

6/30/95

AGREEMENT

between

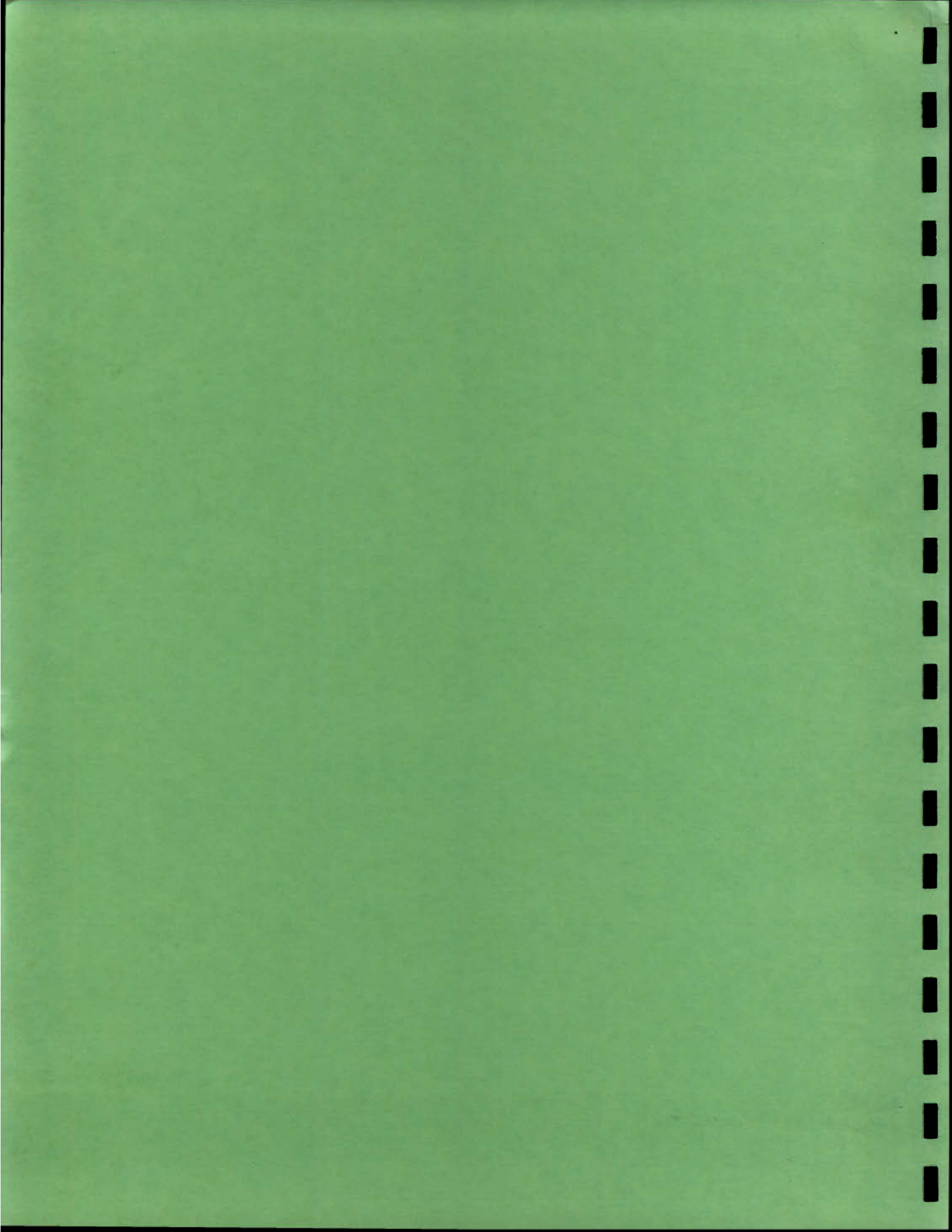
CITY OF SOUTH HAVEN

and

SOUTH HAVEN FIRE FIGHTERS UNION
I.A.F.F., LOCAL 2658

South Haven, City of

July 1, 1992 - June 30, 1995



A G R E E M E N T

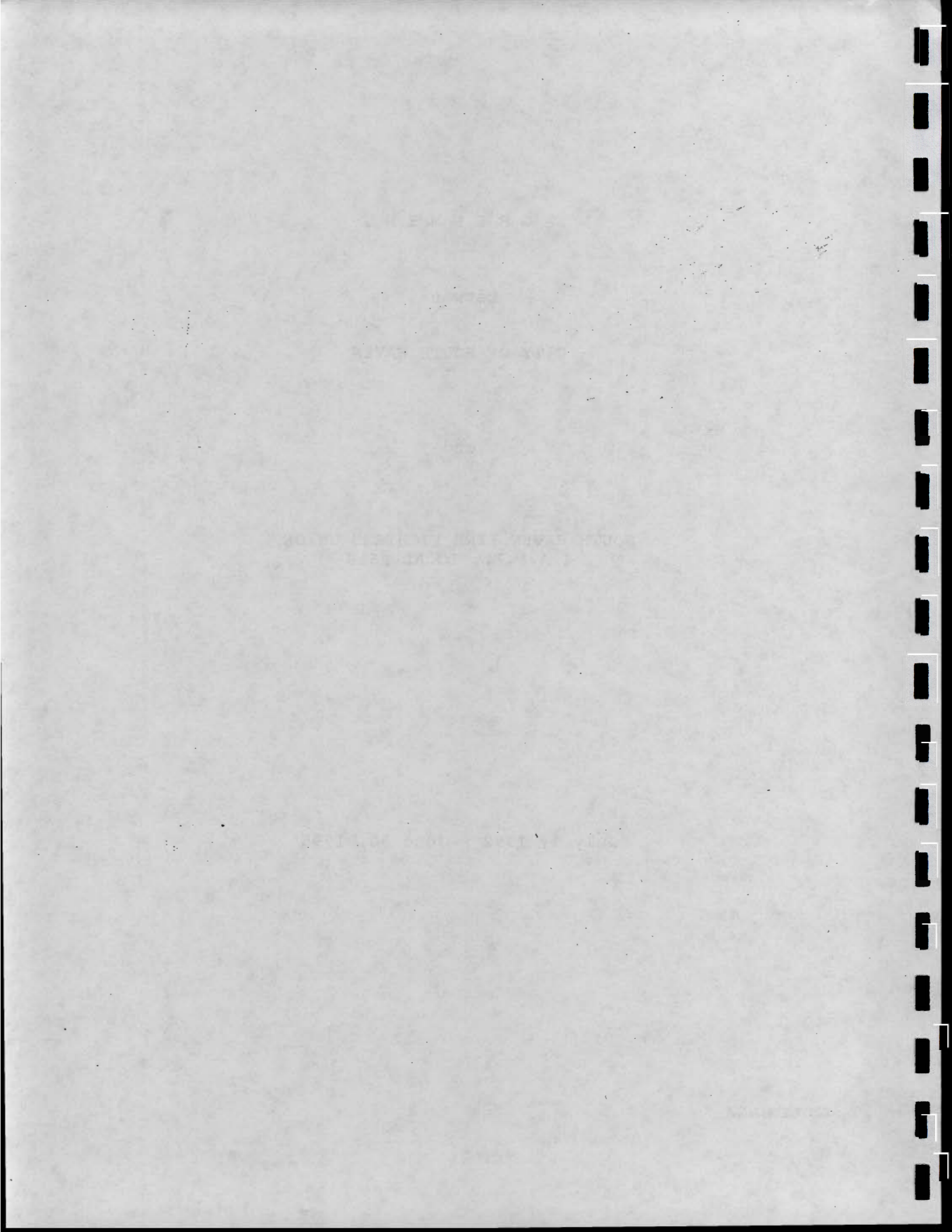
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CITY OF SOUTH HAVEN

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SOUTH HAVEN FIRE FIGHTERS UNION
I.A.F.F., LOCAL 2658

July 1, 1992 - June 30, 1995



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A G R E E M E N T

PREAMBLE

THIS AGREEMENT, made and entered into as of this 1st day of July, 1992, between the CITY OF SOUTH HAVEN, MICHIGAN, hereinafter referred to as the "City," or "Employer" and LOCAL 2658 of the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, also known as the SOUTH HAVEN FIRE FIGHTERS UNION, hereinafter referred to as the "Union."

PURPOSE AND INTENT

It is the intent of the parties of this Agreement, that the procedures here set forth shall serve as a means of promoting and maintaining the efficient operation of the City, to promote and insure harmonious relations, cooperation and understanding between the Employer and the employees covered hereby, to insure true collective bargaining and to establish standards of wages, hours and working conditions and for the peaceable settlement of all disputes that may arise between the parties hereto.

UNION RECOGNITION

Section 1.1. Collective Bargaining Unit. Pursuant to and in accordance with all applicable provisions of Act 336 of the Public Acts of 1947, as amended, the Employer does hereby recognize the Union as the exclusive representative for the purpose of collective bargaining for all employees covered by the bargaining unit described below:

All regular full-time employees of the Fire Department of the City of South Haven employed in the classification of Fireman/EMT, Assistant Chief/EMT and Captain/EMT, but excluding the Fire Chief, temporary employees, casual employees, confidential employees and all other employees.

The Fire Chief is excluded from the collective bargaining unit as an executive, but the continued performance of duties by the Fire Chief as in the past shall not constitute a violation of this Agreement.

Section 1.2. Aid to Other Unions. The Employer shall not aid, promote or finance any labor group or organization which purports to engage in collective bargaining or make any agreement with any such group or organization for the purpose of undermining the Union.

Section 1.3. Part-Time and Irregular Employees. The City reserves the right to hire and utilize part-time employees (including part-paid (volunteer) firemen), temporary employees and casual employees from time to time. Such employees and part-paid volunteers are not within the recognition granted the Union and are not covered by the terms of this Agreement. The performance of work by such employees and part-paid volunteers shall not constitute a violation of this Agreement, even if it could remove potential overtime opportunities; provided, however, that the Employer agrees not to utilize such employees and part-paid volunteers so as to cause employees covered by this Agreement to lose time from their regular scheduled hours.

Section 1.4. Supervisors. It is recognized that an integral part of a supervisory employee's normal work includes the performance of tasks that are also performed by bargaining unit employees. The performance of this work by supervisors shall not constitute a violation of this Agreement, even if it could remove potential overtime opportunities; provided, however, that the performance of such work by supervisors shall not cause employees covered by this Agreement to lose time from their regular scheduled hours. The Fire Chief will not normally fill a vacant shift without first attempting to utilize the call back board.

UNION SECURITY

Section 2.1. Union Membership. Membership in the Union is not compulsory. All employees have the right to join, not join, maintain or drop their membership in the Union as they see fit. The Union recognizes, however, that it is required under this Agreement to represent all employees included within the collective bargaining unit set forth in the Agreement without regard to whether or not the employee is a member of the Union.

Section 2.2. Union Service Fee. All employees included in the collective bargaining unit set forth in Section 1.1 shall, as a condition of employment, pay to the Union a service fee. This obligation to pay a service fee to the Union shall commence thirty-one (31) days after commencement of the employee's employment within this bargaining unit. For purposes of this Agreement, the term "service fee" shall be defined to mean an amount equivalent to the periodic monthly dues uniformly required of Union members. The Union shall advise the Employer in writing of the amount of its monthly dues and any changes thereto. An employee's obligation to pay a service fee to the Union may be satisfied by direct payment to the Union by the employee of the service fee, or by payment of the service fee in accordance with the checkoff provisions of Section 2.4. In addition, any employee who is a member of the Union shall be deemed to have satisfied their service fee payment obligation for any month in which they were in good standing with the Union.

Section 2.3. Failure to Pay Service Fee. An employee required to pay the service fee established in Section 2.2 who fails to pay the service fee is subject to discharge. The Union may request the discharge of an employee who is sixty (60) days or more in arrears of payment of the service fee by notifying the Employer of the Union's intent to require enforcement of Section 2.2. This notification shall be in writing signed by a non-employee representative of the Union and must include verification of non-payment of the service fee. The Employer shall deliver to the employee concerned a copy of this notification within five (5) working days of its receipt by the Employer. An employee who has not paid, tendered payment or made arrangements satisfactory to the Union for payment of all service fee arrearages within thirty (30) working days of receipt of a copy of notification from the Employer shall be terminated; provided, however, that should any employee be contesting their obligation to pay the service fee or the proper amount of the service fee in any forum, the employee shall have an additional thirty (30) working days beyond the time that the decision of that forum becomes final within which to pay, tender payment or make arrangements satisfactory to the Union for payment of all service fee arrearages before the employee is subject to termination.

Section 2.4. Checkoff.

(a) During the term of this Agreement, the Employer agrees to deduct service fees, or if applicable, Union membership dues and initiation fees from each employee covered by this Agreement who voluntarily executes and files with the Employer the following checkoff authorization form:

AUTHORIZATION FOR REPRESENTATION BY THE
SOUTH HAVEN FIRE DEPARTMENT UNION

I hereby request and authorize you to deduct from my earnings the Union assessments, if any, and once each month, an amount established by the Union as monthly dues. The amount deducted shall be paid to the Treasurer of the Union.

BY _____
Printed last name First Name Middle Name S.S. #

TO City of South Haven South Haven Fire Fighters

Union Local #2658

DATE TO START _____ DEDUCTIONS \$ _____ SIGNED _____

ADDRESS _____ South Haven, Michigan 49090

Any written authorization which lacks the employee's signature will be returned to the Union.

(b) All authorizations filed with the Employer shall become effective the first (1st) payroll period of the following month and each succeeding month, provided that the employee has sufficient net earnings to cover the amounts to be deducted. These deductions will cover the employee's service fee obligation, or if applicable, Union membership dues and initiation fees owed for the previous month. If an employee's net earnings are insufficient to cover the sums to be deducted, the deductions shall be made from the next paycheck in which there are sufficient earnings. All dues and fees so deducted shall be remitted as soon as possible after the 20th day of each month to the Union at an address authorized for this purpose.

(c) In cases where a deduction is made which duplicates a payment already made to the Union by an employee, or where a deduction is not in conformity with the provisions of the Union constitution and bylaws, refunds to the employee will be made by the Union.

(d) The Union shall notify the Employer in writing of the proper amounts of dues and fees, and any subsequent changes in such amounts.

(e) If a dispute arises as to whether or not an employee has properly executed or properly revoked a written checkoff authorization form, no further deductions shall be made until the matter is resolved.

(f) The Employer's sole obligation under this Section is limited to the deduction of service fees and, where applicable Union membership dues and initiation fees. If the Employer fails to deduct such amounts as required by this Section, its failure to do so shall not result in any financial liability whatsoever.

Section 2.5. Indemnification. The Union agrees to indemnify and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability including, but not limited to, wages, damages, awards, fines, court costs, attorney fees and unemployment compensation costs that arise out of or by reason of action taken by the Employer pursuant to Sections 2.2, 2.3 and/or 2.4.

UNION REPRESENTATION

Section 3.1. Representation. For the purpose of processing grievances under the Grievance Procedure at the Steps provided herein, the Employer will recognize the officers of the Union, who shall be chosen or selected in a manner determined by the employees

and the Union, provided they are employees who have completed their probationary period. The Union agrees to provide the names of the Union officers in writing to the Employer within seven (7) calendar days after their election.

Section 3.2. Special Conferences. Special conferences for important matters may be arranged between the Local President and the Employer or its designated representative upon mutual agreement by both parties. At least one other representative of the Union shall be present at the meeting. Arrangement for such a special conference shall be made 48 hours in advance and an agenda of the matters to be taken up at the meeting shall be presented at the time the conference is requested. Matters taken up in special conference shall be confined to those included in the agenda. Conferences shall be held at a time mutually agreed upon by both parties. This meeting may be attended by a representative of the City Council. The Union representative may meet at a place designated by the Employer on the Employer's property for at least one-half hour immediately proceeding the conference with the representatives of the Employer for which a written request has been made.

Section 3.3. Pay For Bargaining Time. Time off with pay will be granted to the Union bargaining committee for purpose of contract negotiations, but every effort will be made to conduct bargaining sessions on non-scheduled work days.

GRIEVANCE PROCEDURE

Section 4.1. Definition of a Grievance. A grievance is a claim of a violation of a specific provision or provisions of the Agreement. Grievances filed shall refer to the specific provision or provisions of the Agreement alleged to have been violated and shall set forth the facts pertaining to the alleged violations.

Section 4.2. Grievance Procedure. All grievances shall be handled in the following manner:

Step 1 - Informal. Any employee having a grievance shall first take up the matter with the Department Head. The employee may request the presence of a Union officer. Every effort shall be made to settle the grievance in this manner.

Step 1 - Formal. If not settled in the informal discussion, the grievance shall be reduced to writing, signed by the grievant, and submitted to the Department Head. Any grievance not submitted in writing within five (5) working days after the incident which gave rise to such grievance initially occurred shall be considered automatically closed. The Department Head shall answer the grievance in writing

within five (5) working days after having received it and deliver it to the employee. If the matter is thereby not dispensed of within five (5) working days, it will be submitted in written form by the employee or a Union officer to the City Manager. The City Manager shall answer the grievance within five (5) working days.

Step 2. If the City Manager's answer is not satisfactory, the employee or a Union officer may re-submit his appeal on an agenda to the City Manager. A meeting with at least two (2) representatives of the Employer will be arranged to discuss the grievance or grievances appearing on the agenda within five (5) working days from the date the agenda is received by the Employer. The Union representatives may meet at a place designated by the Employer on the Employer's property for at least one-half hour immediately preceding a meeting with the representatives of the Employer for which a written request has been made. Up to two officers of the Union will be allowed time off to participate in the Step Two grievance meetings.

Section 4.3. Arbitration Request. The Union may request arbitration of any unresolved grievance which is arbitrable by filing the arbitration request form with the Federal Mediation and Conciliation Service and delivering a copy of this form to the City Manager within ten (10) working days after receipt of the City's written disposition in Step 2 of the grievance procedure. If the City fails to answer a grievance within the time limits set forth in Step 2 of the grievance procedure, the Union may request arbitration by filing the arbitration request form with the Federal Mediation and Conciliation Service and delivering a copy of this form to the City Manager not later than ten (10) working days following the date the City's written Step 2 disposition was due. The grievance may thereafter be submitted to arbitration. If the Union does not request arbitration in the manner or within the time limits established herein, the grievance shall be considered settled on the basis of the City's last written disposition. Grievances which are considered settled shall not be arbitrable and no arbitrator shall have the power to issue any award or fashion any remedy concerning such grievances.

Section 4.4. Arbitration. If a timely request for arbitration is filed by the Union on a grievance which is arbitrable, the parties shall promptly select, by mutual agreement, one (1) arbitrator who shall decide the matter. If no agreement is reached, the arbitrator shall be selected from a panel of arbitrators obtained from the Federal Mediation and Conciliation Service by each party alternately striking a name. The remaining name shall serve as arbitrator. Each party shall be responsible for the expenses of the witnesses that they may call, except members of the Union. Arbitration, whenever possible, shall be conducted on the premises

of the Employer. All fees and expenses of the arbitrator are to be shared equally by the City and the Union.

Section 4.5. Arbitrator's Powers. The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written. The arbitrator shall at all times be governed wholly by the terms of this Agreement. The arbitrator shall have no power or authority to amend, alter or modify this Agreement either directly or indirectly. If issue of arbitrability is raised, that question must first be decided before the arbitrator is permitted to hear the merits of the grievance. The Union acknowledges that the City retains all rights not otherwise abrogated under the express terms of this Agreement as generalized in the Management Rights Clause herein. If the grievance concerns the exercise of these rights which are not otherwise limited by the express terms of this Agreement, the grievance shall not be arbitrable.

Section 4.6. Arbitrator's Decision. The arbitrator shall render his decision in writing relative to the grievance within thirty (30) calendar days from the date of the conclusion of the arbitration hearing. The decision of the arbitrator shall be final, conclusive and binding upon all employees, the Employer and the Union, provided however, that each party reserves its lawful right to challenge the award of the arbitrator in a court of competent jurisdiction if the arbitrator has exceeded his jurisdiction.

Section 4.7. Discharge or Discipline Grievances. Should the discharged or disciplined employee or a Union officer consider the discharge or discipline to be improper, a complaint shall be presented in writing through a Union officer to the Employer within two (2) regularly scheduled working days of the discharge or discipline. The employer shall give its answer within three (3) regularly scheduled working days after receiving the complaint. If the decision is not satisfactory to the Union, the matter shall be referred to Step Two of the grievance procedure.

Section 4.8. Grievance Investigation. Employees, including Union officers, may not stop their assigned work for any reason related to the investigation or processing of grievances without first seeking permission of the department head. Such permission shall be granted provided that efficient operations does not require the employee to continue working and provided further that the employee seeks such permission in relation to the investigation or processing of grievances.

Section 4.9. Grievance Settlement. An agreement reached between the Employer and the Union at any stage of the Grievance Procedure is binding on all employees affected and cannot be changed by an individual. Grievances processed to arbitration may be withdrawn only on mutual agreement of the Employer and the Union.

Section 4.10. Time Limits. The time limits specified in the Grievance Procedure are of the essence, however, the time limits in the Steps may be shortened, extended, or waived upon written mutual agreement between the parties.

Section 4.11. Lost Time. Union officers who leave their jobs under the conditions described in Section 4.8 shall be paid their regular hourly rate for time spent during their regular working hours investigating or processing grievances. The right of Union officers to leave their work during working hours without loss of pay is extended with the understanding that the time will be devoted to the prompt handling of legitimate grievances and will not be abused, provided, however, that no more than one Union officer shall be entitled to receive pay for investigating any one particular grievance.

Section 4.12. Veterans' Preference Claims. Any employee who may come within the provisions of any legislative enactment which establishes a procedure whereby the military veteran may challenge the Employer's determinations regarding the veteran's employment status will be required to, no later than Step 2 of the Grievance Procedure, elect in writing either the Grievance Procedure or his statutory remedy as his single means of challenging the Employer's determination. If the employee elects to pursue his statutory remedy or fails to make an election, any grievance concerning the Employer's employment determination shall be considered withdrawn by the Union and, further, shall not thereafter be a subject of any Arbitration proceeding.

MANAGEMENT RIGHTS

Section 5.1. Management Rights. The Employer retains and shall have the sole and exclusive right to manage and operate the City and its operations and activities. Among the rights of the Employer, included only by way of illustration and not by way of limitation, is the right to determine all matters pertaining to the services to be furnished and the methods, procedures, means, equipment and machines required to provide such services; to determine the nature and number of facilities and departments to be operated and their locations; to establish classifications of work; the number of personnel required; to direct and control operations; to maintain order and efficiency; to discontinue, combine or reorganize any part of or all of its operations; to continue and maintain its operations as in the past; to study and use improved methods and equipment and outside assistance whether in or out of the City facilities and in all respects to carry out the ordinary and customary functions of administration of the City. The Union hereby agrees that the Employer retains all rights established by law and reserves the sole and exclusive right to establish and administer without limitations, implied or otherwise, all matters not specifically and expressly limited by this Agreement. These

rights shall not be subject to the grievance and arbitration procedures established herein.

The Employer shall have the right to hire, promote, assign, transfer, suspend, discipline or discharge for just cause, lay-off, and recall personnel; to establish work rules and to fix and determine penalties for violation of such rules; to make judgments as to ability and skill; to establish and change work schedules, provided, however, that these rights shall not be exercised in violation of any specific provisions of this Agreement. These rights shall be subject to the grievance and arbitration procedures established herein.

Section 5.2. Disciplinary Action. Dismissal, suspension and/or any other disciplinary action shall be only for just and stated causes. Among the causes which shall be deemed sufficient for dismissal, suspension and/or other disciplinary action, shall include, but shall not be limited to the following:

1. Consuming intoxicating liquor during working hours.
2. Reporting for duty under the influence of liquor.
3. Absence without leave.
4. Fighting or threatening bodily injury (may apply to both employees involved), or doing any other acts which jeopardize the health and safety of citizens or fellow employees.
5. Conviction of a felony.
6. Deliberate destruction of City's or another employee's property.
7. Falsification of application or other personnel records.
8. Falsification of sick leave claim.
9. Theft.
10. Violation of rules and regulations promulgated by the Employer in accordance with the Management Rights of this Agreement.

The Employer will give written notice to the Union and the affected employee(s) when disciplinary action is taken.

Section 5.3. Suspensions Pending Investigation. An employee may be dismissed or suspended pending investigation. If the dismissal or suspension is found to be without justification, the employee shall be reinstated and shall receive back wages not to exceed the

amount of wages the employee would otherwise have earned at this regular rate, less any unemployment or other compensation he may have received from any source of employment during the period in question. Normal earnings from a second job held at the time of separation shall not be included in the computations. If the employee is not reinstated through the grievance procedure, the employee shall be deemed dismissed as of the date such action was taken.

SENIORITY

Section 6.1. Definition of Seniority. Seniority shall be defined as the length of the employee's continuous service with the Employer since the employee's last date of hire. An employee's "last day of hire" shall be the most recent date upon which they commenced work for the Employer in a position within the bargaining unit covered by this Agreement. Seniority shall commence only after the employee completes the probationary period hereinafter provided. Employees who complete their probationary period on the same date shall be placed on the seniority list in alphabetical order of surnames. The application of seniority shall be limited to the preferences and benefits specifically recited in this Agreement.

Section 6.2. Probationary Period. All employees shall be considered to be on probation for the first twelve (12) months of employment by the Employer in a position within the bargaining unit covered by this Agreement. Until an employee has completed the probationary period, they may be disciplined, terminated or discharged at the Employer's discretion without regard to the provisions of this Agreement and without recourse to the Grievance Procedure set forth in this Agreement. The probationary period may be extended by the Employer for up to an additional three (3) months with the prior written consent of the Union.

Section 6.3. Seniority List. The seniority list on the date of this Agreement will show the names and job titles of all employees of the unit entitled to seniority. The Employer will keep the seniority list up to date from time to time and will provide the Union with up-to-date copies at least once a year.

Section 6.4. Loss of Seniority. An employee's seniority and employment relationship with the Employer shall terminate for any of the following reasons:

- (a) If the employee quits or retires;
- (b) If the employee is terminated or discharged and the termination or discharge is not reversed through the Grievance Procedure set forth in this Agreement;

(c) If the employee is absent from work for three (3) consecutive working days, unless the employee's absence is for a reason satisfactory to the Employer;

(d) If the employee fails to report for work on the required date for return from an approved leave of absence, vacation or disciplinary suspension, unless the failure to return to work is for a reason satisfactory to the employer;

(e) If the employee is on layoff status for a period of eighteen (18) consecutive months or the length of his seniority, whichever is lesser;

(f) If the employee is on a disability leave for a period of eighteen (18) consecutive months or the length of the employee's seniority at the time of the leave, whichever is lesser.

(g) If the employee makes an intentionally false and material statement on his employment application or on an application for a leave of absence;

(h) If the employee fails to return to work on the required date following recall to work from layoff in accordance with the procedures established in this Agreement, unless the employee's failure to return to work is for a reason satisfactory to the Employer;

(i) If the employee works for any other employer while on an authorized leave of absence.

Section 6.5. Seniority While on Leave of Absence. Employees on Employer approved paid leaves of absence, military training or emergency duty leave of absence or a worker's compensation leave of absence, shall continue to accrue seniority during the period of their leave of absence. Employees on Employer approved unpaid leaves of absence shall continue to accumulate seniority for a period of up to thirty (30) days. Employees on Employer approved unpaid leaves longer than thirty (30) days shall retain their seniority, but shall not accumulate any additional seniority during the remainder of their leave of absence.

LAYOFFS

Section 7.1. Indefinite Layoff. When it is determined by the Employer that the work force in a particular job classification is to be reduced, the Employer shall lay off employees in the following order:

(a) The first employee or employees to be laid off shall be part-time or temporary employees (if any) in the particular job classification affected by the layoff.

(b) The next employee or employees to be laid off shall be probationary employees (if any) in the particular job classification affected by the layoff.

(c) Further layoffs from the affected classification shall be accomplished by inverse order of seniority.

The Employer shall provide at least fourteen (14) calendar days notice of layoff to affected employees and to the Union.

Section 7.2. Displacement Rights After Indefinite Layoff. Employees with seniority who are indefinitely laid off shall be entitled to displace the least senior employee in a lower paid job classification under the following conditions:

(a) The laid off employee has greater seniority than the displaced employee.

(b) The laid off employee presently has the necessary training, ability and skill to perform the work in the lower paid job classification.

(c) The laid off employee elects to exercise their displacement rights within nine (9) calendar days of notification of their indefinite layoff.

An employee displaced under this Section shall be indefinitely laid off. An employee exercising displacement rights under this Section retains the right of recall to their former classification.

Section 7.3. Recall. When it is determined by the Employer to increase the work force in a particular job classification, employees with seniority previously laid off from that classification will be recalled in inverse order of layoff, provided, however, that the Employer may recall a junior employee if a more senior employee does not presently have the necessary experience, ability or training to perform efficiently the required work.

Section 7.4. Recall Procedure. When employees are to be recalled from indefinite layoff, the following procedures shall be followed:

(a) The Employer may attempt to telephone the employee first in an effort to give the employee notification of recall. If the employee could not be contacted by telephone, or if the Employer determines not to use telephone contact, the Employer shall give the employee notification of recall

together with the required return to work date by certified mail, sent to the employee's last known address.

(b) Employees have the obligation to advise the Employer of their intent to accept or decline the recall to work within forty-eight (48) hours of notification of recall by telephone or delivery of notice of recall by certified mail. Employees who decline recall shall be considered to have voluntarily quit. Employees who fail to respond within the forty-eight (48) hour period shall be considered to have voluntarily quit, unless the employee's failure to respond by the required date is for a reason satisfactory to the Employer.

(c) Recalled employees are required to report for work on the required return to work date following notification of recall by telephone or following delivery of notice of recall by certified mail, or within forty-eight (48) hours following notification of recall by telephone or following delivery of notice of recall by certified mail, whichever is later. Employees who fail to report for work by the required date shall be considered to have voluntarily quit, unless the employee's failure to report on the required date is for a reason satisfactory to the Employer.

Section 7.5. Address and Telephone Numbers. It shall be the responsibility of each employee to notify the Employer, in writing, of any change of address or telephone number. The employee's address and telephone number as they appear on the Employer's records shall be conclusive.

JOB VACANCIES

Section 8.1. Job Vacancies. The functions performed by the department include ambulance operation and fire fighting related services. Fire fighting is the primary responsibility of the department, and it is recognized that ambulance operation is also an integral part of the functions performed by the department. When considering applicants for full time positions in the department, EMTS and FF#2 licensing or ability to be EMTS and FF#2 licensed will be taken into consideration when hiring new employees. As a condition of continued employment, newly hired employees must become qualified as a Fire Officer I within one (1) year. Nothing in this section, however, will limit the City's rights contained in Section 5.1.

Section 8.2. Promotions. In the event that the Employer determines to fill a vacancy in the Captain/EMT or Assistant Chief/EMT classifications, notification that the vacancy will be filled shall be posted for a period of five (5) days, Saturdays, Sundays, and holidays excluded. Individuals desiring to be considered for the vacancy shall apply in writing to the Fire

Chief, or a designated representative, within the five (5) day posting period. In order to be considered for promotion to Captain, an employee must have EMTS, FF#2, and Fire Officer 1 and 2. In order to be considered for promotion to Assistant Chief, an employee must have EMTS, FF#2, and Fire Officer 1, 2 and 3. In addition, all applicants must take a psychological evaluation. The eligibility of applicants for the vacancy shall be determined as follows:

- (a) Written Examinations. Individuals seeking appointment to the vacancy must take a written examination, which shall be selected by the Employer. The Employer shall endeavor to provide at least sixty (60) days advanced notice of the date of the administration of the written examination. Employees who are on leaves of absence shall have notification sent to the address reflected on the Employer's records. Written examination scores shall be valid for a period of twelve (12) months. The written examination consists of a possible forty-five (45) points of an applicant's total final score.
- (b) Oral Interview. The oral examining board shall determine the ability of applicants to perform the duties of the position by consideration of the following criteria:
 1. Education and experience.
 2. Discipline and commendations.
 3. Participation in departmental training programs.
 4. Sick leave record.
 5. Physical fitness.
 6. Other relevant matters in the oral examining board's discretion.

The Fire Chief shall appoint the oral examining board, which shall consist of not less than three (3) fire protection officers of the rank of Captain or higher for the Captain/EMT vacancy and Assistant Chief or higher for an Assistant Chief/EMT vacancy, who may not be employees of the City of South Haven. The members of the oral examining board shall be selected from a list to be provided by the Michigan Municipal League. The Employer will endeavor to post the names of the oral examining board at least fifteen (15) days prior to the oral interview. Applicants who believe that a board member might not be impartial shall deliver a written statement of the reasons for such belief to the Fire Chief prior to the oral interview. The oral interview constitutes a possible forty-five (45) points of an applicant's total final score. The Union may select a non-employee observer to be present during the oral interview.

- (c) Seniority. Applicants will receive one (1) point for each complete year of departmental seniority over five (5) years, up to a maximum of ten (10) points; provided, however, that applicants who are veterans shall receive an additional two (2) points. The number of complete years of departmental seniority shall be calculated as of the day of posting of the notice of the Captain/EMT or Assistant Chief/EMT vacancy.

The Fire Chief shall select the individual to fill the vacancy from the two applicants achieving the highest combined score on the written examination, the oral interview and seniority. An individual receiving a position under this procedure shall be on probation for a period of twelve (12) months, any time during which the Employer has the right to return the employee to their former classification. This procedure shall not apply to promotion to the classification of Fire Chief, since promotions to that position shall be in the sole discretion of the Employer.

LEAVES OF ABSENCE

Section 9.1. Purpose of Leaves. It is understood by the parties that leaves of absence are to be used for the purpose intended, and employees shall make their intent known when applying for such leaves. It shall be grounds for discipline, up to and including discharge, for an employee to seek or engage in outside employment while on a leave of absence, or to falsify the reason for a leave of absence. All leaves of absence shall be without pay unless specifically provided to the contrary by the provisions of the Leave Section involved.

Section 9.2. Paid Sick Leave. Employees covered by this agreement shall earn and be granted sick leave of absence with pay under the following conditions and qualifications:

(a) Paid sick leave will be earned at a rate of one (1) day for each month of active service with the Employer. For purposes of this section, an employee has a complete month of active service when they work or receive pay for at least ten (10) days during any calendar month.

(b) One (1) day of sick leave for full time employees shall equal eight (8) hours. For each day that an employee is absent from work and utilizes paid sick leave, one (1) eight (8) hour day shall be deducted from the employee's accumulated sick leave credits. Sick leave shall be paid at the employee's regular hourly rate of pay when the sick leave is taken.

(c) Employees who have completed six months of employment may utilize accrued paid sick leave when it is

established to the Employer's satisfaction that an employee is incapacitated due to illness or injury. Employees may also utilize up to a maximum of six (6) days of accrued sick leave each contract year in the event of illness or injury to a member of employee's immediate family that necessitates the presence of the employee at home, subject to the same verification procedures for personal illness or injury; provided, however, that the Employer may, in its sole discretion, allow an employee to utilize up to eighteen (18) days of accrued sick leave under extreme circumstances. For purposes of this section, a member of the employee's immediate family shall include the employee's spouse, children, and parents if residing with the employee.

(d) The Employer may require as a condition of any sick leave a physician's certificate setting forth the reasons for the sick leave. All absences of three days or more shall require a physician's certificate setting forth the reasons for the sick leave. Falsification of the physician's certificate or falsely setting forth the reasons for the absence shall constitute just cause for discipline, up to and including discharge.

(e) Unused paid sick leave may accumulate up to a maximum of sixty (60) days, after which time no more paid sick leave will be accumulated except to the extent of restoring paid sick leave used; provided, however, the employees hired prior to July 1, 1984, shall be permitted to accumulate a maximum of seventy-five (75) days over their sick leave balance as of July 1, 1984.

(f) Sick leave is a benefit for employees to be used in case of illness or injury. It is not a benefit to be converted into wages. Employees whose employment status with the Employer ends other than by death or retirement shall not be paid for accrued but unused sick leave benefits. On written notice of intent to retire under the Municipal Retirement System at a specified date, the employee may use accumulated sick leave benefits to the extent of fifty percent (50%) of the accumulated sick leave at the dollar value computed on an annual basis. However, upon filing such letter of intent to retire, said employee will not be entitled to re-employment by the Employer, at the expiration of such accumulated sick leave. In the event of an employee's death, accumulated sick leave will be paid to his estate in the same manner as specified in this section. Payment for period of sick leave used as herein provided may be paid to the employee at the time and in the manner as if he were working and shall constitute a part of the regular Employer payroll. In the case of a retiring employee, he may petition for lump sum payment of accumulate sick leave benefits. Employees hired after July 1, 1984, shall be limited to payment for up to

seventy-five (75) days of accumulated but unused sick leave days.

(g) If an employee is injured while on duty, no time shall be deducted from his sick leave account.

(h) Paid sick leave may be utilized during periods covered by sickness and accident insurance payments to the extent necessary to maintain the employee's net take home pay based upon the employee's normal work week.

Section 9.3. Disability Leave. An unpaid leave of absence for injury, illness, pregnancy or other disability for a period of not more than six (6) months will be granted to employees with seniority upon written application, subject to the Employer's right to require medical proof. An extension of this leave may be granted by the Employer, in its sole discretion, upon written application; provided, however, that an employee may not be on a disability leave for a period of more than twelve (12) consecutive months. The Employer may request at any time, as a condition of continuance of a disability leave of absence, proof of a continuing disability. In situations where the employee's physical or mental condition raises a question as to the employee's capacity to perform the job, the Employer may require a medical examination at its cost, and, if appropriate, require the employee to take a leave of absence under this Section; provided, however, that no such disability leave without pay shall be imposed prior to having a special conference with the Union. Employees are required to notify the Employer of any condition which will require a leave of absence under this Section together with the anticipated date for commencement of such leave. This notice shall be given to the Employer by the employee as soon as the employee is first aware of the condition. Employees who are anticipating a leave of absence under this Section may be required to present a physician's certificate recommending that the employee continue at work and in all cases, the employee's attendance and job responsibilities must be satisfactorily maintained. All employees returning to work from a disability leave of absence must present a physician's certificate establishing to the Employer's satisfaction that the employee is physically and mentally able to perform the employee's job.

Section 9.4. Unpaid Personal Leave. The Employer may in its discretion grant an employee a personal leave of absence without pay for a period not to exceed six (6) months. Requests for a personal leave of absence shall be submitted in writing to the Employee's Department Head. All requests shall state the reason for the leave and must be signed by the employee. An extension of personal leave of absence may be granted by the Employer in its discretion, provided the extension is requested in writing prior to the termination of the original leave period. No personal leave of absence may be granted for a period in excess of one (1) calendar

year. No request for a personal leave of absence shall be considered approved unless such approval is in writing signed by the City Manager.

Section 9.5. Paid Personal Leave. Employees who have completed their probationary period may utilize accrued sick leave as paid personal leave days up to three (3) times in each calendar year. Paid personal leave days must be scheduled at least forty-eight (48) hours in advance with the employee's Department Head; provided however that in no event will personal days be allowed to be taken on consecutive working days.

Section 9.6. Funeral Leave. Upon request, an employee will be granted a leave of absence with pay for up to a maximum of two (2) duty days that the employee is otherwise scheduled to work following the date of death of a member of the employee's immediate family in order to attend the funeral and take care of other necessary arrangements. "Immediate family" shall mean the employee's spouse, children, mother, father, sister, brother, grandparents, grandchildren, father-in-law or mother-in-law. The maximum of two (2) scheduled duty days for which an employee may request and receive pay provided in this Section must be scheduled duty days of the employee occurring within four (4) calendar days following date of death. An employee granted a leave of absence under this Section shall receive pay in an amount equal to what the employee would have earned by working the employee's scheduled straight time hours at the employee's straight time regular rate of pay, exclusive of all premium pay, on the duty days for which paid leave is granted. However, no day or days off with pay shall be allowed unless the employee attends the funeral.

Section 9.7. Jury Duty Leave. Employees summoned by a court to serve as jurors shall be given a jury leave of absence for the period of their jury duty. For each day, up to a maximum of twenty (20) working days per year, that an eligible employee serves as juror when the employee otherwise would have worked, the employee shall receive the difference between the employee's regular rate of pay for that day and the amount the employee received from the court. In order to be eligible to receive jury duty pay from the Employer, an employee must:

- (a) Be a full time employee;
- (b) Give the Employer reasonable advanced notice of the time that the employee is required to report for jury duty;
- (c) Give satisfactory evidence that the employee served as a juror at the summons of the court on the day that the employee claims to be entitled to jury duty pay;
- (d) Return to work promptly after he is excused from jury duty service.

Section 9.8. Military Training or Emergency Duty Leave. Employees required to perform active duty for training or to perform emergency duty in any reserve component of the Armed Forces of the United States or the National Guard shall be granted a leave of absence for the period of such training or emergency duty upon request and the presentation of proper documentation from the employee's Commanding Officer. For each day that an employee is on such leave when the employee otherwise would have worked, the employee should receive the difference between the employee's straight time regular rate of pay for that day and the amount the employee received for such training, for up to a maximum of eighty (80) hours of pay per year. The provisions of this Section do not apply to an employee's initial period of active duty for training.

Section 9.9. Workers' Compensation Leave. Upon written application, a leave of absence for a period of not more than eighteen (18) months will be granted to employees with seniority who are unable to continue to work for the Employer because of a work related injury or disease for which the employee is entitled to receive benefits under the Worker's Compensation laws of the State of Michigan and is receiving voluntary payments from the Employer, subject to the Employer's right to require medical proof. Extension of the leave may be granted by the Employer, in its sole discretion, upon written application. During the period of a worker's compensation leave of absence, the employee shall receive worker's compensation payments, supplemented payments from the Employer in an amount sufficient to maintain the employee's net pay, and shall continue to receive all insurance benefits. The Employer may require at any time, as a condition of continuance of a worker's compensation leave of absence, proof of a continuing inability to perform work with the Employer. In the event that the Employer determines that the employee is capable of returning to work, the employee's leave of absence shall immediately end.

HOURS OF WORK AND PAY

Section 10.1. Wages and Classification. During the term of this Agreement, wages shall be as set forth in Appendix A. An employee's regular hourly rate of pay shall be determined by dividing the annual salary by 2,808 hours, rounded to the nearest whole cent. Employees shall begin at the start rate and shall advance from step-to-step upon completion of the specified periods of employment in that classification. The Employer reserves the right to determine the number of employees that shall be in a particular classification at any one time.

Section 10.2. Hours of Work. Employees are normally scheduled to work 2,808 hours in a calendar year. An employee's normal workweek shall average fifty-four (54) hours per week and a normal duty shift shall consist of twenty-four (24) hours of duty. Nothing contained herein shall be construed to constitute a

guarantee of any particular number of hours of work or pay per day, week or year.

Section 10.3. Overtime. Employees will be expected to work overtime upon request by the Employer. Overtime other than of an emergency nature must be authorized by the Fire Chief, or his designated representative. Any overtime offered will be given to the lowest man on the callback board. A new hire shall be credited with the number of hours worked that the lowest man on the board possesses. If during a severe winter storm overtime is needed, then as many men as needed to cover the station will be called in. If an eight (8) hour day, forty (40) hour workweek is implemented during the term of this Agreement, the question of overtime and rates of pay for an eight (8) hour day, forty (40) hour workweek will be open for negotiation.

Section 10.4. Work Period. The work period shall be a period of twenty-eight (28) consecutive days.

Section 10.5. Overtime Premium Pay. Time and one-half (1½) the employee's straight time regular rate of pay shall be paid for all hours actually worked in excess of 212 hours in a work period, or in excess of the employee's regularly scheduled hours. For purposes of this section, training time shall be considered to be hours actually worked. In the event that the present 212 hours standard is contained in the FLSA is changed, the parties agree to reopen this section and negotiate a successor overtime pay provision.

Section 10.6. Trading Time. Employees may trade time only with the prior approval of the Fire Chief or his designated representative; provided, however, that no overtime shall result in any way to the individuals involved in such voluntary changes.

Section 10.7. Training Pay. Employees required to perform training by the Employer shall be paid at the employee's regular rate of pay and at time and a half (1-1/2) the employee's regular rate of pay if the training is required by the State of Michigan; provided, however, that if such training is scheduled during an employee's regular scheduled workday, the employee shall receive no additional pay for attending such training.

Section 10.8. Call Back Pay. Employees who are called into work at times other than their regularly scheduled shift shall be paid for two (2) hours at time and one-half (1-1/2) or for the time actually worked at the applicable rate, whichever is greater. The hourly pay guarantee of this section does not apply in instances where an employee is called to work one (1) hour or less before the start of their regularly scheduled shift or where circumstances require the employee to work past the end of the regularly scheduled shift.

Section 10.9. Pay For Acting Rank. Fire fighter/EMT's required to fill in for an entire twenty-four (24) hour shift for a Captain/EMT shall be paid an additional \$1.00 per hour over their regular rate.

Section 10.10. New Classifications. If the Employer establishes a new classification covered by this Agreement, the Union shall be provided prior to the implementation of the classification with the title of the new classification, a brief description of the job to be performed and the proposed wage rate. The Employer agrees to negotiate with the Union upon request over the wage rate for the new classification.

HOLIDAYS

Section 11.1. Recognized Holidays. The following days are recognized as holidays for the purpose of this Agreement:

| | |
|---------------------|------------------------|
| New Year's Day | Columbus Day |
| President's Day | Veteran's Day |
| Good Friday (1/2) | Thanksgiving Day |
| Memorial Day | Day after Thanksgiving |
| Independence Day | December 24 (1/2) |
| Labor Day | Christmas Day |
| Employee's Birthday | December 31 (1/2) |

Employees shall be granted compensatory time off for each holiday. The taking of holiday time shall be approved by the Department Head, with preference being given in order of seniority of the employee.

VACATION

Section 12.1. Vacation Entitlement. Eligible employees earn vacation leave with pay in accordance with the following schedule:

| <u>Years of Continuous Service</u> | <u>Work Days</u> |
|---|------------------|
| Less than one (1) year | 3.0 |
| At least one (1) year but less than six (6) years | 5.0 |
| At six (6) years but less than ten (10) years | 8.0 |
| At least ten (10) years | 10.0 |

Vacation leave accrues on a calendar year basis and is credited to eligible employees on January 1 of each year, based upon their years of continuous service with the Employer as of January 1 of each year. An employee's length of continuous service shall be computed from the most recent date upon which the employee

commenced work for the Employer, and shall only be broken by a loss of seniority.

Section 12.2. Vacation Eligibility. In order to be eligible for crediting vacation leave on January 1, an employee must be a full-time employee of the Employer, and must have worked a total of at least 2,808 hours during the immediately preceding January 1 - December 31 period. Full-time employees who fail to work the required number of hours shall be entitled to prorated vacation leave based upon the ratio of the hours actually worked to 2,808 rounded to the nearest half day. For purposes of this Section, hours worked shall include paid sick leave, paid bereavement leave, paid jury duty leave, paid holidays, vacation and all hours actually worked.

Section 12.3. Vacation Scheduling. Employees may schedule their vacation leave at any time after it has been credited to their use, in accordance with the procedures set forth in this Section. Vacation requests must be submitted in writing by the employee at least thirty (30) days in advance of the period requested. The Employer shall respond within two (2) weeks of receipt of the vacation request. The Employer will allow employees to take their vacation leave at the time requested, unless in the opinion of the Employer such time off will unreasonably interfere with the efficient operation of the Employer. In the event that more than one (1) employee desires to take vacation during the same period, approval of such vacation requests shall be guided by the seniority of the employees concerned; provided, however, that no employee may utilize seniority to secure more than one (1) vacation period in any one (1) calendar year. Employees are required to take their vacation leave during the twelve (12) months following its accrual and crediting; provided, however, that should an employee not be able to utilize their vacation, up to thirty (30) days of vacation leave may be carried over to the next year. Vacation leaves of less than one (1) day shall not be allowed.

Section 12.4. Vacation Pay. Vacation pay shall be at the employee's regular straight time rate, exclusive of all premiums, in effect at the time the employee takes vacation leave.

Section 12.5. Benefits on Termination. Employees whose employment relationship with the Employer ends for any reason may receive pay for accrued but unused vacation leave in any of the following circumstances:

(a) If an employee retires in accordance with the retirement plan currently in effect.

(b) If an employee resigns from employment and a minimum of two (2) weeks' advance notice is given to the Employer.

(c) If an employee is laid off and requests payment of vacation pay, provided, however, that such vacation pay shall be designated to the period of the layoff. At the option of the employee, accrued vacation pay may be paid in a lump sum payment.

(d) In the event of the death of an employee, vacation pay shall be paid to the employee's estate.

INSURANCE

Section 13.1. Hospitalization Insurance. The Employer will make available a group insurance program covering certain hospitalization, surgical and medical expenses for participating employees and their eligible dependents. This insurance program shall be on a voluntary basis for all full time employees who elect to participate in the insurance program. The insurance program will provide the coverages set forth on Appendix B. The specific terms and conditions governing the group insurance program are set forth in detail in the master policy or policies governing the program as issued by the carrier or carriers.

Full time employees are eligible to participate in the group insurance program no earlier than the first (1st) day of the premium month following the commencement of employment with the Employer in a full time position or at a date thereafter that may be established by the insurance carrier. Employees electing to participate in the group insurance plan shall advise the Employer in writing of this intent and shall make arrangements satisfactory to the Employer for the payment of the required monthly premium, if any.

The Employer pays up to \$373.11 per month for single subscriber, two person and family coverage for eligible employees who elect to participate in the group health insurance plan. All premium costs for family continuation and sponsored dependent coverage shall be paid by the employee electing to have the insurance coverage. The current cost for this group health insurance plan is \$388.11 for family coverage, and employees with coverage costs (exclusive of family continuation and/or sponsored dependent coverage) in excess of \$373.11 (currently only those with family coverage) are required to pay \$15.00 per month towards the monthly premium. All premium increases that occur after July 1, 1992 in excess of this \$388.11 amount shall be shared on a 50/50 basis between the Employer and the employee electing to have the insurance coverage. The Employer's liability under this section shall be limited to these payments.

Section 13.2. Dental Insurance. The Employer will make available a group insurance program covering certain dental expenses for participating employees and their eligible dependents. This

insurance program shall be on a voluntary basis for all full time employees who elect to participate in the insurance program. The insurance program provides the coverages set forth on Appendix B. The specific terms and conditions governing the group insurance program are set forth in detail in the master policy or policies governing the program as issued by the carrier or carriers.

Full time employees are eligible to participate in the group insurance program no earlier than the first (1st) day of the premium month following the commencement of employment with the Employer in a full time position or at a date thereafter that may be established by the insurance carrier. Employees electing to participate in the group insurance plan shall advise the Employer in writing of this intent and shall make arrangements satisfactory to the Employer for the payment of the required monthly premium, if any.

During the term of this Agreement, the Employer agrees to pay up to \$25.00 per month of the premium for participating employees and their lawful dependents, with all premium increases in excess of this amount to be paid by the employee.

Section 13.3. Term Life Insurance. All full time employees shall be eligible for term life insurance policy coverage in an amount of Fifteen Thousand Dollars (\$15,000.00) after completion of the waiting period presently in effect. During the term of this Agreement, the Employer agrees to pay the total premiums required for eligible employees.

Section 13.4. Sickness and Accident Insurance. All full time employees shall be eligible for sickness and accident insurance coverage in an amount equal to sixty percent (60%) of their normal gross weekly wages, up to a maximum benefit of One Hundred Dollars (\$100.00) weekly after completion of the waiting period presently in effect. These benefits shall be payable from the first (1st) day of disability due to accidental bodily injury or hospitalization or the eighth (8th) day of disability due to sickness, for a period not to exceed twenty-six (26) weeks for any one (1) period of disability. During the term of the Agreement, the Employer agrees to pay the total premiums required for eligible employees.

Section 13.5. Liability Insurance. All employees shall be provided with liability insurance coverage for work related claims. The specific terms and conditions governing the liability insurance coverage are set forth in detail in the master policy or policies issued by the carrier or carriers. During the term of this Agreement, the Employer agrees to pay the total premiums required for eligible employees.

Section 13.6. Insurance Carrier. The Employer reserves the right to select the insurance carrier or carriers, or to become self-

insured; provided, however, that the benefits provided shall remain substantially equivalent. Prior to changing carriers a special conference will be called to discuss the changes.

Section 13.7. Obligation to Continue Payments. In the event that an employee eligible for insurance coverage under this agreement is laid off or on an unpaid leave of absence other than a workers compensation leave of absence, the Employer shall have no obligation or liability whatsoever for making any insurance premium payment for any such employee or their lawful dependents beyond the month in which the layoff or unpaid leave of absence commences. Employees on Employer approved unpaid leaves of absence may continue insurance benefits on a month by month basis by paying to the Employer, in advance, the amount of the next month's premium for that employee and/or their lawful dependents, subject to the approval of the insurance carrier.

Section 13.8. Retiree Insurance Coverage. During the term of this Agreement, the Employer agrees to allow continued insurance coverage for employees who retire after July 1, 1974 in accordance with the following:

- (a) Health Insurance. The Employer shall pay one half (1/2) of the required monthly premium for single subscriber coverage under the group insurance plan for retirees not eligible for Medicare-Medicaid who elect to continue to participate in the plan, subject to the following:
 - (1) Approval by the insurance carrier that such arrangement is possible.
 - (2) At least twenty (20) years' service at time of retirement by the employee.
 - (3) Subject to any changes in the event that either the insurance carrier changes its program to prevent such program and to modification in the event federal legislation provides some coverage to substitute in whole or in part for such insurance coverage.
 - (4) The employee has no other health insurance coverage available through another employer or a plan available to their spouses.

Eligible retirees desiring to continue their insurance coverage shall pay to the Employer, in advance, the amount of the retiree's portion of the next month's premium.

Section 13.9. Duplication of Benefits. The provisions of Sections 13.1 and 13.2 notwithstanding, the Employer shall have no obligation to duplicate any benefit an employee receives or is

eligible to receive under any other policy or plan notwithstanding the circumstances of eligibility, amount or duration of benefit. Employees are required to inform the Employer of any and all hospitalization, dental or medical benefit coverage enjoyed by said employee, as a condition to receipt of the benefits set forth as Sections 13.1 and 13.2. A special conference may be called in the event that a dispute arises over continued coverage for any employee, and the dispute may thereafter be submitted to the grievance procedure for resolution.

PENSION

Section 14.1. Pension. During the term of this Agreement, the program of retirement benefits provided for in Plan B-2, with the F50(25) rider, of the Michigan Municipal Employees Retirement System shall be in effect. Under this plan, employees contribute eight percent (8%) of their gross earnings. The specific terms and conditions of the retirement plan are controlled by the statutes governing the Michigan Municipal Employees Retirement System.

ALLOWANCES

Section 15.1. Uniforms. The Employer agrees to provide employees with necessary uniforms upon initial employment, and to replace articles of the uniforms at such times as they are determined by the Employer to be unserviceable.

Section 15.2. Food Allowances. The food allowance is to be \$65.00 per month per man during the period of the contract. The food allowance is to be paid only if an employee's regularly scheduled work day is over eleven and one-half hours.

Section 15.3. Cleaning and Laundry of Uniforms. The Employer shall provide facilities for employees to launder their uniforms, and shall reimburse employees for the necessary dry cleaning of winter coats and dress uniforms.

STRIKES AND LOCKOUTS

Section 16.1. Continued Work Pledge. Under no circumstances will the Union, any of its officers, or employees, cause, authorize, or condone, nor will any member of the bargaining unit cause, authorize, condone, or take part in any strike, sit-down, stay-in, or slow-down in any building or property of the Employer or any curtailment of work or restriction of work or interference with the operations of the Employer, during the term of this Agreement.

Section 16.2. Violation of Continued Work Pledge. In the event an individual employee or group of employees engage in any of the

prohibited activities set forth in Section 16.1, the Employer shall have the right to, at his discretion, discipline or discharge such employee or group of employees. However, it is understood and agreed that if there is a dispute as to whether an employee has engaged in the prohibited activities set forth in Section 16.1, the employee may process a grievance limited to the issue of whether they engaged in the prohibited activity, starting at the second (2nd) step of the grievance procedure, provided a written grievance is filed with the City Manager within three (3) work days after the date upon which the employee was disciplined or discharged.

Section 16.3. Affirmative Action. In the event of a work stoppage or other curtailment of interference of work, Union officers shall immediately instruct the involved employees in writing that their conduct is in violation of the contract, that they may be discharged, and instruct all such persons to immediately cease the offending conduct. The Employer shall not be required to negotiate on the merits of this dispute which gave rise to the stoppage or curtailment until such has ceased.

Section 16.4. No Lockout. The Employer agrees that it will not lockout any employee during the term of this Agreement. However, if any employee is unable to work because equipment or facilities are not available due to a strike, work stoppage, slow-down or other interference by employees of another Employer, such inability to work shall not be declared a lockout, or a slow-down, or stoppage or work by the employees of the Union.

MISCELLANEOUS

Section 17.1. Manpower. The City will try to maintain two men per shift. Nothing in this article, however, will negate the City's right to "establish classifications of work and the number of personnel required" contained in Section 5.1, Management Rights.

Section 17.2. Health Examinations and Requirements. Each employee covered by this Agreement must maintain a medically acceptable personal physical fitness commensurate with the duties and requirements of the position they occupy. This will include demonstrating such condition by a physical examination by a doctor mutually agreed upon by the City and the Union at least once every two (2) years. Failure to submit to the examination may result in disciplinary action and/or discharge. The City agrees to pay the cost of these routine physicals.

Section 17.3. Schools and Training. It is recognized that training and schooling is important for the professionalism of each fire fighter and the department. It will be in the sole discretion of the Fire Chief to assign and schedule such training. It is further recognized that the City may require employees to attend fire fighting and EMT training functions and classes. The City

will pay the cost of tuition, travel and living expenses if employees are required to attend training or schooling.

Section 17.4. Scope, Waiver and Alteration of Agreement. No agreement, alteration, understanding, variation, waiver or modification of any of the terms or covenants contained herein shall be made by any employee or group of employees with the Employer, unless executed in writing between the parties hereto, and the same has been ratified by the Employer and the Union. The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of the terms and conditions herein. If any Article or Section of this Agreement or any supplements thereto should be held invalid by operation of law or by any competent jurisdiction or tribunal, or if compliance with or enforcement of any Article or Section of this Agreement should be restrained by such tribunal, the remainder of this Agreement shall not be effected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutual satisfactory replacement for such Article or Section.

Section 17.5. Reemployment Following Active Military Services. Employees who leave the employment of the Employer to enter active military service in any branch of the Armed Forces of the United States or the National Guard shall be entitled to reemployment rights in accordance with the Federal and State statutes governing such reemployment rights in effect at the time the individual seeks reemployment with the Employer. Notice of intent to enter into such active service and the scheduled date of departure shall be given to the Employer in writing as soon as the individual is notified of their acceptance and departure dates. Individuals reemployed in accordance with such Federal and State statutes shall be entitled to the benefits set forth in this Agreement, provided they satisfy the eligibility requirements established under this Agreement.

Section 17.6. Bloodborne Pathogens. The City and the Union agree to adhere to the bloodborne pathogens legal requirements under federal law.

Section 17.7. Drug Testing. The City and the Union agree to adhere to the Drug Testing Policy attached as Exhibit B.

Section 17.8. Captions. The captions used in each Section of this Agreement are for identification purposes only and are not a substantive part of this Agreement.

Section 17.9. Termination and Modification. This Agreement shall remain in full force and effect from ratification until June 30, 1995, and from year to year thereafter, unless either party hereto serves upon the other a written notice of desire to amend or terminate this Agreement at least sixty (60) calendar days prior to

the expiration date, or sixty (60) calendar days prior to the expiration of any subsequent automatic renewal period. Should either party of this Agreement serve such notice upon the other party, a joint conference of the Employer and the Union shall commence not less than thirty (30) days after notice of desire to amend or termination is given.

Notice of termination or modification shall be sufficient if sent by certified mail to the recognized mailing address of the other party.

CITY OF SOUTH HAVEN

SOUTH HAVEN FIRE FIGHTERS
UNION, LOCAL #2658

Alan J. Vandenberg

Anthony Marsala Jr
Alan R Hosier
R. Rain

APPENDIX "A"

WAGES

A. Effective the first pay period on or after July 1, 1992, the following annual rates shall be in effect (roll-in of \$900 longevity and \$500 EMTS bonus and then increase by 4.00%):

| <u>Classification</u> | <u>Start</u> | <u>After 1 Year</u> | <u>After 2 Years</u> | <u>After 3 Years</u> |
|-----------------------|--------------------|-------------------------|--------------------------|--------------------------|
| Fireman/EMTS | 20,168 (\$7.18) | 22,280 (\$7.93) | 24,515 (\$8.73) | 26,746 (\$9.53) |
| Captain/EMTS | --- | --- | --- | 30,355 (\$10.81) |
| Assistant Chief/EMTS | --- | --- | --- | 32,524 (\$11.58) |

B. Effective the first pay period on or after July 1, 1993, the following annual rates shall be in effect:

| <u>Classification</u> | <u>Start</u> | <u>After 1 Year</u> | <u>After 2 Years</u> | <u>After 3 Years</u> |
|-----------------------|--------------------|-------------------------|--------------------------|--------------------------|
| Fireman/EMTS | 20,974 (\$7.47) | 23,171 (\$8.25) | 25,495 (\$9.08) | 27,815 (\$9.91) |
| Captain/EMTS | --- | --- | --- | 31,569 (\$11.24) |
| Assistant Chief/EMTS | --- | --- | --- | 33,826 (\$12.05) |

C. Effective the first pay period on or after July 1, 1994, the following annual rates shall be in effect (4.00% increase):

| <u>Classification</u> | <u>Start</u> | <u>After 1 Year</u> | <u>After 2 Years</u> | <u>After 3 Years</u> |
|-----------------------|--------------------|-------------------------|--------------------------|--------------------------|
| Fireman/EMTS | 21,812 (\$7.77) | 24,097 (\$8.58) | 26,514 (\$9.44) | 28,927 (\$10.30) |
| Captain/EMTS | --- | --- | --- | 32,831 (\$11.69) |
| Assistant Chief/EMTS | --- | --- | --- | 35,179 (\$12.53) |

APPENDIX "B"

INSURANCE COVERAGE

The hospitalization insurance program provides the following coverages through Blue Cross/Blue Shield:

MVF-1 Basic Coverage
Master Medical Option II
\$2.00 Prescription Drug Rider (with generic drugs)
OB Rider
Emergency Care Rider
PREDETERMINATION

The dental insurance program provides the following coverages through Blue Cross/Blue Shield:

\$600 Maximum Yearly Amount
Class I Basic Services (50/50 co-pay)
Class II Additional Services (50/50 co-pay)
Class III Extended Services (50/50 co-pay)
Class IV Orthodontic Services (50/50 co-pay, \$600 lifetime benefit.

CITY OF SOUTH HAVEN

- and -

SOUTH HAVEN FIRE FIGHTERS

Letter of Understanding Regarding Health Insurance Payments.

The provisions of Section 13.1. Hospitalization Insurance and Section 13.2. Dental Insurance notwithstanding, during the period of this Agreement, from 7-1-92 through 6-30-95, no employee shall be required to pay more than \$15.00 per month as their portion of the required premium for single subscriber, two person or family hospitalization and/or dental insurance coverage. Prior to implementing any employee health or dental care contribution, a special conference shall be called to discuss alternatives.

CITY OF SOUTH HAVEN

Don H. Vandenberg

SOUTH HAVEN FIRE FIGHTERS UNION,
LOCAL #2658

Anthony Marsala Sr
Allan R Hosier
[Signature]

CITY OF SOUTH HAVEN

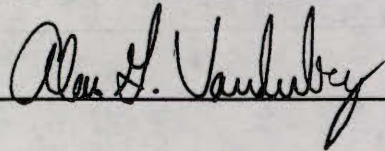
- and -

SOUTH HAVEN FIRE FIGHTERS

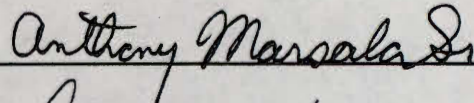
Letter of Understanding Regarding Duplicate Insurance Coverage.

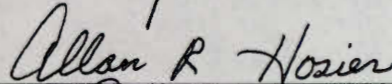
The parties have agreed in Section 13.9. Duplication of Benefits to restrict the health and dental care insurance coverages available to employees who do not have such coverage available under programs under which their spouse or dependents are eligible to participate. The intention of this restriction on coverage was to have employees utilize alternate coverage whenever possible, in order to reduce costs to the Employer for duplicative coverage. It was recognized that each employee's duplicate coverage situation would be different, and it is agreed that these different coverage situations will be handled on an individual basis utilizing the premise that the other available insurance program will be primary, but that the Employer will provide supplemental payments or programs to enable the employee to be in an insurance coverage situation similar to that which would have occurred had the employee been covered by the Employer's group insurance program.

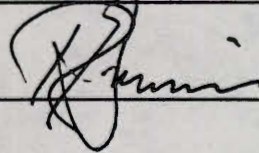
CITY OF SOUTH HAVEN



SOUTH HAVEN FIRE FIGHTERS UNION,
LOCAL #2658







CITY OF SOUTH HAVEN

-and-

SOUTH HAVEN FIRE FIGHTERS

Letter of Understanding Regarding Miscellaneous Matters

1. Bargaining unit members agree to participate in the Wellness program on a voluntary basis. In the event that a wellness program is implemented and that wellness program results in lower premiums for health care insurance, the City agrees to pass on one-half (1/2) of the savings to the employees through lowered employee contributions for that insurance.

The health wellness program will include testing features such as cardiovascular, pulmonary function, flexibility, strength, stress, and colon/rectal. This program is not mandatory, and employees who do not participate will not be disciplined. Employees who do not participate will not benefit from any employer's insurance cost savings.

2. The Union agrees that the City may implement an IRC Section 125 Plan without further bargaining.

CITY OF SOUTH HAVEN

Alan G. Vandenberg

SOUTH HAVEN FIRE FIGHTERS UNION,
LOCAL #2658

Anthony Marsala Jr

Allan R. Hosier

R. Quinn

AGREEMENT
DRUG TESTING
EMPLOYEE ASSISTANCE PROGRAM

1. PURPOSE

- A. To establish the City of South ^{Haven} policy and procedures for dealing with employees whose job performance is substantially impaired through the abuse of controlled and/or use of illegal substances.
- B. To identify what assistance is available to employees.
- C. To identify the employees responsibility.
- D. To identify the employers responsibility.
- E. To identify the Union's responsibility.

2. POLICY

- A. To establish employer, employee and Union responsibilities as they relate to the handling of individuals whose job performance is substantially impaired through the abuse of controlled and/or use of illegal substances.
- B. To provide employees assistance when substance usage creates problems which interfere with the performance of his/her duties.
- C. Substance usage is deemed to be a medical problem which deserves an appropriate medical evaluation and treatment.

3. PROCEDURE

- A. The demand for testing of City of South Haven personnel for controlled or illegal substances must meet the following requirements.
 - 1. The employee is, based on "reasonable suspicion", requested/ordered to submit to testing by the Fire Chief after consultation with the City Manager or his designate.
- B. Standards for Determining Reasonable Suspicion
 - 1. The test must be requested by the Fire Chief.

3.

B. Standards for Determining Reasonable Suspicion (cont.)

2. "Reasonable Suspicion" shall be based on "specific objective facts and reasonable inferences drawn from these facts in light of experience and/or training.
3. Where the "reasonable suspicion" is based on personal observation by the Fire Chief, the objective facts must be articulated and may include the person's appearance and behavior.

Among the possible signs or symptoms of a substance abuse problem are any articulating factors which objectively demonstrate substantial job impairment and which are otherwise unexplainable, such as:

- excessive absenteeism and tardiness
- inconsistent work performance
- avoidance of supervisors
- consistent failure to meet established standards of personal appearance
- substantial decrease in productivity
- lack of dexterity
- slurred or incoherent speech
- excessive perspiration or chills
- nausea and vomiting
- any other articulate factor which relates to the employees ability to perform his/her job.

C. Preparation of Report

If the Fire Chief, based upon the criteria set forth above, determines that a test should be requested, he shall prepare a signed, dated, timed and contemporaneous report reducing the objective facts and the reasonable inferences drawn from those facts to writing and shall immediately furnish a copy to the

C. Preparation of Report (cont.)

employee. The employee shall, at the same time, be given the opportunity to explain his/her behavior/action/appearance in writing. Upon request, the employee shall have the right to Union representation.

D. Review of Report

If following the employees explanation, the Fire Chief determines that a test is still required, he/she shall submit a copy of his/her report and employees explanation, if any, to the City's health clinic physician or an independent physician employed at a health care facility mutually agreed upon prior to implementation of the program by the Union and the City of South Haven. (either the City or the Union shall have the right upon one week's notice and with reasonable justification to revoke its approval of the health care facility performing the review function. Following such notice, the parties shall forthwith meet to agree on a new facility.) The physician shall evaluate the report and explanation as an independent, unbiased party and determine whether or not a test shall be ordered based upon whether or not the report establishes beyond a reasonable doubt that the employee is substantially impaired in his/her ability to perform the job.

The physician shall prepare a signed, dated, timed and contemporaneous report specifically setting forth the basis of his/her decision. An employee who is required to submit to a urine test shall be given a copy this decision before the time production of a sample is required.

E. Demand for Testing

If the physician has determined that a test shall be ordered, the order will be given by the Fire Chief. At the time the order is given, the employee shall be advised that refusal to submit to the test shall be cause for discipline, up to and including discharge.

Should an employees tour duty expire or he/she otherwise be in an off-duty status during the order for testing process, the employee will be placed/continued in a duty status, and so compensated, until the process of obtaining a specimen is completed. If the results of the test ultimately prove negative, the employee shall compensated at the rate of time and one half the

E. Demand for Testing (cont.)

employees straight time hourly rate for all hours of portions thereof, occurring outside of scheduled work hours, that the employee is involved in activities directly attributable to the order to take the test.

F. Testing Procedure

To maintain the integrity of the collection and testing processing, the following procedure will be observed:

- 1) Specimen collection will be performed only at sites that follow Section 3.3 through 3.7 of the Michigan Law Enforcement Officers Training Council guidelines. (Attached herein and incorporated by reference)
- 2) Actual testing will only be performed by laboratories that meet the above referenced guidelines (see attachment).
- 3) All of the above referenced guidelines (advisory and mandatory) must be followed, unless in conflict with a provision of this agreement which shall be controlling.
- 4) The employee, if he/she so wishes, may have a Union representative present as a witness to the collection process.
- 5) Upon completion of all testing, the employee immediately shall be notified of the results of the testing. A signed, dated and contemporaneous written report from the laboratory must be submitted to the City of South Haven within forty-eight (48) hours of the test and shall be made available to the employee (and upon the employees request to the Union) immediately after its receipt by the City of South Haven. If the reports do not contain the information, the City of South Haven will obtain and furnish such information as soon as is practicable:
 - a. the type of test will be the GC/MS urine test;
 - b. the results of the test(s);
 - c. the sensitivity (cut-off point) of the methodology employed; and

F. Testing Procedure (cont.)

- d. any available information concerning the margin of accuracy and precision of the quantitative data reported for the test(s).
6. If results of test(s) are negative, any remaining samples will be opened and disposed of and container, label(s), chain of possession records, and all other reports pertaining to the test will be destroyed and such destruction noted, along with date, time and signature of the designated person destroying same.
7. The results of the test will be reported to the City of South Haven only if the confirmation test is positive.

G. Lab Tests

1. The initial "screening" test will be of the GC/MS type and shall be conducted by the indicated laboratory. No action shall be taken based on the initial screening test but rather may only be taken after a confirmation or follow-up test has been administered.
2. Confirmation or follow-up test will be of Mass Spectrometer type and will be conducted by the laboratory.
3. The Union and the City of South Haven shall mutually agree on the laboratories performing the aforesaid testing previously certified. The Union shall also have the right to demand inspection of the laboratory at any time. Any laboratory selected must be licensed by, and located in, the State of Michigan.
4. The employee may request that the remaining preserved sample/specimen container be sent for testing to any laboratory of his/her choice (with the cost to be borne by the City of South Haven).

4. EMPLOYEE ASSISTANCE PROGRAM

If following the completion of the testing process, it is determined beyond a reasonable doubt that the employee is abusing controlled and/or using illegal substances, he shall be given the opportunity to participate in the Employee Assistance Program (EAP) currently being administered by the City of South Haven. *The Employee Assistance Program can also be accessed by an employee at any time.*

4. EMPLOYEE ASSISTANCE PROGRAM (cont.)

Either party may revoke its approval of the EAP administrator upon seven (7) days notice and the parties shall forthwith meet to agree on a replacement. Participation in the EAP allows employees to get the medical help that they need by participating in a rehabilitation program and, at the same time, be given an opportunity to retain employment with the City of South Haven. Employees who are required or elect to be treated on an in-patient basis may utilize sick or vacation time for this purpose. In the absence of such available time, the employee may be granted a leave of absence without pay, without loss of seniority. If the employee refuses to participate in the EAP, he shall be subject to discipline, up to and including discharge. An employee must participate in the EAP for a minimum of 30 days. If the employee successfully completes the EAP program, he/she will be returned to his/her former position with retention of all seniority rights.

All participants in the EAP program will have their participation costs covered under the parties health insurance program. It is understood that in the event of a dispute between the health insurance provider and administrator of the Employee Assistance Program concerning the course of treatment, the decision of the administrator of the Employee Assistance Program shall control and the Employer shall insure that benefits are paid in accordance with said decision.

5. CONFIDENTIALITY

All records pertaining to the initiation and administration of this program, including but not limited to, the supervisor's report, employees explanation, physician's decision, Departmental Testing Record and any Employee Assistance Program reports shall be treated as strictly confidential and shall be maintained only by the medical department. Copies shall also be made available upon request to the employee. No such records shall be maintained in any employees personnel file of any kind. All such records pertaining to a positive test shall be destroyed within one year of the employees successful completion of the Employee Assistance Program. Such records may be used only for purposes of treatment of the employee and may not be utilized in the promotional or disciplinary process, except as set forth above.

Any individual in unauthorized possession of such a record shall be disciplined.

6. RESCISSION OF PRIOR RULES

All rules inconsistent with the above are hereby rescinded.

7. GRIEVANCE PROCEDURE

Any disputes concerning the interpretation or application of this program shall be subject to the grievance procedure.

8. UNION HELD HARMLESS

This drug testing program is solely initiated at the behest of the City of South Haven. The City of South Haven shall be solely liable for any legal obligations, costs, and attorneys' fees arising out of the provisions and/or application of this agreement relating to drug testing. The Union and its members shall be held harmless for the violation of any laws, regulations, or worker rights arising from the creation, implementation, or administration of the drug testing program by the City.

UNION

Anthony Marsala Sr
Allen R Hosier
[Signature]

MANAGEMENT

[Signature]

DATED: 5-6-93

GUIDELINES FOR LAW ENFORCEMENT OFFICER CANDIDATE DRUG TESTING

MICHIGAN LAW ENFORCEMENT OFFICERS TRAINING COUNCIL
Employment Standards Section
Michigan Department of State Police
7426 N. Canal Road, Lansing, MI 48913, (517) 322-1946

Comment: These guidelines for the drug testing of law enforcement officer candidates are **advisory** except where indicated as **mandatory (mandatory)**. This drug testing program is operated pursuant to Public Act 125 of 1991.

Because this program contains the potential to deny some individuals employment, these guidelines are comprehensive and specific. Unlike a clinical laboratory analysis which is diagnostic, the urinalysis done under this program is forensic in nature, i.e., the specimen must be treated as evidence from the time of collection through final disposition. Findings regarding the illicit use of controlled substances must be able to stand up to judicial scrutiny. It is the purpose of these guidelines to assist agencies and laboratories in meeting that standard.

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- 1.4 Future Revisions.

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- 2.2 Individuals Subject to Testing.
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- 2.4 Notifying Candidates of Specimen Collection Using the Element of Surprise
- 2.5 Agency Investigation of Prescription Drug Use.
- 2.6 Agency Reporting Requirements.

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- 3.2 Specimen Collection Site Registration Requirements
- 3.3 Specimen Collection Procedures.
- 3.4 Laboratory Participation Requirements.
- 3.5 Laboratory Personnel.
- 3.6 Laboratory Analysis Procedures.
- 3.7 Quality Assurance and Quality Control.

Part A - General

1.1 Applicability

(a) These guidelines apply to:

(1) Law enforcement agencies employing law enforcement officers empowered to enforce the general criminal laws of the state of Michigan.

(2) Laboratories licensed by the Michigan Department of Public Health to perform urine drug screening and registered by the Council to participate in this program.

(3) Laboratories outside of the state of Michigan licensed by the federal government under the Clinical Laboratory Improvement Act (CLIA) or by the National Institute on Drug Abuse (NIDA) which are performing urine drug screening under contract to a Michigan law enforcement agency and registered by the Council to participate in this program.

(4) Collection sites performing urine collection for laboratories or law enforcement agencies as part of this drug testing program and registered by the Council to participate in this program.

1.2 Definitions

For purposes of these guidelines the following definitions are adopted:

Agency: An agency is any political subdivision in Michigan or railroad which employs persons as law enforcement officers whose selection and employment are regulated by the Council.

Alliquot: A portion of a specimen used for testing.

Chain of Custody: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures require that a chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory or between laboratories. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

Collection Site: A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person: A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person should have successfully completed training to carry out this function which is described in 3.3.

Confirmatory Test: A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for amphetamines, barbiturates, cocaine, marijuana, opiates, and phencyclidine.)

Council: The Council is the Michigan Law Enforcement Officers Training Council created by Public Act 203 of 1965, which is authorized to

prepare and publish standards for the selection and training of law enforcement officer candidates in Michigan.

Initial Test: (also known as Screening Test) An immunoassay screen to eliminate "negative" urine specimens from further consideration.

1.3 Urine Drug Testing Applies Analytical Forensic Toxicology

The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of testing apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Michigan law enforcement agencies will require the services and advice of a qualified forensic toxicologist, or an individual with equivalent qualifications (both training and experience) (see 3.5a) to address the specific needs of the law enforcement officer candidate drug testing program, including the demands of chain of custody of specimens, security, proper documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

1.4 Future Revisions

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of the law enforcement officer drug testing program, the Council may make changes to these guidelines to reflect improvements in the available science, technology and procedures.

Part B - Agency Responsibilities

2.1 Testing Requirement

(a) Public Act 196 of 1990 stipulates that no individual shall be trained or certified by the Council unless that individual tests negative for the illicit use of controlled substances [mandatory]. Any individual who refuses to be tested shall be considered as having tested positive [mandatory]. Further, individuals who test positive or refuse to test shall not be eligible for training or certification for a period of two (2) years from the date of the test or the refusal to test [mandatory].

2.2 Individuals Subject to Testing

(a) Drug testing shall be required of the following:

(1) Individuals who plan to attend basic training as an agency employee [mandatory].

(2) Individuals who are preservice graduates seeking certification upon employment by an agency [mandatory].

(3) Individuals who are seeking certification upon employment by an agency after having successfully completed the waiver of training

requirements [mandatory].

(4) Individuals from out-of-state who are seeking certification upon employment by an agency after having successfully completed the waiver of training requirements [mandatory].

(b) Certified officers transferring employment between agencies are not subject to this testing program.

2.3 Agency Testing Requirements

(a) An agency hiring an individual as a certified law enforcement officer shall cause the individual to be tested for the illicit use of controlled substances [mandatory].

(b) An agency shall use only a laboratory registered by the Council (see 3.4) [mandatory].

(c) An agency shall use only a specimen collection site registered by the Council (see 3.2) [mandatory].

(d) An agency shall test individuals no sooner than 120 days prior to training or certification [mandatory].

(e) Agency testing of individuals shall comply with the provisions of these guidelines [mandatory].

2.4 Notifying Candidates of Specimen Collection Using the Element of Surprise

(a) Other than advising all candidates for law enforcement positions that drug testing will occur as part of the selection process, candidates should not be given prior notice as to when the actual specimen collection will occur. Adding this element of surprise will increase the effectiveness of the drug detection process by defeating short term abstention on the part of a candidate.

(b) When candidates are notified to report for specimen collection they should be told they must appear at the collection site within 24 hours of notice. They should also be told that if they fail to report and give a specimen they will be reported to the Council as a refusal and will be barred from training and certification as a law enforcement officer for two years.

2.5 Agency Investigation of Prescription Drug Use

(a) Where a laboratory report indicates the "positive" presence of prescription medications in the urine of an individual, the agency shall investigate to substantiate the legitimate use of the drug [mandatory]. The investigation shall include identifying the prescribing physician and verifying with the physician that the prescription for the drug was issued to the individual and that the use of the drug was legitimate [mandatory].

(b) When an investigation reveals the presence of a prescription drug inconsistent with a legitimate prescription, the drug use shall be reported to the Council as a "positive" drug use, as provided in 2.6 of these guidelines [mandatory].

2.6 Agency Reporting Requirements

(a) **Reporting Time Requirements.** Agencies shall report the results of drug testing to the Council at least 14 days prior to basic training or hire, whichever is applicable [mandatory].

(b) **Basic Training Candidate.** Agencies intending to enroll an individual in a basic training academy shall attach the laboratory report

for the individual to the "Basic Police Training Program: Enrollment/Certification" form (TC-1 (Revised 8-90)), as instructed of the form [mandatory].

(c) **Preservice Graduates.** Agencies seeking certification for an individual who is a preservice graduate shall attach the laboratory report for the individual to the "Basic Police Training Program: Enrollment/Certification" form (TC-1 (Revised 8-90)), as instructed on the form [mandatory].

(d) **Waiver of Training: In-state Graduates.** Agencies seeking certification for an individual previously certified in Michigan and who has successfully completed the waiver of training requirements shall attach the laboratory report for the individual to the "Application for Recertification: Based on a Waiver of Training" form (TC-2 (Revised 10-90)), as instructed of the form [mandatory].

(e) **Waiver of Training: Out-of-State Graduates.** Agencies seeking certification for an individual who was previously certified in a state other than Michigan and who has successfully completed the waiver of training requirements shall attach the laboratory report for the individual to the "Application for Recertification: Based on a Waiver of Training" form (TC-2 (Revised 10-90)), as instructed of the form [mandatory].

(f) **Requirements for Laboratory Reports.** An original laboratory report for each individual tested shall be attached to the prescribed application form [mandatory]. Each laboratory report shall include: the name and address of the laboratory where the urinalysis was performed; the name and address of the collection site; the name of the individual whose urine was tested; the individual's date of birth, social security number or Michigan driver's license number; the date the specimen was collected; the date the laboratory analysis was performed; the drugs tested for, the detection levels used, both initial and confirmatory, when appropriate; and the presence of each drug [mandatory].

(i) Teletypewritten or teletext copies of laboratory reports may be transmitted to the Council as interim evidence of a drug test having occurred; however, an original laboratory report attached shall be received by the Council within five (5) working days of receipt of the teletypewritten or teletext copy in order for the agency to have fulfilled the reporting requirements of this program [mandatory].

(g) **Reporting Positive Test Results.** Agencies shall report "positive" drug test results for any individual reported "positive" by a laboratory using the Law Enforcement Officer Candidate Drug Test Report (TC-4 (Revised 9-90)) [mandatory]. The laboratory report for the individual shall be attached to the Drug Test Report [mandatory].

(h) **Reporting a Refusal or Failure to Report.** Agencies shall report any individual who is told to report for a drug test but refuses or fails to do so using a Law Enforcement Officer Candidate Drug Test Report (TC-4 (Revised 9-90)) [mandatory]. Agencies shall report the circumstances of a "refusal" or "failed to report" on the Drug Test Report [mandatory].

Part C - Scientific and Technical Requirements

3.1 The Drugs

(a) **Illegal drugs** are those drugs which are included in Schedule I or II of the Controlled Substances Act (CSA) but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them the law enforcement officer candidate drug testing program shall test for drugs as follows:

(1) An agency applicant shall at a minimum be tested for amphetamines, barbiturates, cocaine, marijuana, opiates, and phencyclidine [mandatory].

(2) Urine specimens collected under this program shall be used only to test for the presence of controlled substances and may not be used to conduct any other analysis or test unless otherwise authorized by law [mandatory].

(b) These guidelines are not intended to limit any agency from including additional categories of controlled substances in a drug testing program of its own employees or applicants.

3.2 Specimen Collection Site Registration Requirements

Collection sites are not required to be registered by the Council at this time.

3.3 Specimen Collection Procedures

(a) **Designation of Collection Site.** Each agency should have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a licensed drug testing laboratory.

(b) **Security.** Procedures should provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it should be secure at all times. If a facility cannot be dedicated solely to drug testing, that portion of the facility used for testing should be secured during drug testing.

(c) **Chain of Custody.** Chain of custody forms should be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures [mandatory]. Every effort should be made to minimize the number of persons handling specimens.

(d) **Access to Authorized Personnel Only.** No unauthorized personnel should be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) **Privacy.** Procedures for collecting urine specimens should allow the individual privacy unless there is reason to believe that the individual may alter or substitute the specimen to be provided.

(f) **Integrity and Identity of Specimen.** Collection sites shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the permanent laboratory record can identify the

individual from whom the specimen was collected [mandatory]. The following minimum precautions should be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents should be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There should be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification [mandatory]. If the individual does not have proper photo identification, the collection site person should contact the coordinator of the drug testing program for the agency which referred the individual, or any other agency official who can positively identify the individual. If the individual's identity cannot be established, the collection site person should not proceed with the collection.

(3) The individual shall be asked to complete that portion of the chain of custody form which asks for all prescription and over the counter medications which the individual has used within the last three (3) days [mandatory]. When a prescription medication is described, the individual shall also identify the name and address of the prescribing physician [mandatory].

(4) If the individual fails to arrive at the assigned time, the collection site person should contact the appropriate authority at the referring agency to obtain guidance on the action to be taken.

(5) The collection site person should ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person should ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(6) The individual should be instructed to wash and dry his or her hands prior to urination.

(7) After washing his or her hands, the individual should remain in the presence of the collection site person and should not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(8) The individual should produce his or her specimen in a stall or otherwise partitioned area that allows for individual privacy.

(9) The collection site person should note any unusual behavior or appearance on the chain of custody form.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 50 milliliters of urine [mandatory]. If there is less than 50 milliliters of urine in the container, additional urine should be collected in a separate container to reach a total of 50 milliliters. (The temperature of the partial specimen in each separate container should be measured in accordance with paragraph (f)(12) of this section, and the

partial specimens should be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 50 milliliters of urine, the collection site person should contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual should be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person should measure the temperature of the specimen. The temperature measuring device used should accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case should exceed four (4) minutes.

(13) If the temperature of a specimen is outside the range of 32.5 degrees to 37.7 degrees C/90.5 degrees to 99.8 degrees F, that is a reason to believe that an individual may have altered or substituted the specimen, and another specimen should be collected under direct observation of a same gender collection site person and both specimens should be forwarded to the laboratory for testing.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants [mandatory]. Any unusual finding should be noted on the chain of custody form.

(15) All specimens suspected of being adulterated should be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen should be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person should keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is being transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle [mandatory].

(18) The collection site person and the individual should be present at the same time during the procedures outlined in the paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person should place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.

(20) The individual should initial the identification on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person should enter on a permanent laboratory record all information identifying the specimen.

(22) The individual should be asked to read and sign a statement certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) A higher level supervisor should review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(24) The collection site person should complete the chain of custody form.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it should be appropriately safeguarded during temporary storage and be kept cool.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form should be taken with him or her or should be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen should be packaged for mailing before he or she leaves the site.

(g) **Collection Control.** To the maximum extent possible, collection site personnel should keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected and the temperature checked, it should be properly sealed and labeled. A chain of custody form should be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose should be documented on the chain of custody form each time a specimen is handled or transferred and every individual in the chain should be identified. Every effort should be made to minimize the number of persons handling specimens.

(h) **Transportation to Laboratory.** Collection site personnel should arrange to ship the collected specimens to the drug testing laboratory. The specimens should be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers should be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site supervisor should sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel should ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

3.4 Laboratory Participation Requirements

(a) **License or Certification.** In order to participate in the law enforcement officer candidate drug testing program, a laboratory must be licensed by the Michigan Department of Public Health to perform special chemistry-toxicology, or if the laboratory is located outside of Michigan,

it shall be licensed for chemistry-toxicology by the federal government under the Clinical Laboratory Improvement Act (CLIA) or certified by the National Institute on Drug Abuse (NIDA) [mandatory].

(b) **Registration by the Council.** In order to participate in this program, a laboratory must also be registered by the Council and maintain compliance with the Council's registration requirements [mandatory]. Standards for registration by the Council are available to laboratories under separate cover.

3.5 Laboratory Personnel

(a) **Day-to-Day Management.** (1) The laboratory should have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual should have documented scientific qualifications in analytical forensic toxicology.

(3) This individual should be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual should be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she should assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual should be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by these personnel. The procedure manual should be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect should be maintained.

(6) This individual should be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual should ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the test results provided are accurate and reliable.

(b) **Test Validation.** The laboratory's urine drug testing facility should have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) **Day-to-Day Operations and Supervision of Analysts.** The laboratory's urine drug testing facility should have an individual to be

responsible for day-to-day operations and to supervise the technical analysts. This individual(s) should have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she should have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) **Other Personnel.** Other technicians or nontechnical staff should have the necessary training and skills for the tasks assigned.

(e) **Training.** The laboratory's urine drug testing program should make available continuing education programs to meet the needs of the laboratory personnel.

(f) **Files.** Laboratory personnel files should include: a resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

3.6 Laboratory Analysis Procedures

(a) **Security and Chain of Custody.** (1) Drug testing laboratories should be secure at all times. They should have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas should be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of state and federal agencies for which the laboratory is engaged in urine testing, all authorized visitors and maintenance and service personnel should be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry should be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens [mandatory]. The date and purpose should be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain should be identified. Accordingly, authorized technicians should be responsible for each urine specimen or aliquot in their possession and should sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) **Receiving.** (1) When a shipment of specimens is received, laboratory personnel should inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information of the accompanying chain of custody forms. Any

direct evidence of tampering or discrepancies in the information on specimen bottles and the chain of custody forms attached to the shipment should be immediately reported to the agency and should be noted on the laboratory's chain of custody form which should accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms should be used by laboratory personnel for conducting initial and confirmatory tests.

(c) **Short-Term Refrigerated Storage.** Specimens that do not receive an initial test within 12 hours of arrival at the laboratory should be placed in secure refrigeration units. Temperatures should not exceed 6 degrees C.

(d) **Specimen Processing.** Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch should contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Quality control test samples should appear as ordinary samples to laboratory analysts.

(e) **Initial Test.** (1) The initial test should use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The initial cutoff levels listed in this paragraph shall be used when screening specimens to determine whether they are negative for these six drugs or classes of drugs [mandatory]. Where two (2) initial test levels are indicated, an agency may select either test level at its option.

| Drug/Metabolite | Initial test level (ng/ml) |
|----------------------------|----------------------------|
| Amphetamines..... | 300 or 1000 |
| Barbiturates..... | 300 |
| Cocaine metabolites..... | 300 |
| Marijuana metabolites..... | 50 or 100 |
| Opiates..... | 300 |
| Phencyclidine..... | 25 |

(2) These drugs and test levels are subject to change by the Council as advances in technology or other considerations warrant identification of these or other substances at other concentrations.

(f) **Confirmatory Test.** (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug [mandatory]. All confirmations shall be by quantitative analysis [mandatory].

| Drug/Metabolite | Confirmatory test level (ng/ml) |
|--------------------------------------|---------------------------------|
| Amphetamines | |
| Amphetamine..... | 500 |
| Methamphetamine..... | 500 |
| Barbiturates | |
| Any Barbiturate..... | 200 |
| Cocaine | |
| Cocaine metabolite (benzoylecgonine) | 150 |

| | |
|------------------------------------|-----|
| Marijuana | |
| Delta-9-THC-9-Carboxylic acid..... | 15 |
| Colates | |
| Cocaine..... | 300 |
| Morphine..... | 300 |
| Phencyclidine | |
| Phencyclidine..... | 25 |

(2) These drugs and test levels are subject to change by the Council as advances in technology or other considerations warrant identification of these or other substances at other concentrations.

(g) **Multiple Laboratories.** (1) While it is preferred that both the initial test and the confirmatory test be done at the same laboratory, it is permissible to perform the confirmatory test at a second laboratory.

(2) Specimens shall be transferred between laboratories only for purposes of confirmation testing [mandatory]. When such transfers occur chain of custody documentation procedures shall be used [mandatory].

(h) **Reporting Results.** (1) The laboratory should report test results to the agency within five (5) working days after receipt of the specimen by the laboratory. An additional five (5) working days are available for reporting results if the specimen is referred to a second laboratory for confirmation testing. Before any test result is reported, it should be reviewed and the test certified as an accurate report by the responsible individual.

(2) The laboratory report shall identify: the name and address of the laboratory where the urinalysis was performed; the name and address of the collection site; the name of the individual whose urine was tested; the individual's date of birth, social security number or Michigan driver's license number; the date the specimen was collected; the date the laboratory analysis was performed; the drugs/metabolites tested for; the initial test cutoff for each; and whether the initial test was negative for each drug/metabolite [mandatory].

(3) When an initial test for a drug/metabolite is positive, the report for the confirmatory test shall identify: the drug/metabolites tested for; the detection level used; that GC/MS was used to perform the confirmatory test; and the results of the confirmatory test [mandatory].

(4) If a urinalysis of a specimen results in an initial positive and the laboratory is unable to perform a GC/MS confirmation test on site, the referring laboratory's report shall contain: the name and location of the reference laboratory and a statement that the specimen was referred for GC/MS confirmation [mandatory].

(5) When a specimen is referred to a second laboratory for confirmation the reference laboratory shall report its results to the referring laboratory. If the reference laboratory confirmatory test verifies the presence of a drug/metabolite, the reference laboratory's report shall include: the name and address of the laboratory where the confirmation urinalysis was performed; the name and location of the laboratory which referred the specimen for confirmation testing; the name of the individual whose urine was tested; the date of birth, social security number

or Michigan driver's license number of the individual; the date the confirmatory test was performed; the drug/metabolites tested for; the detection level used; that GC/MS was used to perform the confirmatory test; and the results of the confirmatory test [mandatory].

(6) The Council may request from the laboratory quantification of confirmatory test results in the event of a challenge.

(7) The laboratory shall report result to the agency in an original, hard copy format [mandatory]. A telefacsimile of the laboratory report may be transmitted to the agency when speed of reporting is critical; however, an original of the laboratory report shall also be sent to the agency within the time specified in 3.6.(h)(1) [mandatory].

(8) Unless otherwise instructed by the Council in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of two (2) years [mandatory].

(i) **Long-Term Storage.** Long-term frozen storage (-20 degrees C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or legal proceedings. Unless otherwise authorized in writing by the Council, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of one (1) year all specimens confirmed positive [mandatory]. Such specimens shall be retained in the original container [mandatory]. Within this 1-year period the Council or an agency may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of one (1) year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period [mandatory].

(j) **Retention of Specimens.** The laboratory which performs the confirmation test on a positive specimen shall be responsible for retaining the specimen [mandatory]. In the event of a legal challenge, a quantity no greater than 10 ml per detected drug/metabolite or urine shall be released for further analysis [mandatory]. The sample shall only be released to a Council approved laboratory using chain of custody procedures upon written authorization of the Council [mandatory].

(k) **Retesting Specimens.** Because some analytes deteriorate or are lost during freezing and/or storage, quantification for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug metabolite.

(l) **Laboratory Facilities.** (1) Laboratory facilities should comply with applicable provisions of any state licensure requirements.

(m) **Documentation.** The drug testing laboratories shall maintain and make available for at least two (2) years documentation of all aspects of the testing process [mandatory]. The laboratory shall maintain documents for any specimen under legal challenge for an indefinite period [mandatory].

(n) **Personnel Available to Testify at Proceedings.** A laboratory shall have qualified personnel available to testify in an administrative

or legal proceeding when that proceeding is based on positive urinalysis results reported by the laboratory (mandatory).

3.7 Quality Assurance and Quality Control

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures (mandatory). Quality assurance programs should be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.

