon request by the Chief, employees shall provide additional (in addition to a physician's certificate) doctor's certification describing the nature of the illness which certification shall be mailed or delivered in a sealed envelope marked "confidential" to the Chief.

B. The City shall not release any information concerning any condition or diagnosis, or any associated medical information or test result that is non-discloseable or confidential under state or federal law which may be contained on the physician's certificate to any person or entity without the written consent of the employee, or an order by a court of competent jurisdiction.

C. If the employee seeks confidential treatment of any matter disclosed by the physician, these certificates shall be delivered or mailed, in a sealed envelope, marked "Medical Information - Confidential" directly to the appropriate office at Fire Administration.

D. No employee or physician shall be expected to provide any information about conditions which are privileged or confidential by law, or which involve a clearly unwarranted invasion of personal privacy. This would include, but is not limited to STD'S or HIV. If a diagnosis or treatment relates to such conditions, the physician may complete this form with a conclusion that the patient's condition prevented work during the specified time period.

Section 5. Loss of Voluntary Overtime

A. After two undocumented absences during any fiscal year, an employee will be ineligible for one (1) voluntary overtime opportunity, which loss shall occur either within two (2) shifts or the next opportunity. For each undocumented absence thereafter, the employee shall lose another overtime opportunity in the same manner.

B. After six (6) undocumented absences during the fiscal year, the Fire Chief has the right to deny eligibility for voluntary overtime for sixty (60) days, on a reasonable basis. Written guidelines for implementing this provision shall be established and disseminated within the department. The Fire Chief may revise these guidelines from time to time.

Section 6. Other provisions.

A. After an employee who is eligible for regular retirement has an absence in excess of thirty (30) consecutive working days, the Chief has the right to require a physician's certificate and may require the employee to submit to a Fitness for Duty Examination.

B. The Union recognizes the City's existing right to contact or attempt to contact an employee either in person or by telephone in a reasonable manner while he/she is on sick leave. Failure of the employee to be at his/her residence, at a location pre-coordinated with his/her supervisor, or attending medical treatment shall be grounds for disciplinary action in accordance with existing rules and regulations. The Chief will establish a procedure for discretionary exemptions from this rule and the provisions of Section 2 for individuals with long term illnesses, injuries or extended hospitalization.

C. The Union recognizes the City's existing right to enforce a policy that the provision of fraudulent medical documentation or deliberately erroneous statements in connection with the provisions of this article shall be grounds for disciplinary action in accordance with the rules and regulations.

D. Nothing in this article shall be construed to limit in any fashion the right of the Chief to enforce rules and regulations or administrative policies that are not in conflict with this Agreement or State Law.

ARTICLE 24.

SICK LEAVE BANK

In the event a Fire Fighter is suffering from an illness or injury which has been diagnosed by a physician as temporary and such diagnosis is provided the City in writing, and in the event the said Fire Fighter has used all of his sick leave, vacation, and all other leaves, he/she may be entitled to the benefits outlined below for a period not to exceed three hundred sixty five (365) calendar days for the same or related illness or injury.

1. a. The City shall draft twelve (12) hours sick leave per Fire Fighter after the employee completes his/her probationary period. Any Fire Fighter who desires not to participate must contact the City in writing prior to the completion of his or her probationary period.

b. The City Shall notify the Union after the sick leave bank hours drop below 480 hours, and in concurrence with the union President, shall be allowed to draft three (3) hours from all Fire Fighters.

2. Fire Fighters may request utilization of the sick leave bank hours by submitting their name to a Committee of three appointed by the Executive Board of Local 624.

3. No Fire Fighter judged totally and permanently disabled by a physician shall be entitled to utilize this plan to extend the time of his retirement.

4. The Committee may donate sick leave drafted from each participant in equal amounts up to three (3) employees. If more than three (3) employees are using this, sick leave bank then an amount shall be deducted from the sick leave bank equal to 1.25 times the amount of actual hours used.

ARTICLE 25.

BENEFIT PLANS

Section 1. Active Fire Fighters Health Benefits.

A. The City shall provide all active Fire Fighters who are eligible with family medical benefits and shall pay the full cost of said benefits as agreed upon herein. The minimum benefits provided are those as stated in the Master Contract Document for the City of San Antonio Uniform Employees and Uniform Prefund Retirees Health Benefit Program dated January 1, 2000, and as amended in Section 8 of this Article (hereinafter referred to as "Master Contract Document"). Provisions and benefits specified in the Master Contract Document shall not be reduced during the life of this Agreement; however, the City reserves the right to change carriers or plan administrators at any time at its discretion. While the City is prohibited from reducing the provisions and benefits specified in the Master Contract Document during the life of this Agreement, a determination of what medical service is medically necessary for a particular patient, or any reduction in the usual and customary charge for that medical service, will not be construed as a reduction in the benefits; provided that the determination is made in accordance with the procedure and criteria described in the Master Contract Document.

B. Active Fire Fighters covered under this Agreement shall be granted the option of entering into or exiting from the flexible benefits program as provided for by the City to substitute for the basic program as outlined in this Agreement. Said option must be exercised by the active Fire Fighter during the City's re-enrollment period between the dates of October 1, and December 31, of each calendar year.

Section 2. Retired Fire Fighters Health Benefits.

A. **Retiree Benefits.** The City shall provide all retired Fire Fighters who are eligible with medical benefits. Retiree medical benefits shall be supplemental to Medicare benefits, only if the retiree is eligible for Medicare. Retirees shall not be required to purchase Medicare coverage if they have not qualified with the full 40 quarters for Medicare, Part A. Upon reaching the age and established qualification criteria for Medicare eligibility, medical benefits under the Master Contract Document as primary coverage shall no longer be applicable, and-medical benefits provided under the Master Contract Document shall convert to supplemental coverage only, in accordance with the provisions set forth in the Master Contract Document. Once the retiree is eligible for Medicare, the retiree is required to apply for, purchase and maintain Medicare, Part B benefits. The benefits provided prior to Medicare eligibility are stated in the Master Contract Document.

Provisions and benefits specified in the Master Contract Document shall not be reduced during the life of this Agreement; however, the City reserves the right to change carriers or plan administrators at its discretion. While the City is prohibited from reducing the provisions and benefits specified in the Master Contract Document during the life of this Agreement, any reasonable determination of what medical service is medically necessary for a particular patient, or any reduction in the usual and customary charge will not be construed as a reduction in benefits, provided that the determination is made in accordance with the procedure and criteria described in the Master Contract Document.

Fire Fighters who retired on or after October 1, 1989, but before or on December 3, 1995, who became eligible for retiree medical benefits under the terms of the Collective Bargaining Agreement executed October 1, 1998, between the City and Union shall continue to receive retiree medical benefits in accordance with that prior Collective Bargaining Agreement. Retiree medical benefits for Fire Fighters, who retire on or after December 4, 1995, shall be determined in accordance with the Collectively Bargained Agreement and the Master Contract Document between the City and the Union in effect when the service or treatment is provided.

B. 1.**Contributions.** The City has established a trust fund for prefunded retiree health care benefits for all eligible retired Fire Fighters (hereinafter referred to as "the Fund") and has increased its contribution levels for the purpose of establishing an actuarially sound retiree health benefit fund, evaluated over thirty years. The parties agreed in principle, in 1995, that, once an actuarially sound fund was established by current contribution levels, the responsibility for future contributions (made necessary by changes in circumstances, the economy, and the medical care system) would be jointly shared by the parties, and would be quantified and allocated by negotiation in future agreements, as necessary. In keeping with this principle, the contribution levels to the trust fund and their effective dates shall be as follows:

Effective Date	City (% of base pay + longevity/ month)	Each Firefighter ($/month)
June 1, 2002	8.92	40
October 1, 2002	8.71	50
October 1, 2003	8.51	60
October 1, 2004	8.33	70

If the Board of Trustees of the Fire and Police Retiree Health Care Fund, San Antonio "Board") does not complete an actuarial study on the Fund by January 2004, the parties agree to have an actuarial study completed on the Fund for that fund year. The costs of study shall be paid by the City and deducted from its contribution to the Fund. The study shall be conducted by a firm having experience in conducting actuarial analysis on municipal retiree health benefit programs, and which is jointly selected by the City and the Unions. The study shall evaluate the amount of monthly contributions necessary to provide benefits under the fund and amortize the unfunded liability for a period of not more than thirty (30) years. The City shall provide such accurate and complete information, as the actuary shall require. The assumptions utilized shall be determined by the actuary, provided that any material change in the assumptions shall be preceded by notice to the City and the Union, and an opportunity for input or conferences prior to completion of the study.

The Union or City may request additional studies, revised assumptions, or developed scenarios as it may deem necessary from the same firm, by paying for such additional services. Contributions beyond the term of this Agreement shall be as negotiated by the parties in future contract terms with the understanding that the parties have agreed, in principle, to share contributions to the Fund as follows: 2/3 City and 1/3 Union members.

In the event that legislation is proposed to be introduced to the Texas Legislature during the term of this Agreement, which removes control over the benefits levels from the collective bargaining process or establishes contribution amounts to the Fund, the parties agree to reopen negotiations to discuss any revisions to this section. The parties agree to include the San Antonio Police Officer's Association in any such discussions. The Association has obtained this provision to reopen negotiations on the basis of its commitment and agreement that any change by legislation which removes any control over the Fund from the collective bargaining process shall establish a defined contribution level in order to protect the City and its taxpayers from any unfunded liability resulting form such revisions. If the parties agree to revise the provisions hereof, any changes must be approved by City Council and ratified by the Association.

B 2. The parties have agreed that Section 2. B. 1. shall be subject to a limited re-opener on the sole subject of equalizing contributions to the prefunded retiree health care fund.

C. Spouses of retired Fire Fighters shall be eligible to receive the benefits as set forth in the Master Contract Document. Medical benefits shall be supplemental to Medicare benefits once the spouse individually qualifies for Medicare coverage. Spouses of retired Fire Fighters shall pay a portion of the annual health plan to retain coverage at a rate based on the tenure of the fire fighter to whom the spouse was married. Beginning with a Fire Fighter, who served 20 years or less, the spousal rate will be 30% of the health plan premium (the COBRA formula premium as enumerated in chapter 2 of the Master Contract Document). From 21 years to 30 years of tenure, for each year of tenure above 20, the spousal rate will decrease by 3% of the health plan premium until it is 0% for a spouse of a Fire Fighter with 30 years of tenure. Once the retired Fire Fighter becomes eligible for Medicare, the spousal rate will become 0% of the annual health plan premium.

D. Spouses of deceased Fire Fighters shall be entitled to benefits provided for spouses of retired fire fighters, in the event that the deceased fire fighter died in the line of duty, or was eligible for retirement at the time of death. Line of duty shall mean any occurrence wherein the officer was exercising the power and authority of a certified fire fighter, whether or not scheduled for duty at the time of death. Spouses of Fire Fighters not eligible for retirement or acting in the line of duty at the time of death shall be entitled to continue coverage by paying the applicable COBRA formula premium (as enumerated in Chapter 2 of the Master Contract Document), until death or remarriage.

E. Upon retirement, the Fire Fighter may elect to cover any other eligible dependents (other than spouse) in accordance with the Master Contract Document. The retiree shall pay 100% of the health plan premium (the COBRA formula premium as enumerated in Chapter 2 of the Master Contract Document) for any such other eligible dependent.

Section 3. Medical benefits provided for herein as to fire fighters and their spouses shall be supplemental to Medicare/Medicaid benefits. Once the spouse is individually eligible for Medicare, each such person is required to apply for, purchase, and maintain Medicare benefits. Upon the death of a retired fire fighter who became a fire fighter on or after October 1, 1988, the plan shall pay the applicable Part B Medicare premium for a surviving spouse until death or remarriage. The Plan Administrator may approve any alternate health care coverage provided by the spouse of a retired or deceased fire fighter, in lieu of Medicare coverage to comply with this requirement. The health plan will serve as supplemental coverage or coverage levels not otherwise provided by Medicare, to the extent permitted by federal law.

Section 4. 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 active fire fighters. The supplemental insurance coverage provisions for retired fire fighters and spouses shall control available health benefits during the term of this agreement for retired fire fighters and spouses.

Section 5. Health care benefits for active or retired Fire Fighters shall not be terminated, altered, modified or reduced, during the term of the Agreement, except by amendments or successors to this Agreement.

Section 6. It is understood and agreed that the provisions of this agreement and the Master Contract Document for health benefits have been drafted in substantial and material reliance upon existing provisions of federal and state law concerning employee health benefits. Any change in federal or state law or regulations which changes the obligations of either party, or the applicability or extent of Medicare benefits, or materially alters the assumptions relied upon in negotiations shall entitle the City or the Union to reopen negotiations concerning health benefits.

Section 7. Other Benefits.

A. Definitions.

The term "Trusts" as used in this Section shall refer to the San Antonio Police Officers and Firefighters Benefit Plan and Trust, which provides optical and dental services, and the San Antonio Police Officers and Firefighters Prepaid Legal Plan and Trust, which provides legal services to members of the San Antonio Police Department and the San Antonio Fire Department.

B. **Amounts.** During the term of this Agreement, the City will pay a monthly amount for each employee as shown by the schedule below for dental, optical and prepaid legal benefits under the Trusts. Furthermore, neither the City nor the Union may change the amounts paid or allocated for the respective benefits as shown in the schedule during the term of this Agreement.

	Optical/ Dental Plan	**Prepaid Legal Plan**
Employees with dependents	$89.50	$32.00
Employees without dependents	$43.50	$32.00

C. **Audits.** The Union shall ensure that the Trusts will conduct annual independent audits at no additional costs to the City. The Union shall further ensure that the Trusts shall provide a copy of each annual independent audited financial report to the City, through its Finance Director, within thirty (30) days of receipt of the audit by the respective Trust.

The City reserves the right, at is sole discretion, to conduct an audit of said benefit plans at the City's expense any time during the term of this Agreement. Should the City decide to conduct such an audit, the Union shall ensure that the Trusts make available to the City all relevant documentation within a reasonable time.

D. **Use of Benefits.** With respect to the prepaid legal benefits, it is understood that no employee may use the benefits for the purpose, in whole or in part, of implementing and/or initiating legal action against the City, any of its agents, officers, and/or assigns.

Exclusive Trust. The Union shall ensure that all funds paid by the City pursuant to this section are used for the exclusive benefit of the employees and that said funds shall not be commingled with the funds of any other organization, entity, or Union, nor shall said funds be used for any other purpose other than that provided for herein.

E. **Payment and Change in Plans.** During the term of this Agreement, the Union may change providers for Supplemental Benefits (Dental/Optical and Legal). In the event that the Union makes a proposal to change benefit providers, the Union shall submit the same in writing to the City.

F. **Copies of Trust Plan.** The Union will provide to each employee a summary of each Trust plan and will provide up-to-date copies of the Trust Plan Documents to the Human Resources Department and the Union Office.

G. **Determination letter.** It shall be the sole responsibility of the Association to maintain the tax-exempt status of the benefit received under this Section. In accordance therewith, the Association shall provide to the City, through its Director of Finance, a copy of the Internal Revenue Service Determination Letter regarding the tax-exempt status of the benefit received under this Section.. Said Letter shall be received by the City no later than ten (10) days from commencement of this Agreement.

Section 8. Amendments to the Master Contract Document[1]

A. Federal Statutes. In accordance with number 4, Conformity with Federal Statutes, of Chapter 15, General Provisions, of the Master Contract Document, the Master Contract Document is hereby amended to incorporate:

1. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended;
2. The Mental Health Parity Act of 1996 (MHPA) as amended;
3. The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) as amended; and
4. The Women's Health and Cancer Rights Act of 1996 (WHCRA) as amended.

B. **Preventive Services.** Number 19, Preventive services, of Chapter 4, Covered Medical Expenses, of the Master Contract Document is hereby revised to read as follows:

19. Preventive services:
(a) One routine pap smear (doctor's procedure charge, lab expenses and office visit) per calendar year for female covered persons;

(b) One routine mammogram per calendar year for female covered persons age thirty-five (35) and over;
(c) One (1) routine physical examination per calendar year for an **eligible employee only.**

(1) If performed by the employee's own physician, covered services will be limited to a preventative medical examination, blood chemistry profile, thyroid function (TSH), fecal occult blood, urinalysis, electrocardiogram, body fat measurement, health risk appraisal, stress and personality profile, and nutritional analysis, subject to the deductible and coinsurance as stated herein.
(2) If performed at the Occupational Health Clinic, at 401 West Commerce, the plan will cover a complete blood count, cholesterol and glucose screening; blood pressure check; height and weight evaluation; and a health assessment questionnaire at 100%.

d) A physical examination for the detection of prostate cancer and prostate-specific Antigen test used for the detection of prostate cancer for each male enrolled in the Plan who is;

(1) at least 50 years of age and asymptomatic; or
(2) at least 40 years of age with a family history of prostate cancer or another prostate cancer risk factor.

C. **Amendment or Termination of Plan.** Number 2, Amendment or Termination of Plan, of Appendix A of Chapter 18, Appendices-Summary of Accident and Health Benefits, third paragraph, is hereby revised to change the date of the Collective Bargaining Agreement between City and Local 624 from 1998-2001 to the effective date of this Agreement, as agreed to by the parties pursuant to Article 37. Duration of Agreement.

D. **Prescription Drug Benefits.** The following prescription drug benefits shall become effective January 1, 2003, or at such time when the contract between the City and the San Antonio Police Officer's Association containing such provisions becomes effective, whichever is later:

[1] The amendments to the Master Contract Document as set forth in this Article 25 and any amendments agreed to by and between the City and Local 624 upon the completion of any re-opened negotiations between City and Local 624, based upon the conclusion of the collective bargaining negotiations between the City and SAPOA and ratification of said provisions by the SAPOA, shall be incorporated into the Master Contract Document. Such amendments are subject to the mutual consent of the parties, subject to Article 36. Declaration of the Full and Final Scope of Agreement.

*In Network Pharmacy** using prescription drug program

Participant co-payment

Retail 30 day supply

Generic	$0
Brand without Generic	20%
Brand with Generic	20%

Retail 90 day supply

Generic	$0
Brand without Generic	20%
Brand with Generic	20%

Mail Order 90 day supply

Generic	$0
Brand without Generic	20%
Brand with Generic	20%

In Network copayment applies to deductible and annual out-of-pocket.

Out of Network Pharmacy or without utilization of prescription drug program:

Participant Co-payment

Retail 30 day supply

Generic	20% after CitiMed deductible**
Brand without Generic	40% after CitiMed deductible**
Brand with Generic	50% after CitiMed deductible**

Retail 90 day supply

Generic	20% after CitiMed deductible**

Brand without Generic	40% after CitiMed deductible**
Brand with Generic	50% after CitiMed deductible**

Mail Order 90 day supply

Generic	20% after CitiMed deductible**
Brand without Generic	40% after CitiMed deductible**
Brand with Generic	50% after CitiMed deductible**

* Out of Area Benefit – Participants who live over 30 miles from a participating network pharmacy may submit Out of Network Pharmacy charges for reimbursement at plan coverage and benefit level.

** This deductible is not an additional deductible. Out of network copayment does not apply to annual out-of-pocket.

E. Number 20 of Chapter 4, Covered Medical Expenses of the Master Contract Document is hereby revised as follows:

20. (a) Gamma globulin injections and the following immunizations for Covered Dependents from birth through the date the child is six (6) years of age shall be covered: (a) DTP, (b) polio (OPV), (c) MMR, (d) meningitis (HIB); (e) hepatitis B (HBV); (f) varicella; and (g) any other immunization as required by Texas law. After age six (6), the aforementioned immunizations will be covered only if the dependent was covered under this Plan before attaining age six (6). Expenses for all covered immunizations are covered at 100%, deductible waived. Other services provided at the same time as the immunizations, including, but not limited to, office visit charges, shall be subject to the deductible and coinsurance.

(b) Synagis (Palivizumab) administration for prevention of respiratory syncytial virus (RSV) among high risk infants meeting prescribing criteria set forth by the American Academy of Pediatrics (AAP) will be covered at 100% deductible waived only if such treatment is determined to be medically necessary and prior authorization obtained on or before administration of first injection.

Section 9. Prescription Drug Program

The parties agree that this Agreement may be reopened for the sole purpose of considering a new prescription drug benefit program no later than the conclusion of collective bargaining negotiations with and prior to the submittal of the negotiated collective bargaining agreement to the San Antonio Police Officers Association for ratification. Such

program may only be adopted and incorporated into the Agreement upon mutual consent of the parties, subject to Article 36, Declaration of the Full and Final Scope of Agreement.

ARTICLE 26.

MISCELLANEOUS

Section 1. Should a Fire Fighter be ordered to another station after reporting to his assigned or temporary assigned duty station, mileage will be paid to the next station after reporting to his assigned or temporary assigned duty station. Mileage will be paid to the next station at the existing City rate per mile, or a minimum of $2.00, whichever is greater. In order to be reimbursed for mileage expenses, a Fire Fighter so affected must turn in to the Chief each quarter on October 1, January 1, April 1, and July 1, of each calendar year expense vouchers requesting reimbursement for mileage expenses during the preceding quarter. Failure of an employee to timely file his voucher request shall result in the employee's waiver and relinquishment of any entitlement to said reimbursement of mileage expense.

Section 2. Suspensions. Employees suspended up to a maximum of six (6) working days may, at the employee's discretion, forfeit either accumulated vacation time or holiday leave equal to the suspension. The employee shall have ten (10) calendar days from his receipt of notice of the suspension to decide whether or not he wishes to forfeit accumulated leave or exercise his appeal rights pursuant to Local Government Code Chapter 143. The provisions of this Article shall apply solely to suspensions which are agreed to by the employee, and no appeal to the Commission or to arbitration may be instituted on suspensions where the employee has forfeited accumulated vacation or holiday leave.

Section 3. Except when workload dictates or in the case of regular alarms or Departmental announcements, all stations shall be on selective call for twenty-four (24) hours per day.

Section 4. The City shall make a copy of this Agreement available at each station and a copy provided to each Fire Fighter.

Section 5. The Chief shall have the authority at any time to require a Fire Fighter to submit to psychological evaluation or treatment and/or medical evaluation, at the City's expense, to be performed by a qualified psychologist, psychiatrist, counselor, therapist, or medical doctor chosen by the City. It is understood and agreed that should an employee refuse to submit to a psychological and or medical examination, or refuse to provide the results of such examination, such refusal shall constitute a refusal to obey a command, for which discipline may be imposed. To the extent allowed by law, the City will indemnify the Union from liability in connection with any disciplinary matters arising under this section.

Section 6. Effective with the execution of this Agreement, the Chief shall have the right to assign (which assignment shall not be unreasonably withheld), a Fire Fighter to light duty

not to exceed one (1) calendar year from the date of the assignment based on the recommendation of a qualified physician. The Chief, in his sole discretion, may extend the duration of an employee's light-duty assignment.

Section 7. After an employee has two (2) uses of emergency leave in a calendar year, for each subsequent use of emergency leave, the Fire Chief shall have the right to deny eligibility for the next voluntary overtime opportunity which would otherwise have been made available to the employee.

Section 8. In the event of a Firefighter death which occurred in the line of duty, the City shall pay $5,000 over and above the City's life insurance/accidental insurance benefit to the beneficiary to assist with funeral and/or related costs. The City shall issue payment directly to the beneficiary listed on the employee's life insurance within ten (10) working days of receipt of the proper request for said payment.

Section 9. Employees separating from the Department shall have their pay for accrued vacation leave calculated at base pay plus longevity.

Section 10. Equipment Reimbursement

A. In accordance with this section, employees who are personally issued or who have individual personal responsibility during a shift for protective clothing, radios, cellular phones, or pagers shall be responsible for reimbursing the City for repair or replacement cost of such equipment in the event of loss or damage resulting from negligence or abuse on the part of the employee. Before the City may require reimbursement under this section, the City must provide the employee advance written notice of the proposed reimbursement. Within ten (10) days of the employee's receipt of such notice, the Union may request mediation-arbitration from the Federal Mediation & Conciliation Service. In such case the parties must exercise their best efforts to schedule the mediation-arbitration within thirty (30) days of the Union's request, taking the FMCS Commissioner's availability into account. In such procedure the FMCS Commissioner's shall first serve as a mediator, and attempt to facilitate voluntary settlement. If voluntary settlement is not achieved, the FMCS Commissioner shall become an arbitrator. He or she shall hear witnesses, who shall be subject to cross-examination, shall receive documentary evidence, and shall have the authority to exclude any evidence that he or she considers irrelevant or immaterial. Attendance and compensation of witness shall be governed by Section 5 of Article 29. There shall be no written briefs. The Commissioner shall issue a bench decision at the conclusion of the hearing, which shall constitute a final and binding arbitration award as to whether or not the employee is liable for reimbursement, and the amount thereof if any, under this section. In no event may an employee be required to pay reimbursement until and unless an arbitrator under this section so orders, if the Union timely requested mediation-arbitration.

B. **Reimbursement – Items less that $50:** When an employee is required under Section 10(A) above to reimburse the City for repair or replacement cost of less that $50.00, the employee shall pay the reimbursement either within 10 (ten) working days of notice of the Chief's determination if mediation-arbitration is not invoked, or in the event mediation-arbitration is invoked, within 10 (ten) working days of the execution of a mediated settlement or the issuance of an arbitration award, whichever is applicable.

C. **Reimbursement – Items greater than $50:**

1. When an employee is required under Section 10(A) above to reimburse the City for repair or replacement cost valued at or above $50.00, either by the Chief's determination if mediation-arbitration is not invoked, or by virtue of a mediated settlement or arbitration awarded if mediation-arbitration is invoked, the employee shall have the option to reimburse the City in one (1) payment or may utilize payroll deductions to reimburse the City for such repair or replacement cost, as long as deductions are made in increments of not less than $50.00 bi-weekly.

2. If the employee chooses to make one (1) payment, said payment shall be made within thirty (30) days of either the date of notice of the Fire Chief's determination if mediation-arbitration is not invoked, or the date of execution of a mediated settlement or of an arbitration award if mediation-arbitration is invoked.

3. If the employee chooses to utilize payroll deductions, reimbursement coordination with the Department's Payroll Section shall be made within ten (10) working days of either the date of notice of the Fire Chief's determination if mediation-arbitration is not invoked, or the date of execution of a mediated settlement or of an arbitration award if mediation-arbitration is invoked. It shall be the obligation of the employee to coordinate such repayment with the Fire Department Payroll Section.

D. No employee who is ordered to make reimbursement under this section shall be subject to disciplinary action, unless it is shown that the loss resulted from intentional or deliberate misconduct. When an employee is found by an arbitrator under this Section not to be liable for reimbursement, such arbitration award shall be final as to all issues involved as to the alleged loss or damage, and the employee may not be subject to subsequent disciplinary action over the same alleged loss or damage.

ARTICLE 27.

EMPLOYEE FITNESS

Section 1. Purpose.

The purpose of the physical fitness plan is to ensure that employees of the Department are physically capable of meeting all of the physical demands inherent in the job. It is the

intent of the parties that the elements of the plan be directed to establishing such job-related physical fitness. The City and the Union recognize that each employee of the Department has individual physical characteristics which must be taken into account in assessing and applying the requirements of the plan.

Section 2. Fitness Requirements for New Employees.

A. Effective with the first class to enter the Fire Academy after the approval of this Agreement, all new employees must agree to maintain a standard of fitness throughout their careers with the San Antonio Fire Department.

B. The City and the Union will meet and come to an agreement on the standard of fitness to be maintained and the regulations, policies, penalties, medical considerations, etc. which will be necessary to implement this section.

Section 3. Fitness Program for Existing Employees.

The City and the Union shall meet and come to an agreement on a physical fitness program for existing employees which is not punitive in nature, but is instead aimed at promoting physical fitness among all employees of the Department. Any discipline which may be issued for non-compliance with the physical fitness program or plan must be corrective in nature and must take into account the individual characteristics of the employee involved.

The City agrees to promote compliance with the plan through education, incentives, interdepartmental counseling and other positive approaches.

Section 4. Nothing in this article or agreement shall require the City or the Union to violate the statutory provisions of the Americans with Disabilities Act.

Article 28.

DRUGS AND ALCOHOL

Section 1. General.

A. 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.

B. Therefore, it is understood that the use of alcohol, drugs, or other controlled substances by members of the bargaining unit without proper prescription or other authorization 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.

C. It is further agreed that the parties will work toward development of a program of awareness and education of the danger and effects of drug and alcohol abuse.

D. The City and the Union agree that Firefighters may be called upon in hazardous situations without warning, and that it is imperative to the interest of the Firefighters and the public to ensure that no Firefighter is substance impaired. In order to further their joint interest in protecting Fire Fighters and the public, effective October 1, 2003, the City and the Union agree to mandatory random drug testing as described in this section.

Section 2. Reasonable suspicion testing

A. The Union acknowledges and recognizes the right of the City to investigate possible alcohol or drug abuse by bargaining unit members which impairs job performance and to require employees to submit to various specified, approved and recognized medical procedures, provided reasonable suspicion exists, in accordance with proper procedure and applicable law, as well as the terms of this Agreement. In this regard, it is understood that the City shall adequately train its supervisory personnel who have authority to investigate the reasonable suspicion standard in detecting symptoms and effects of alcohol and/or controlled substance abuse. This Article in no way establishes or permits testing in violation right provided by this Agreement.

B. In addition to reasonable suspicion testing as provided for above, the parties acknowledge the right of the City to require employees who receive special assignments to be tested. As used herein, special assignments shall include assignments to Haz-Mat, Paramedic, and/or Arson units where the assignment requires (1) the carrying of a firearm; (2) contact with or access to extremely dangerous materials; and (3) the administration of controlled substances. Testing must be approved pursuant to recognized medical procedures in accordance with applicable clinical protocols as well as the terms of this Agreement. Employees applying for such positions must be informed at the outset that such testing will be required prior to promotion/assignment to the position sought. In no event will employees be tested under this subsection as a result of involuntary assignment to an affected position, unless said assignment is the result of a promotion. Employees subject to tests under this subsection will be given a minimum of five (5) days notice of the actual test, and shall take the test, and the City must administer the same, in a manner which assures the employee's privacy to the greatest extent possible consistent with the City's need to preserve the integrity of the test procedures and results.

Section 3. Random Testing.

A. One Hundred percent (100%) of Fire Fighters of all ranks, including the Chief, shall be susceptible to mandatory testing for illegal drugs and controlled substances, during each calendar year on a fair and impartial statistical basis at the City's expense. The fair and impartial statistical basis (in which each employee has an equal chance of being selected during a calendar year) shall be by a non-discriminatory 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 computer program shall be designed to ensure that no employee shall be randomly tested more than once in any 12-month period.

B. Upon notice of selection for random testing, any employee shall provide a urine sample in accordance with the policy or protocol established by the testing laboratory. Failure to provide a sample may be considered insubordination, and may be the basis for suspension or indefinite suspension. The Medical Review Officer (MRO) shall be contacted for instructions in the event of a claimed inability to provide a sample.

C. The City and the Union have a mutual interest in ensuring that drug impaired Fire Fighters do not perform fire department duties. The City and the Union agree that the purpose of the mandatory drug testing policy is not to punish an employee who has not violated the Fire Department's rules, regulations, policies or procedures. The City and the Union are committed to the principle that the mandatory drug testing policy for Fire Fighters is designed and shall be administered to result in disciplinary action only against those Fire Fighters who have violated the Fire Department's rules, regulations, policies and procedures.

D. The City will utilize a U.S. Department of Health and Human Services (DHHS) approved laboratory in performing urinalysis for drug detection. The laboratory will provide chain-of-custody procedures and documentation necessary to meet federal standards. Specimen collection and chain of custody procedures will ensure that specimen security, proper identification, and integrity are not compromised. A MRO will provide oversight to trained personnel on the collection and testing of urine samples. The Medical Review Officer shall be a qualified physician designated by the City.

E. The employee will provide a urine specimen in a location that affords privacy. The collector will seal and label the specimen, initiate a chain of custody document, and prepare the specimen and accompanying paperwork for shipment to the drug testing laboratory. Each urine specimen will be subdivided into two bottles labeled as "primary" and "split" specimens. Both bottles will be sent to a laboratory where only the primary specimen confirms the presence of illegal, controlled substances, the employee will have 72 hours from the time they are notified by the MRO

concerning positive test result to request the split specimen be sent to another DHHS-certified laboratory for a second opinion analysis. If either analysis is below the positive threshold levels, this shall constitute a negative result and the employee shall not be subject to further random testing for at least 12 months. Both the primary and the split specimen shall be maintained for one year to be available in the event of legal or contractual disputes or further questions. In addition, employees may at their own expense request to have another urine specimen administered at a physician's office of the employee's choice and accompanied by the testing personnel provided such testing is administered within four (4) hours of the initial notification for testing. Results of any such test taken at the employee's expense shall be provided to the City only if the employee chooses to release the results to the City.

F. Sample testing procedures shall conform to scientifically accepted analytical methods and procedures and shall include confirmation of positive test results by gas chromatography/mass spectrometry (GC/MS). Before the results of a drug test may be used as a basis for any action, an MRO will be employed to determine if the test result is positive due to illicit drugs, or prescribed or over-the-counter drugs or food substances. In the event the MRO determines laboratory analysis found the specimen to be positive, but circumstances leading to the test result were other than illicit drug use, the test will be reported as negative to the City.

Section 4. Threshold Levels Revealed by Testing.

The parties have agreed that the following levels shall be determinative in any testing administered under this Article.

A. The five (5) drugs to be screened and the test cutoff levels in nanogram/milliliter are as follows:

	Drugs	Cutoff Levels
1.	Marijuana metabolite	50 ng/ml
2.	Cocaine Metabolite	300 ng/ml
3.	Opiate metabolite	2,000 ng/ml
4.	Phencyclidine	25 ng/ml
5.	Amphetamines	1,000 ng/ml

B. Concentrations of a drug at or higher than the above levels shall be considered a positive test result on the initial drug screening test.

1. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending."

2. A positive test result on the initial drug-screening test will automatically require a confirmation drug test be performed.

C. The same five (5) panel drug screen test will be conducted on each confirmation drug test as was conducted on the initial test. The five (5) drugs to be screened and the test cutoff levels in nanogram/milliliter for the confirmation drug test are as follows:

	Drugs		Cutoff Levels
1.	Marijuana metabolite		15ng/ml
2.	Cocaine metabolite		150ng/ml
3.	Opiates:		
	a.	Morphine	2,000 ng/ml
	b.	Codeine	2,000 ng/ml
	c.	6-Acetylmorphine	10 ng/ml
4.	Phencyclidine		25ng/ml
5.	Amphetamines:		
	a.	Amphetamines	500 ng/ml
	b.	Methamphetamine	500 ng/ml

D. Concentrations of a drug at or higher than the above levels shall be considered a positive test result on the confirmation drug screening test. A positive test result under this section shall not constitute conclusive proof of impairment or use, but shall create a rebuttable presumption subject to challenge through the grievance procedure. In the event that the employee appeals any disciplinary action to arbitration after a positive test result under this section, the losing party shall pay all costs of the proceeding. The employee is the "losing party" under this section if the arbitrator finds drug or alcohol impairment in violation of department policies, rules or regulations, irrespective of any modification or reduction in discipline.

Section 5. General.

A. The thresholds listed above shall apply to all testing under this Article. Employees will complete a pre-testing consent form each time a test is conducted as part of drug testing procedure under this Article. Failure to do so may be insubordination, and just cause for discipline. This is in addition to any signed acknowledgement forms which may have been obtained at the time of employment or any other occasion.

B. In all testing under this Article, only conclusive results are to be reported to the City. A positive urinalysis test will be confirmed by a GC/MS test and reviewed by a Medical Review Officer before considered conclusive. Both tests must be positive or the results are considered inconclusive, thereby causing a negative test result to be reported to the City.

C. In all testing under this Article, individuals with positive test results for drugs will be notified by the MRO (or a para-professional acting as his delegate) in person or by telephone. An interview will be conducted to determine if there is an alternative medical explanation of the drugs found in the employee's urine specimen. The employee is entitled to request and receive an in-person interview with the MRO prior to release of a positive result. If the employee provides appropriate documentation and the MRO is satisfied with the explanation, the drug test result is to be reported as negative to the City.

D. 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 referred to or used at any time for any employment or disciplinary purpose whatsoever by the City.

Section 6. Confidentiality.

All records pertaining to the department required drug 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 Chief 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.

Section 7. Rehabilitation and Treatment for Substance Abuse.

A. The parties have these joint objectives in this Article of the Agreement:

1. To preserve the Chief's right to discipline or terminate an employee for on-duty use or impairment in violation of Fire Department Rules and Regulation;

2. To create disincentives for the use and abuse of substances, and

3. To provide a means, together with icentives, to seek and obtain treatment and rehabilitation for any employee who is involved in off-duty substance abuse.

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 and the existing coverage definitions in the Master Contract for Health Benefits, provided, however, that the Chief's right to discipline or terminate for on-duty use or impairment shall not be affected by this provision. An employee entitled to rehabilitation and treatment is not exempted from disciplinary action for violation of any other rules and regulations of the department (e.g. off duty DWI, regulations concerning leave, etc.).

C. The City shall implement a drug and alcohol abuse education program. As part of that program, information will be provided on the availability of any EAP services under City programs or other outside service providers. The City will provide employees with literature and audio-visual materials and a copy of the drug and alcohol-free workplace policy as well as penalties for violating said policy.

Section 8. Union Representation of Members.

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 bargining 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.

ARTICLE 29.

GRIEVANCE PROCEDURE

Section 1. Scope of Procedure.

The purpose of this Article is to provide a just, equitable, and expeditious method for resolving disputes between the City and the Union (or employees) concerning all aspects of the employment relationship between the City and bargaining unit employees, and concerning the bargaining relationship between the City and the Union. To that end, the parties hereby agree and stipulate as follows:

A. All disputes concerning the interpretation and/or application of the terms of this Agreement shall be submitted, if at all, to the grievance/arbitration procedure as called for herein. Failure to initially pursue grievance/arbitration in these instances shall be the basis for a plea in abatement in response to any suit or claim filed with a court of law and/or administrative agency.

B. Employee claims of violation of statutory or constitutional rights may be submitted to the grievance/arbitration procedure or may be pursued by means of judicial and/or administrative appeal; provided that once the employee has elected to file a lawsuit and/or administrative claim, all issues raised by the dispute or claim will be resolved in such lawsuit and/or administrative process, and no grievance may be filed concerning the same subject matter. It is recognized that claims falling under this subparagraph may be included with related claims of contract violations. In such circumstances, the City shall not be entitled to abatement of a suit involving the contract claims, related to the statutory or constitutional claims asserted, for failure to grieve such contract matters initially. If the employee elects to use the grievance/arbitration procedure to raise statutory or constitutional claims, such matters may not thereafter be appealed to court except as provided by this Article.

C. Union claims of violation of statutory and/or constitutional rights as to it individually and/or in behalf of a "class" of its members shall be submitted, if at all, to the grievance/arbitration procedure called for herein. Upon the exhaustion of such remedy, such matter(s) may not thereafter be appealed to a court or agency except as provided for herein.

D. Claims alleging violation of Article 11, Section 1, or state or federal laws prohibiting employment discrimination including discrimination for having initiated or filed a claim for workers' compensation benefits, as prohibited by Texas Labor Code Section 451.001, shall not be subject to the grievance/arbitration procedure.

E. Disciplinary matters subject to the appeals procedure provided by Texas Local Government Code Chapter 143 shall not be subject to the grievance/arbitration procedure; provided that such matters, at the employee's election, will be subject to the Civil Service Commission or grievance/arbitration procedure under a just-cause standard, if Texas Local Government Code Section 143.057 is repealed or amended to eliminate the optional appeal of disciplinary matters to a Hearing Examiner. If the provisions of Chapter 143 are not repealed, and should the employee elect to proceed to the optional appeal of disciplinary matters to a Hearing Examiner, the examiner shall be one of the six (6) pre-selected, qualified neutrals as called for in Section 4 (A) hereof. The powers, duties, and/or obligations of said arbitrator/hearing examiner shall likewise be as provided for in this Agreement and applicable provisions of the Texas Local Government Code, Chapter 143.

Section 2. Time Limits.

The parties shall adhere to the time limits set forth in this Article, unless such time limits are waived or extended by mutual agreement. In the event the employee or Union fails to meet the time limit at any step of the grievance procedure, the grievance shall be considered satisfied and no further action need be taken; provided, that where the grievance concerns a matter within the jurisdiction of the courts, the employee may file suit if the grievance is rejected due to failure to comply with a time limit set forth in this Article. Failure by the City to meet the time limits at any step shall be considered a denial of the grievance which will allow the Union or employee, at their option, to proceed to the next step. Time limits begin to run on the date of a party's actual receipt of an appeal or response. When either party provides an appeal or response by mail, its timeliness shall be judged by the postmark on the envelope. Where a deadline falls on a Saturday, Sunday, or legal holiday, the deadline will be extended to the next day which is not a Saturday, Sunday, or legal holiday.

Section 3. Steps of Grievance Procedure.

A. Relief through Chain of Command

1. The Union or any employee covered by this Agreement having a matter which is felt to be a grievance shall first attempt to resolve the matter through the appropriate chain of command via telephone, e-mail or face to face meetings. The employees shall have ten (10) days from the actual or constructive knowledge of the event to seek resolution through the chain of command.

2. In the event the matter is not resolved through the chain of command via telephone, e-mail or face to face meetings, and the employee did not have an opportunity to speak face to face with an Appointed Chief in his chain of command, the employee may request a face to face meeting with the lowest ranking Appointed Chief in his chain of command.

3. If the employee desires a face to face meeting in accordance with Section 3, A (2) of this Article, the request to meet must be made within three (3) calendar days after the verbal decision through the chain of command but not later than the 13th day from actual or constructive knowledge of the event giving rise to the matter. The Appointed Chief or his designee shall meet with the employee within seven (7) days from receipt of the request. An employee's decision to meet is voluntary and under no circumstances shall overtime be paid for such meetings.

4. In the event multiple employees request meetings with an Appointed Chief or his designee on the same subject matter, the Appointed Chief shall not be obligated to have more than three separate meetings on that subject.

5. In the event the matter is not resolved at Step 1. the employee may submit a grievance to the union grievance committee as specified in Step 2.

B. Step 1. Initial Filing and Grievance Committee Review

1. In order to be considered, a grievance raising contractual issues must be submitted to the union grievance committee within thirty (30) calendar days of the grievant's actual or constructive knowledge of the event. A grievance raising non-contractual issues must be submitted with the union grievance committee within one hundred eighty (180) calendar days of the grievant's actual or constructive knowledge of the event.

2. The Union or any employee covered by this Agreement having a matter which I felt to be a grievance shall submit the grievance in writing to the Union Grievance Committee. The grievance shall be submitted on a form (FG1) to be provided by the City and must include (a) a brief statement of the grievance and the facts on which it is based; (b) the section of the collective bargaining agreement which has been violated; (c) the remedy or adjustment, if any, sought; (d) the employee's signature; and (e) where "maintenance of standards" is a basis for the grievance, the specific standard(s) alluded to must be identified. As used herein, "maintenance of standards" includes all statutory or other non-contract provisions incorporated herein through the Maintenance of Standards Clause found at Article 9.

3. Within three (3) business days after receipt of a grievance, the Union Grievance Committee must the submit the grievance to the Fire Chief.

4. The Union Grievance Committee shall have ten (10) business days from receipt thereof in which to act on the grievance.

5. If the Union Grievance Committee decides in its sole discretion that no grievance is found to exist, no further action shall be required; provided, that if any employee grievance concerns matters appealable to court, e.g., statutory violations, the employee retains the option to file suit if his/her grievance is rejected at Step 1.

6. If a grievance is found to exist for reasons stated by the employee or other reasons known to the Committee, the Committee shall process the grievance by passing it to Step 2. Any additional bases for the grievance added by the Committee or amendments to the FG1 will be forwarded with the original grievance.

C. Step 2. Submission of Grievance to Fire Chief and Fire Chief's Response

1. If a grievance is believed to exist, the matter shall be submitted to the Fire Chief or his designated representative within ten (10) business days of the Step 1 ruling.

2. The Fire Chief or his designee shall respond to the grievance and shall render a decision to the Union Grievance Committee, in writing (FG3), within twenty (20) business days from receipt thereof.

D. Step 3. Appeal to City Manager

1. If a grievance is not resolved at step 2, the Union Grievance Committee shall submit the grievance, in writing, to the City Manager or his designated representative within ten (10) business days from receipt of the decision at Step 2.

2. The City Manager or his designated representative shall review the matter and shall render a decision in writing to the Union Grievance Committee within fifteen (15) business days.

E. Step 4.

1. If the grievance is not resolved at Step 3, the Union Grievance Committee shall have ten (10) business days from receipt of the City Manager's decision to submit the matter to arbitration.

2. Arbitration will be invoked by delivering a letter to the City Manager.

Section 4. Arbitrator Selection

A. If a grievance is submitted to arbitration or an employee appeal to a Hearing Examiner is requested, within five (5) business days, the City and the Union shall select an arbitrator/Hearing Examiner by order of rotation the name of one of six (6) pre-selected, qualified neutrals.

The panel of six (6) shall have been previously agreed upon by the parties. The arbitrator selected shall be notified promptly by the City or the Union of his appointment and, simultaneously therewith, the parties in agreement with the arbitrator shall select a date for a hearing of the grievance. If the arbitrator cannot begin the hearing within 90 calendar days after being notified, the parties shall select another arbitrator using the procedure prescribed by this subsection. If none of the arbitrators can begin the hearing within 90 calendar days of being notified, within five (5) business days, the City shall request a list of seven (7) qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The request shall include that only arbitrators who can schedule a hearing within 90 calendar days after the first arbitrator selected from the standing panel received notice of selection be listed on the list of seven (7). After receiving the list, each party shall alternate striking a name from the list and the name remaining is the arbitrator. The hearing schedule requirement herein (i.e. 90 days) may be shortened or lengthened by mutual agreement.

Within thirty (30) calendar days of the execution of this Agreement, the panel of six (6) arbitrators shall be established by each party alternately striking names from a list of thirty (30) names; fifteen (15) names each being submitted for this list by the City and Union, respectively. The Union will strike the first name. The established panel of six (6) arbitrators shall expire at the end of the term of this contract.

In the event a vacancy occurs on the panel of six (6) arbitrators, the vacancy will be filled by mutual agreement of the parties. In the event mutual agreement is not reached, the remaining panel members shall be utilized until a second vacancy occurs. The two panel vacancies shall be filled by each party alternately striking names from a list of 20 names, 10 names each being submitted for this list by the City and the Union, respectively. The Union shall strike the first name.

B. At a date previously agreed upon, the arbitrator shall convene the hearing at a place mutually convenient to all parties. The arbitrator shall hear and take evidence of all issues presented as raised by timely-filed grievances. The hearing shall continue from day to day until all such evidence has been received and all parties have "rested". Transcripts and post-hearing briefs may be utilized at the discretion of the Arbitrator. If a transcript is utilized, a transcript by a duly-authorized court reporter will be taken of the hearing and shall be the only official transcript thereof. Both parties to the proceeding shall be entitled to representation of their own choosing, the expense of which must be borne by the respective party.

C. The arbitrator shall make a reasonable effort to issue his/her award within thirty (30) calendar days after the date the hearing ends or, if transcripts and/or post-hearing briefs are required, within thirty (30) calendar days of receipt of the transcript or receipt of the parties' post-hearing briefs, whichever occurs later.

Section 5. Witnesses and Expenses.

A. The following expenses shall be shared equally by the parties: arbitrator's fees and expenses and the cost of the hearing transcript. Each party will bear its own attorney's fees and costs; provided that:

1. Should the arbitrator find that grievance upon which he rules is specious, he may in fact award the "prevailing party" (singularly) "reasonable attorney's fees" as defined in section 2 below.

2. Should the matter proceed to court, the court shall have the discretionary authority to grant attorney's fees, including the costs of the arbitration proceedings (but not the grievance proceedings). A reasonable attorney's fee for the City shall be $85.00 per hour, and for the employee, shall not exceed the actual rate agreed and charged, not to exceed $100.00 per hour.

B. The City shall compensate all witnesses called by either party at their straight-time rate; provided, however:

1. The witness called is scheduled for duty when called to appear:

2. The individual's identity and a brief statement as to the relevancy of his expected testimony has been provided the City five (5) days in advance of the hearing.

Any witness called by the Union and/or the grievant who has not been identified and/or who is not scheduled for duty shall be due no compensation or administrative leave from the City.

C. Witnesses shall be scheduled by agreement between the parties so as not to unduly interrupt the mission of the Department. The arbitrator shall have the authority, based upon the summary statement of the witnesses, to determine whether or not the testimony of the witness is required or is merely duplicitous or cumulative, then the City shall have no obligation to pay for the witness' appearance

D. The grievant shall not be compensated for time spent at the hearing and/or in preparation thereof, nor shall he be entitled to administrative leave for any such time.

Section 6. Arbitrator's Authority--Contract Cases.

A. This section applies to all issues involving the application or interpretation of this Agreement; provided, that where the sole issue of contract interpretation involves the Maintenance of Standards provision, and the underlying standard is a statute or constitutional provision, this section shall not apply.

B. For issues subject to this section, the award of the arbitrator shall be final and binding upon the City, Union and employees. In making his/her award, the arbitrator shall be limited to interpreting and applying the provisions of this Agreement; he/she shall have no authority to add to, subtract from, or modify the terms of this Agreement as negotiated between the parties.

C. The arbitrator shall have full power to take steps necessary to ensure a fair hearing for all concerned, which power shall include, but is not limited to: ordering a party to provide information in its possession or control which is reasonably necessary to the other party's prosecution of its case; ordering a party to make available to testify a person within its control; issuance of witness subpoenas; and taking reasonable steps to ensure that no undue delays in the proceedings occur, consistent with the right of all concerned to a full and fair hearing.

D. The arbitrator shall have the authority to provide in his/her award for such relief as is necessary to make the prevailing party whole for all economic losses suffered as a result of a violation of the terms of this Agreement.

Section 7. Arbitrator's Authority--Non-Contract Cases.

A. In all cases which present issues, e.g., statutory claims which do not involve interpretation or application of the terms of this Agreement, the procedures specified in this section shall apply; provided, that where a case raises both contract and non-contract claims, the arbitrator's award as to contract claims shall be final and binding on the City, Union, and the employee.

B. In cases subject to this section, the parties will be entitled to engage in discovery as provided in the Texas Rules of Civil Procedure, and the arbitrator is authorized to issue subpoenas, to resolve disputes concerning the appropriateness of a party's discovery requests, and to enter such other orders as may be necessary to effectuate the discovery process. As soon as practicable after the arbitrator's appointment and agreement to serve, the arbitrator and the parties' representative shall hold a conference, by telephone or otherwise, to set a reasonable period for discovery and a hearing date. In no case shall the period for discovery exceed ninety (90) days, except by mutual agreement of the parties.

C. The provision of Section 5(C) of this Article are equally applicable to Section 6 cases.

D. For issues subject to this section, the award of the arbitrator (both as to facts and the law of the contract) shall be final and binding; provided, that either party may appeal such award to state district court pursuant to Texas Local Government Code Chapter 174 on the grounds that it is clearly contrary to the provisions of a statute or the Constitution (state or federal), or is not supported by substantial evidence as indicated in the record made before the arbitrator. Any such appeal must be filed within thirty (30) days of the date of arbitrator's award.

E. The arbitrator shall have the authority to provide in his/her award for such relief as a court with jurisdiction over such matter would be entitled to award, including injunctive and equitable relief, compensatory and exemplary damages.

ARTICLE 30.

EXHAUSTION OF REMEDIES

Section 1. Exhaustion.

The City, the Union, and the Fire Fighters covered herein, shall be required to exhaust all available remedies through grievance and/or the Civil Service Commission prior to

proceeding to a court of law, state or federal administrative agency, or other regulatory body, except as provided in Article 29, Grievance Procedure. Failure to do so will act as a plea in abatement to any such court, administrative body, and/or regulatory agency proceeding until the exhaustion of remedies provided for in this Agreement have been completed to finality.

Section 2. If, at any time after a decision and/or award of the Civil Service Commission and/or an arbitrator, any affected party contests or challenges the decision or award in any other legal proceeding, the following shall apply:

A. The decision and award of the arbitrator and/or the Commission must be upheld, unless the contesting party can establish the award was not supported in whole or in part by substantial evidence and/or that the award of the arbitrator and/or the Commission was capricious.

B. As a condition precedent to the filing of any subsequent action challenging the award of the arbitrator and/or the Commission, the affected party (as used here, "party" shall mean the Union and/or the City) must file a cost bond in the minimum amount of the sum of the arbitrator's fees and expenses and the fees of the court reporter who took the transcript of the arbitration proceeding.

Section 3. Should any party be a part to any action by any other party contesting and/or challenging the award of the arbitrator and/or the Commission, the party may, pursuant to the terms of this Agreement, request the court or administrative body to which the action has been addressed to reimburse it/them for all costs of court, including but not limited to reasonable attorneys fees, for having to defend said action. This remedy shall be in addition to any other remedy to which the party may be entitled, including but not limited to those as specified above and/or elsewhere in this Agreement. Should either party, after having pursued grievance/arbitration or Civil Service Commission proceedings, sue in a court of law, then that court has the authority to grant as a portion of its award all costs including attorney's fees, including but not limited to the attorney's fees expended and/or generated as a result of the arbitration proceedings (but not the grievance proceedings). It is agreed that as used herein the term "reasonable attorney's fees", shall be in accordance with Article 29. Grievance Procedure, Section 5. Witnesses and Expenses.(A)(2).

ARTICLE 31.

PROMOTIONS

Section 1. Definitions.

A. Seniority - For purposes of this Article, each Fire Fighter shall be given one point added to only the passing score on any written promotional examination for each year as a classified Fire Fighter in the San Antonio Fire Department. In no event shall the

number of such seniority points exceed ten (10). "Classified Fire Fighter" is meant to include service as a probationary Fire Fighter. Seniority is defined as all years of service, whether interrupted or uninterrupted, on the San Antonio Fire Department, and not merely the 1st continuous period of service.

B. Eligibility -

1. Fire promotional examinations shall be open to all Fire Fighters who have held a classified position with the San Antonio Fire Department for two (2) continuous years or more, immediately below that rank for which the examination is to be held. (This period shall consist of time spent by the Fire Fighter in actual service with the Department. Any absences in excess of thirty (30) consecutive days will cause the Fire Fighter to be required to remain in that position and rank for a period of time equal to the time of such absence. Time spent of leave for less than 30 days shall not apply. Example: A Fire Fighter is an Apparatus Operator as of 1/1/87. He is off work on a Line of Duty injury for thirty-one (31) days. He would be eligible for promotional examination to the position of Lieutenant as of 2/1/89. Fire Fighters who receive a retroactive promotion will be entitled to use the retroactive promotion date for purposes of determining eligibility to take future promotional examinations.)

2. The two (2) year continuous period required for eligibility to take the promotional examination for the rank of Fire Apparatus Operator shall commence with the date the Fire Fighter entered the Fire Academy.

3. A Fire Fighter who has completed two (2) continuous years of service as Fire Apparatus Operator shall be eligible for promotion to the rank of Lieutenant. The two (2) continuous year period required for eligibility on promotion shall commence with the date he was promoted to Fire Apparatus Operator.

4. A Fire Fighter who has completed two (2) continuous years service as a Fire Lieutenant shall be eligible for promotion to the rank of Captain. The two (2) year period required for eligibility on promotion shall commence with the date he was promoted to Fire Lieutenant.

5. A Fire Fighter who has completed two (2) continuous years service as a Fire Captain shall be eligible for promotion to the rank of District Chief. The two (2) year continuous period required for eligibility for promotion shall commence with the date he was promoted to Fire Captain.

6. In the event the scheduling of a promotional examination is prior to the ninetieth (90th) day of the vacancy, any Fire Fighter that would become eligible for such exam if it was given on the ninetieth (90th) day would be allowed to take such exam. For the purposes of calculating the ninetieth (90th) day, day one (1) begins

1. Written Exam Score 50%

2. Assessment Center Score 50%

Total Score 100%

Section 5. Promotional Probation.

For promotional ranks of Fire Apparatus Operator, Lieutenant, Captain, and District Chiefs there shall be a probationary period of six (6) months. During the promotional probationary period, an employee may be demoted by the Chief to the rank from which promoted, and the decision to demote shall not be subject to disciplinary appeal. Upon demotion while holding a probationary promotion, an employee shall resume the competitive rank from which appointed and the salary shall be in accordance with said competitive rank, with service time credited as continuous time in that competitive rank and with all salary increases to which the employee would have been automatically entitled had the employee continuously remained in said competitive rank. If the probationary period is successfully completed, the probationary period shall count as time in grade in the new rank.

Section 6. Chief's Review of Promotability.

Notwithstanding the provisions of this Agreement, the parties understand and agree that in considering a Fire Fighter for promotion the Chief shall have all rights and privileges as contained in Chapter 143 Local Government Code regarding promotability.

Section 7. Assessment Center Promotional Dispute Resolution Procedure.

A. The purpose of this Section of this Article is to provide for the exclusive remedy available to officers who question or challenge the Assessment Center process.

B. Any officer who disputes or challenges the Assessment Center process as contained in this Article as it applies to him shall file a grievance within ten (10) calendar days of the posting of the results of the examination process with the Director of Personnel of the City, which grievance must state in particular and with specifics the officer's objection to said process and/or results. Copies of all grievances so filed shall be provided to the Union.

C. Within fifteen (15) calendar days of the date of the posting of the results of the Assessment Center process, the City and the Union shall meet to review all such grievances timely filed and shall each designate a representative to act in their behalf. These two representatives shall select and agree upon a third, mutually-satisfactory individual who shall act as an independent arbitrator. Failure of the parties' representatives to agree on this third "neutral" shall result in the parties selecting an

arbitrator from the list of six (6) arbitrators previously agreed to in Section 4 of Article 29. Grievance Procedure. The arbitrator or "neutral" so selected shall be notified promptly of his appointment and, simultaneously therewith, the parties in agreement with the arbitrator or "neutral" shall select a date for a hearing of all the grievances so submitted, which date shall be within thirty (30) calendar days.

D. At the date previously agreed upon, the independent arbitrator or "neutral" shall convene the hearing at a place mutually convenient to all parties. The arbitrator or "neutral" so selected shall hear and take evidence on all of the grievances that were timely filed by officers as previously described. The hearing shall continue from day to day until all such evidence has been received. A transcript by a duly authorized court reporter will be taken of the hearing and shall be the only official transcript thereof. All parties to the proceedings, including individual officers, shall be entitled to representation of their own choosing, the expense of which must be borne by the respective party.

E. The arbitrator or "neutral" so selected shall submit a written opinion on each grievance presented and/or heard by him without the benefit of the submission of briefs by the City, the Union, and/or the affected officer. The decision of the arbitrator or "neutral" shall be brief and concise and shall recite:

1. The name of the grievant;

2. The issue presented;

3. The decision and award of the arbitrator or neutral.

Unless otherwise mutually agreed by the Union and the City, the decision of the arbitrator or "neutral" shall be rendered within fifteen (15) calendar days of the date the hearing was closed. The decision of the arbitrator shall be final and binding on the City, the Union, and the affected Fire Fighter/grievant.

F. The fees and expenses of the arbitrator or "neutral" and of the official court reporter shall be borne equally by the Union and the City.

G. Should at any time after the decision and award of the arbitrator or "neutral" any affected Fire Fighter/grievant contest or challenge the award of the arbitrator in any other legal proceeding, the following shall apply:

1. The decision and award of the arbitrator or "neutral" must be upheld, unless the Fire Fighter/grievant can establish by clear and convincing evidence said award was not supported in whole or in part by substantial evidence and/or that the award of the arbitrator or "neutral" was capricious.

2. As a condition precedent to the filing of any subsequent action challenging the award of the arbitrator or "neutral", the affected Fire Fighter/grievant must file a cost bond in the minimum amount of the sum of the arbitrator's fees and expenses and the fees of the court reporter who took the transcript of the arbitration proceeding.

H. Should the Union and/or the City be a party to any action by a Fire Fighter/grievant contesting and/or challenging the award of the arbitrator or "neutral", the City and/or the Union may, pursuant to the terms of this Agreement, request the court or administrative body to which the action has been addressed to reimburse it/them for all costs of court, including but not limited to attorneys fees, for having to defend said action. This remedy shall be in addition to any other remedy to which the City and/or the Union may be entitled, including but not limited to those as specified above and/or elsewhere in this Agreement.

Section 8. Appointment to Assistant Chief and Deputy Chief.

A. The Chief shall have the right to appoint six (6) Assistant Chiefs which rank immediately above the rank of District Chief and rank below the Deputy Chief in the chain of command. The Chief shall have the right to appoint (2) Deputy Chiefs which rank immediately above the rank of Assistant Chief and rank below the Chief in the chain of command.

B. All officers who held the rank of Assistant Chief on or before October 1, 1988 shall remain grandfathered into their positions and shall maintain all rights and privileges currently enjoyed by virtue of holding that rank. No additional positions within the rank of Assistant Chief shall be created other than by this Article.

C. Hereinafter, no position in the rank of Assistant or Deputy Chief shall be filled other than by appointment. As vacancies occur in the rank of Assistant Chief, the Chief shall have the right to appoint to the position in accordance with this Section. Appointments to the rank of Assistant or Deputy Chief shall be by the Chief at his sole discretion, provided that the employee promoted is a classified, sworn member of the San Antonio Fire Department and occupies a rank of either Assistant Chief, District Chief, or Captain.

D. Persons appointed to the rank of Assistant Chief or Deputy Chief shall be subject to overall City policies and regulations and while appointed to this rank shall not be subject to the provisions of Chapter 143 Local Government Code or any of the provisions of this Agreement, unless specifically so provided in this Article.

E. Any person appointed to the rank of Assistant Chief or Deputy Chief may be suspended or demoted to the rank from which he was promoted at the sole discretion of the Chief without appeal to the Commission and/or Arbitration. Any person appointed to either rank may, further, voluntarily return to the rank from which he was promoted

at any time. Upon demotion or voluntary return to the previously-held rank pursuant hereto, the employee shall receive thereafter the full benefits provided in Chapter 143 Local Government Code and this Agreement as if he had served in either rank on a continuous basis throughout his tenure as either Assistant or Deputy Chief.

F. A person appointed to the rank of Assistant or Deputy Chief may be terminated for cause, provided that such termination shall be subject to appeal in the same manner as applicable to all classified, uniformed employees in the Department.

G. Except for the positions of Assistant or Deputy Chief, nothing in this Article shall be construed to require the City to create the rank or establish and fill the maximum number of positions authorized herein. Further, nothing in this Article shall be construed to limit any existing right of the City to create ranks and establish positions in accordance with State law and the City Charter.

H. Assistant or Deputy Chiefs appointed by the Chief pursuant to this Article may receive administrative leave time for work performed in excess of their regularly-scheduled duties. Said leave time may be granted at the discretion of the Chief, subject to scheduling and manpower contingencies that may arise. Said discretionary leave time shall, in no event, exceed that amount of time that said Assistant or Deputy Chiefs have accumulated in excess of their regularly-scheduled work week.

I. Salary and Benefits for Assistant Chiefs and Deputy Chiefs

1. The pay provisions outlined in Article 13, Wages, of this Agreement for the classification of Assistant Chief are applicable to only those officers who held the Assistant Chief rank as of October 1, 1988.
2. Fire Fighters appointed to the Assistant Chief position by the Chief as provided for in Article 31, Section 8, of this Agreement, shall be compensated at an annual salary of not less than fifteen percent (15%) above the base salary of a District Chief plus thirty (30) years longevity.
3. The Fire Fighters appointed to the Deputy Chief position by the Chief shall be compensated at an annual salary of not less than twenty-four (24%) above the base salary of a District Chief plus thirty (30) years longevity.
4. The Fire Fighters holding appointed positions shall be entitled to all benefits as contained in the following specified Articles of this Agreement: Articles 1. Recognition; 2. Definitions; 4. Rules and Regulations, Special Directives, and Administrative Orders; 5. City Protection of Fire Fighters; 7. Payroll Deductions; 10. No Strikes, No Lockouts; 17. Vacations; 18. Holidays; 19. Bereavement Leave; 20. Uniform Items and Protective Equipment; 23. Sick Leave; 25. Benefit Plans; 26. Miscellaneous, Section 5; 27. Employee Fitness; 28. Drugs and Alcohol; 31. Promotions, Section 8; Appointment to Assistant Chief and Deputy Chief 34. Agreement Binding; 35. Savings Clause; 36. Declaration of the Full Scope of the Agreement; and 37. Duration of Agreement.

5. The Fire Chief, at his discretion, may grant incentive pay as outlined in Article 22. Incentive Pay to qualified appointed personnel. In the event the Chief grants such discretionary incentive pay, all appointed personnel eligible shall receive such incentive pay. To ensure appointed personnel are equally compensated, appointed personnel with paramedic certifications and assigned to the EMS Division shall not receive Paramedic incentive pay but will receive EMT incentive pay.

ARTICLE 32.

FIRE FIGHTER TRAINEES AND FIRE FIGHTER PROBATION

Section 1. Persons enrolled in the initial Fire Academy shall hold the position of Fire Fighter Trainee. As such, he shall be considered a civilian employee and is not a member of the bargaining unit covered by this Agreement nor shall he be subject to any of the terms of this Agreement or of Chapter 143 Local Government Code.

Section 2. Upon completion of the Academy, an employee shall be certified as a Fire Fighter and shall hold the rank of Fire Fighter (Probationary). The probationary period shall be extended by a like period if an employee covered by the provisions of this Article is on leave for a period of thirty (30) consecutive calendar days or more. During this probationary period, excluding time spent as a Fire Fighter Trainee as described in Section 1 of this Article, the employee shall be subject to all provisions of this

Agreement and of Chapter 143 Local Government Code with the exception that the Chief, in his sole discretion, shall have the authority to suspend or discharge said employee without appeal through the grievance procedure or to the Fire Fighter and Police Officer Civil Service Commission.

Section 3. The provisions of this Article shall be exempt from the Maintenance of Standards Article 9 of this Agreement.

ARTICLE 33.

LIMITATIONS ON ACTS

Except as provided in this section of this Article, the Chief and City are precluded from the introduction of evidence or otherwise complaining of any acts or occurrences earlier than the 180th day immediately preceding the date on which the Chief suspends the employee or as specified in Chapter 143.052 of the Local Government Code. Only upon written notice in the original written statement of the Chief may any act or occurrence be admissible in a disciplinary hearing in accordance with this section. Solely to aid the Commission or arbitrator in the assessment of appropriate discipline and not to prove a charge of a violation of Civil Service Rules or for any other purpose, the Chief and the

City may introduce evidence of prior disciplinary actions which have not been set aside on appeal as follows:

A. Where the Chief's original written charges include alleged violations of Civil Service Rules and/or Department Rules and Regulations, Special Directives, and/or Administrative Orders, constituting acts of violence (exertion of physical force so as to injure or abuse), the Chief and the City may introduce prior discipline on such other violations found to have been committed within five (5) years immediately preceding the date of the act(s) charged as contained in said written charges;

B. Where the Chief's original written charges include alleged violations of Civil Services Rules and/or Department Rules and Regulations, Special Directives, and/or Administrative Orders, concerning drug or alcohol abuse, any prior discipline on such violations found to have been committed within ten (10) years immediately preceding the date of said written charges;

C. Where the Chief's original written charges allege acts of incompetence, all prior discipline for acts of incompetence may be introduced by the Chief or the City so long as adequate records are maintained; and

D. Where the Chief's original written charges allege a violation of any other Civil Service Rules and/or Department Rules and Regulations, Special Directives, and/or Administrative Orders. The Chief and the City may introduce prior discipline for a violation(s) of the same rule within two (2) years immediately preceding the date of the charged act, so long as adequate records are maintained.

ARTICLE 34.

AGREEMENT BINDING ON SUCCESSORS AND ASSIGNS ON BOTH PARTIES, REGARDLESS OF CHANGES IN MANAGEMENT, CONSOLIDATION, MERGER, TRANSFER, ANNEXATION, AND LOCATION

This Agreement shall be binding upon the successors and assigns of the parties thereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, annexation, transfer, or assignment of either party hereto or by a change geographically or otherwise in the location or place of business of either party hereto.

ARTICLE 35.

SAVINGS CLAUSE

Should any provision of this Agreement be found to be inoperative, void or invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement, it being the intention of the parties that no portion of this Agreement or provision herein shall become inoperative or fail by reason of the invalidity of any other portion of provision.

ARTICLE 36.

DECLARATION OF THE FULL AND FINAL SCOPE OF AGREEMENT

Section 1. The parties agree that each has had full and unrestricted right and opportunity to make, advance, and discuss all matters properly within the province of collective bargaining. This Agreement constitutes the full and complete Agreement of the parties and there are no others, oral or written, except as specified in this Agreement. Each party for the term of this Agreement specifically waives the right to demand changes herein, whether or not the subjects were known to the parties at the time of execution hereof as proper subjects for collective bargaining; however, it is understood and agreed that the contract may be amended by mutual consent of the parties to this Agreement.

Section 2. Additionally, in the event that any provisions of this Agreement conflicts or is inconsistent with any provision of Chapter 143 Local Government Code, this Agreement shall prevail, notwithstanding any such provision of the Civil Service Statutes.

Section 3. The parties understand and agree that where they have agreed to a re-opener upon the occurrence of specific events and/or with the passage of a specified period of time, such re- opener provisions are exempt from the provisions of Section 1 above.

ARTICLE .37

DURATION OF AGREEMENT

Section 1. Except as specifically provided herein, this Agreement shall be effective upon approval and signing by both parties. It shall remain in full force and effect until the 30th day of September, 2005 and shall continue in effect from year to year until replaced by a successor agreement or until terminated by mutual agreement. In no event shall this Agreement continue in effect after September 30, 2015.

Section 2. Whenever wages, rates of pay, or any other matter requiring appropriation of money by any governing body are included as a matter for collective bargaining pursuant to this Act, it shall not be the obligation of the Union to serve written notice of request for such collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget, because this Section serves as such notice.

In witness whereof, the City, through its Chief Negotiator acting with full authority and in his representative capacity, and the Union's Chief Negotiator acting with full authority and in his representative capacity hereto execute this Agreement on the dates as indicated below:

FOR THE CITY OF SAN ANTONIO

Lowell F. Denton
Attorney, City Chief Negotiator

Date: 6/03/02

Robert Ojeda
Fire Chief

Date: June 3, 2002

Andrew Martin
City Attorney

Date: 6/3/02

Erik J. Walsh
Assistant to the City Manager

Date: 6/3/02

Terry M. Brechtel
City Manager

Date: 6-03-02

FOR THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS and LOCAL 624:

John Anderson, Jr.
Chief Negotiator, Local 624

Date: 6/3/02

George Suther
President, local 624

Date: 6-3-02

ATTACHMENT I

JS
4/18/96
#33

AN ORDINANCE 83927

ADOPTING THE CITY'S OFFICER AND EMPLOYEE LIABILITY PLAN POLICY AND REPLACING ORDINANCE NO. 62206, ADOPTED IN JANUARY 1986.

* * * * *

WHEREAS, the current Ordinance adopted as Ordinance No. 62206, in January 1986, lacks procedural detail and clarity, causing concerns as to "acts" covered and excluded under the Indemnification Policy; lacks detail in procedures that officers and employees need to follow in order to be entitled to indemnification; and causes confusion as to when the City will pay for employee's outside counsel, and

WHEREAS, a new Ordinance is needed to define "acts" and to formalize the procedural process; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. This Ordinance formally adopts the City of San Antonio Officer and Employee Liability Plan Policy ("the Plan"). It replace Ordinance No. 62206, adopted in January 1986. The Plan indemnifies City officers and employees in connection with legal proceedings arising from the performance of their duties.

SECTION 2. This Policy will clarify the rights and responsibilities of the City, and of the officer or employee, and will simplify the process of responding in a timely manner to the initiation of litigation. The Plan shall consist of the policies, rights, and duties embodied in this Ordinance, and shall be implemented and administered as provided by this Ordinance.

SECTION 3. The proposed Ordinance defines "acts" that are covered and excluded. If the City denies coverage, the Plan member may seek a determination from the court as to whether they are entitled to coverage; it will formalize the procedural process, in that officers and employees are given specific procedures in order to request indemnification.

SECTION 4. The City Attorney or his designee will represent the Plan member unless a conflict arises, then the Plan member must select an approved private attorney for representation. The City will not pay for any costs or legal fees incurred by the Plan member if they utilize an attorney not approved by the City Attorney and Risk Manager, unless required by law.

SECTION 5. The Plan does not affect police/fire personnel under their present labor contracts.

SECTION 6. Formal adoption of this Ordinance will not necessitate a current budget amendment, as expenditures will be approved on a case-by-case basis in connection with each individual lawsuit.

SECTION 7. This Ordinance shall be effective on April 25, 1996.

PASSED AND APPROVED this 11th day of April, 1996.

MAYOR

ATTEST:

ASSISTANT City Clerk

APPROVED AS TO FORM:

City Attorney

96-15

The City of San Antonio Officer and Employee Liability Plan Policy

Section 1. Definitions.

The following terms, as used in this Ordinance, shall have the following meanings unless the context requires otherwise:

1. "Act" includes an omission or failure to Act.

2. "City" means the City of San Antonio, Texas.

3. "City Vehicle" means a vehicle or any mobile equipment leased to, or owned by CITY.

4. "Claim" means any claim made or suit brought against the City and/or a Plan Member for damage or injury alleged to be caused by a Covered Act.

5. "Claims Board" means the CITY's Self-Insurance Claims Board created by the Program Ordinance.

6. "Coverage Determination Action" means an action by a Plan Member to determine coverage under the Plan pursuant to Section 7 of this Ordinance.

7. "Covered Act" means any act or omission of a Plan Member while constituting no waiver of immunities, that:

   (a) occurs during the discharge of the Plan Member's official duties,

   (b) is within the course and scope of the Plan Member's office, employment, or assigned work with the CITY, as applicable, or

   (c) constitutes, or is alleged or asserted to constitute, negligence on the part of the Plan Member.

   (d) occurs during incidental medical services or first aid (including transportation) at the scene of an accident or injury by any Plan Member not regularly engaged in the medical profession.

(e) occurs while rendering medical services (including transportation) by emergency medical technicians, paramedics, nurses and aides employed by the CITY while in the course of their employment as such.

(f) occurs while a Plan Member is carrying out their authorized duties related to the CITY's public safety activities.

(g) occurs while a Plan Member is using a CITY Vehicle, or one hired by or on behalf of the CITY, provided the use is with the permission of the CITY, or

(h) arises from the use of a Non-Owned Automobile by a Plan Member while such automobile is being used in the business of the CITY.

(i) arises from an act or omission of a Plan Member while they are acting the course of their duties as a member of the Claims Board.

8. "Excluded Action" means any Claim against a Plan Member:

(a) by the CITY; or

(b) that results from (i) an intentional or knowing violation of a penal law (including an administrative agency rule having the force and effect of law) committed by, or with the knowledge and consent of, the Plan Member; (ii) an act of fraud committed by, or at the direction of the Plan Member; (iii) official misconduct, a willful or wrongful act or omission, or an act or omission constituting gross negligence committed by, or at the direction of, the Plan Member; (iv) an act of conspiracy or collusion by the Plan Member against the CITY; or (v) knowing or intentional violation by the Plan Member of any ordinances, policies or procedures of the CITY, or of lawful orders, instructions or directives of CITY management; or (vi) an intentional or knowing violation of employment rules or policies; or

(c) that arises while the Plan Member is using or operating a CITY vehicle or other CITY property or equipment with no authority to do so; or

(d) that asserts or alleges liability assumed by the Plan Member under a contract, unless the Plan Member is authorized by the CITY to enter into the contract; or

(e) that includes a joinder by the Plan Member of a claim or suit of the member against the CITY for benefits under the Plan; or

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(f) for damages that are not recoverable against the CITY; or

(g) for damages the CITY is precluded from paying under Section 102.002, Texas Civil Practice and Remedies Code, Vernon's Texas Codes Annotated, or for payments in excess of the limitations on payments by the CITY prescribed by Section 102.003, Texas Civil Practice and Remedies Code, Vernon's Texas Codes Annotated; or

(h) that includes exemplary damages.

9. "Excluded Loss" means any of the following:

(a) any Loss that arises out of an Excluded Action; or

(b) any Loss the CITY is precluded from paying by law; or

(c) any Loss arising out of a Claim resulting from a Covered Act that occurred before the Plan took effect, unless the Board at its discretion, extends coverage; or

(d) any Loss arising out of a claim resulting from a Covered Act that occurs while the Plan is in effect if (i) the Plan Member experiencing the Loss becomes legally obligated to pay the Loss after the Plan is terminated, and (ii) such Claim or Legal proceeding were barred by any statute of limitations when instituted; or

(e) any Loss arising out of a Claim resulting from a Covered Act that occurs after the Plan is terminated.

10. "Loss" means (i) the damages, excluding exemplary damages, that a Plan Member or former Plan Member is legally obligated to pay on account of a Claim; and (ii) amounts paid, or agreed to be paid, by the CITY pursuant to Section 3(b) and 4 of this Ordinance, to compromise or settle a Claim in order to avoid the risk expense and uncertainty of litigation.

11. "Loss Expenses" means any of the following:

(a) the CITY's expense in investigating or defending a claim that may result in a Plan Claim; and

(b) the costs taxed against a Plan Member in a suit that results in a Plan Claim and any pre-judgment or post-judgment interest for which the Plan Member is liable; and

(c) the reasonable expenses of a Plan Member incurred at the CITY's request in connection with a Claim that may result in a Plan Claim; and

(d) any attorneys' fees ordered by a court to be paid by a Plan Member in a suit arising out of a Claim that results in a Plan Claim.

12. "Non-Owned Automobile" means an automobile which is neither a CITY Vehicle nor one hired by the CITY.

13. "Plan" means the City of San Antonio Officer and Employee Liability Plan, as established by this Ordinance.

14. "Plan Claim" means any Plan Loss, together with the Plan Loss Expenses that result from the Claim giving rise to such Plan Loss.

15. "Plan Loss" means any Loss that is not an Excluded Loss.

16. "Plan Loss Expenses" means any Loss Expenses, except those incurred in connection with an Excluded Action.

17. "Plan Member" means an individual who at the time of a covered Act is:

(a) an employee of the CITY;

(b) the Mayor, and any other member of the City Council;

(c) a member of (i) a CITY board, commission, or committee created by charter, ordinance, or resolution of the CITY, or (ii) the board of directors of any nonprofit corporation created under the authority of the City Council as an instrumentality of the CITY, unless by specific contract provision the CITY does not provide coverage.

18. "Program Ordinance" means Ordinance No. 83926 (which establishes the CITY's Self-Insurance), as from time to time amended.

Section 2. Plan Established.

The CITY hereby establishes the "City of San Antonio Officer and Employee Liability Plan" which shall consist of the policies, rights, and duties embodied in this Ordinance. The Plan shall be implemented and administered as provided by this Ordinance.

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Section 3. Defense and Settlement.

(a) The CITY will defend any suit, except an Excluded Action, against a Plan Member or former Plan Member that results from a covered Act occurring prior to termination of the Plan, even if the suit is groundless or fraudulent. 12

(b) The CITY may investigate, negotiate, or settle any Claim, as the CITY determines necessary or appropriate.

Section 4. Payment of Plan Claims.

(a) The funds will pay each Plan Claim subject to any limitations contained in the Program Ordinance No. 83926, subject to the provisions of State law.

(b) This Ordinance will in no way alter any CITY tort or contract liability existing the date of its' passage. More specifically, this Ordinance will not alter contractual obligations in either San Antonio Firefighters or San Antonio Police, labor contracts existing the date of this Ordinance's passage.

(c) This Ordinance does not include payment, by the CITY, of exemplary damages on the behalf of a Plan Member.

(d) **TO BE ENTITLED TO PAYMENT BY THE FUNDS FOR ANY PLAN CLAIM, A PLAN MEMBER MUST:**

(1) give notice of loss;

(2) notify the Claims Board in writing, within a reasonable time to be determined by the Board, after receipt of any written or oral notice of any Claim that may result in a Plan Claim but in any event not later than two (2) working days after receipt of such notice;

(3) cooperate fully with the Claims Board, City Attorney, Risk Management, the CITY and, upon the request of the Claims Board, assist in making settlement, in the conduct of any suit, and in enforcing any right of contribution or indemnity against an individual or organization who may be liable for the Act giving rise to a Claim, or to the CITY because of the payment by the CITY of a Plan Claim;

(4) cooperate fully in the investigation and defense of any Plan Claim made against the Plan Member including but not limited to, attendance at any hearing or trial held in connection with a Plan Claim and assisting in discovery, securing and giving evidence and obtaining the attendance of witnesses;

(5) not give any oral or written statement or enter into any stipulation or agreement concerning a Claim resulting in a Plan Claim, except upon advice of the City Attorney or his designee or when questioned by a police officer at the scene of an accident;

(6) not, except at the Plan Member's own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to any Claim resulting in a Plan Claim without the consent of the Claims Board;

(7) deliver to the City Attorney or his designee, promptly upon receipt, but no later than two (2) working days, any demand, summons, notice, or other process received by the Plan Member in connection with any Claim that may result in a Plan Claim;

(8) comply with the claims administrative procedure of the Claims Board; and

(9) perform the duties and comply with the requirements imposed on the Plan member by this Ordinance or by the Program Ordinance.

Section 5. Legal Representation.

(a) The CITY will provide legal representation for a Plan Member or former Plan Member in a Claim, except an Excluded Action, in which the asserted or alleged liability of the member results from a Covered Act occurring prior to termination of the Plan.

(b) The City Attorney or his designee, and the Risk Manager, shall select, supervise and/or retain, if applicable, attorneys, experts, and investigators he deems necessary in connection with the defense of any Plan Claim.

(c) The City Attorney or his designee shall be authorized to pursue all cross-claims, counter claims, and/or affirmative defenses on behalf of a Plan Member or former Plan Member.

(d) If the City Attorney determines that there exists a potential conflict of interest for the City Attorney to represent a Plan Member (pursuant to Subsection (a) of this Section), the CITY will pay the reasonable fee of an a private attorney approved by the City Attorney and Risk Manager to represent the Plan Member.

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(e) If the Plan Member utilizes an attorney not selected and approved by the City Attorney and Risk Manager, the Plan Member assumes all responsibility for all associated costs, fees, and expenses, except those required by law that the CITY pay.

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Section 6. Assignment.

If payment of a Plan Claim or legal representation is provided to a Plan Member under the Plan, the CITY is assigned the Plan Member's rights of recovery against any individual or organization to the extent of the CITY's payment or liability for payment. A Plan Member shall execute and deliver to the Claims Board such documents as are necessary to secure this right of assignment in the sole opinion of the City Attorney or his designee. A Plan Member shall not do anything after a Plan Claim is incurred to prejudice this right.

The Plan Member shall:

(a) cooperate fully with the Claims Board and, upon the request of the Claims Board, assist in making settlement, in the conduct of any suit, and in enforcing any right of contributions or indemnity against an individual or organization who may be liable to the CITY because of the payment by the CITY of a Plan Claim;

(b) attend any hearing or trial held in connection with a Plan Claim and assist in discovery, securing and giving evidence, and obtaining the attendance of witnesses.

Section 7. Determination of Coverage.

If the CITY denies coverage under the Plan to a Plan Member, the Plan Member may seek a determination of whether the member is entitled to such coverage from a court of proper jurisdiction.

Section 8. No Creation of Cause of Action.

NOTHING CONTAINED IN THIS ORDINANCE SHALL BE CONSTRUED AS CREATING A RIGHT OR CAUSE OF ACTION AGAINST THE CITY OR A PLAN MEMBER OR AS GIVING A RIGHT TO A THIRD PARTY TO INSTITUTE OR MAINTAIN A SUIT THAT WOULD NOT OTHERWISE EXIST UNDER LAW AS A LEGAL CLAIM AGAINST THE CITY OR A PLAN MEMBER.

Section 9. Indemnification of Claims Board.

In the course of carrying out its responsibilities, the Claims Board and its members shall be indemnified and held harmless by the CITY for any act or omission and the Program shall pay all attorney fees necessary in its defense and fully recognize the members' official immunity.

Section 10. Administration of Plan.

The Claims Board is responsible for the administration of the Plan in accordance with its terms, subject to the superior authority of the City Manager and approval by the City Council. In the course of carrying out this responsibility, the Claims Board shall interpret and apply the provisions of this Ordinance.

Section 11. Other Insurance.

The Self-Insurance afforded by this Ordinance is primary self-insurance. When this self-insurance is primary and the Plan Member has other insurance which is stated to be applicable to the Plan Claim, the amount of the Fund's liability under this Ordinance shall not be reduced by the existence of such other insurance.

Section 12. Construction, Amendment, Repeal, and Termination.

The Rules of Construction, as found in the Code Interpretation Act, shall apply in interpreting this Ordinance. This Ordinance may be repealed or amended at any time, subject to existing rights of Plan Members under Section 4 of this Ordinance, in which case the provisions of this Ordinance shall govern, all save and except, continuing obligations under prior indemnity ordinances.

Section 13. Conflicts With Other Ordinances.

This Ordinance shall not operate to repeal or affect any other ordinance of the CITY except to the extent that the provisions thereof are inconsistent or in conflict with this Ordinance, in which case the provisions of this Ordinance shall govern.

Section 14. Severability.

That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause or phase of this Ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause or phrase of the Ordinance.

Section 15. Governmental Regulations.

The regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public.

Section 16. Payments Subject to Appropriation.

All amounts payable under this Ordinance are subject to available and appropriated funding, and applicable law.

Section 17. No Right to Fund by Plan Member.

This Ordinance does not grant or vest any right to any Plan Member in, or to, the Funds administered by the Program Ordinance or any other funds of the City of San Antonio.

Section 18. Effective Date of Plan.

The program shall become effective on April 25, 1996, 12:01 a.m. and shall continue in effect until terminated by the City Council.

Section 19. Effective Date of Ordinance.

This Ordinance shall become effective upon its final adoption by the City Council.