

## ARTICLE 29. DRUGS AND ALCOHOL

### Section 1. General.

- A. It is agreed that efficiency and safety in the work place is necessary and required in order to carry out the mission of the Fire Department. Both parties support the proper and responsible implementation of this Article in the interests of public safety and the safety of Fire Fighters.
- B. Therefore, it is understood that the use of alcohol, drugs, or other controlled substances by members of the bargaining unit without proper prescription or other authorization while on duty or in the work place is detrimental to the operation of the Department and is clearly prohibited by this Agreement and the rules and regulations of the Fire Department. The use of illegal drugs is strictly prohibited.
- C. The City agrees to form an employee assistance drug committee with the Association. The Fire Chief and the Association President shall designate two (2) individuals to serve on the committee; the committee shall assemble and prepare materials to inform Fire Fighters of the issues and dangers of substance abuse to the Fire Fighters, the colleagues in the department, the public, and their families. The materials shall include an inventory and presentation of available community and City resources for dealing with emotional issues, depression, family conflict, domestic violence, alcohol abuse, substance abuse, and other mental and medical issues which are a part of the substance abuse paradigm. The committee will make materials and presentations available to all Fire Fighters.
- D. The City and the Union agree that Fire Fighters may be called upon in hazardous situations without warning, and that it is imperative to the interest of the Fire Fighters and the public to ensure that no Fire Fighter is substance impaired. In order to further their joint interest in protecting Fire Fighters and the public, the City and the Union agree to mandatory random drug testing as described in this section.

### Section 2. Post Accident Testing.

- A. The parties agree to require post accident mandatory alcohol and drug testing under the testing guidelines set forth in this Article of any Fire Fighter involved in a vehicular accident in a City vehicle where the following conditions exist:
  1. The Fire Fighter was operating the City vehicle at the time of the collision; and
  2. The accident results in a death, serious injury to any person requiring medical treatment, or significant property damage.
- B. The City agrees to conduct post accident drug and alcohol testing of any Fire Fighter

involved in a vehicular accident in a City vehicle that voluntarily requests testing, regardless of whether the above conditions are met.

C. A positive drug or alcohol test under this Section shall not constitute conclusive proof of impairment or use, but shall create a rebuttable presumption subject to challenge through the grievance procedure. The presumption may be rebutted by competent evidence, in which case the determination of impairment or use shall be based upon the weight of the evidence, as determined by the arbitrator. Absent contrary evidence, the positive drug or alcohol test shall be sufficient to prove use or impairment.

### **Section 3. Reasonable Suspicion Testing.**

A. The Union acknowledges and recognizes the right of the City to investigate possible alcohol or drug abuse by bargaining unit members which impairs job performance and to require employees to submit to various specified, approved and recognized medical procedures, provided reasonable suspicion exists, in accordance with proper procedure and applicable law, as well as the terms of this Agreement. In this regard, it is understood that the City shall adequately train its supervisory personnel who have authority to investigate the reasonable suspicion standard in detecting symptoms and effects of alcohol and/or controlled substance abuse. Reasonable suspicion is defined as the actions, appearance or conduct of an employee which are indicative of or consistent with the use and/or presence in the employee's body of a controlled substance or alcohol. Reasonable suspicion is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. This Article in no way establishes or permits testing in violation of a right provided by this Agreement.

B. Whenever there are discrepancies in records regarding controlled substances that require the Fire Department to file a report with the Drug Enforcement Administration, the responsible crew will be required to submit to drug testing.

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

### **Section 4. Random Testing.**

- A. One Hundred percent (100%) of Fire Fighters of all ranks, including the Chief, shall be susceptible to mandatory testing for illegal drugs and controlled substances, during each calendar year on a fair and impartial statistical basis at the City's expense. The fair and impartial statistical basis (in which each employee has an equal chance of being selected during a calendar year) shall be by a non-discriminatory computerized program operated and certified as non-discriminatory by an independent firm hired by the City, and the employee shall be tested upon being selected by the computer. The computer program shall be designed to ensure that every employee is eligible to be randomly selected; however, no employee may be tested more than four times in any twelve (12) month period. The City will provide a quarterly report indicating the number of bargaining unit employees tested along with whether any tests were second, third or fourth tests for the 12-month period. The reporting will begin in January of 2021 for the preceding quarter.
- B. Upon notice of selection for random testing, any employee shall provide a urine sample in accordance with the policy or protocol established by the testing laboratory. Failure to provide a sample may be considered insubordination, and may be the basis for suspension or indefinite suspension. The Medical Review Officer (MRO) shall be contacted for instructions in the event of a claimed inability to provide a sample.
- C. The City and the Union have a mutual interest in ensuring that drug impaired Fire Fighters do not perform Fire Department duties. The City and the Union agree that the purpose of the mandatory drug testing policy is not to punish an employee who has not violated the Fire Department's rules, regulations, policies or procedures. The City and the Union are committed to the principle that the mandatory drug testing policy for Fire Fighters is designed and shall be administered to result in disciplinary action only against those Fire Fighters who have violated the Fire Department's rules, regulations, policies and procedures.
- D. The City will utilize a U.S. Department of Health and Human Services (DHHS) approved laboratory in performing urinalysis for drug detection. The laboratory will provide chain-of-custody procedures and documentation necessary to meet federal standards. Specimen collection and chain of custody procedures will ensure that specimen security, proper identification, and integrity are not compromised. A MRO will provide oversight to trained personnel on the collection and testing of urine samples. The Medical Review Officer shall be a qualified physician designated by the City.
- E. The employee will provide a urine specimen in a location that affords privacy. The collector will seal and label the specimen, initiate a chain of custody document, and prepare the specimen and accompanying paperwork for shipment to the drug testing laboratory. Each urine specimen will be subdivided into two bottles labeled as "primary" and "split" specimens. Both bottles will be sent to a laboratory where only the primary specimen confirms the presence of illegal, controlled substances, the employee will have seventy two (72) hours from the time they are notified by the MRO concerning positive test result to request the split specimen be sent to another DHHS-certified laboratory for a second opinion analysis. If either analysis is below the positive threshold levels, this shall constitute a negative result and the employee shall not be subject to further random testing

for at least twelve (12) months. Both the primary and the split specimen shall be maintained for one year to be available in the event of legal or contractual disputes or further questions. In addition, employees may at their own expense request to have another urine specimen administered at a physician's office of the employee's choice and accompanied by the testing personnel provided such testing is administered within four (4) hours of the initial notification for testing. Results of any such test taken at the employee's expense shall be provided to the City only if the employee chooses to release the results to the City.

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

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

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

A. The drugs that will always be screened and the initial and confirmatory test cutoff levels to be used include all that are listed in the Mandatory Guidelines for Federal Workplace Drug Testing Programs established by the Department of Health and Human Services (DHHS) and published in the Federal Register. In January of each calendar year, additional drugs will be included or removed from the drug testing panel as drugs are authorized or deauthorized for use by fire department employees in the course and scope of their duties and for which testing protocols exist. Cut-off levels for any additional drugs will be established by the DHHS-certified testing laboratory and made available by the lab. Initially, the additional drugs used in the fire department which will be included for testing are Diazepam and Midazolam (both Benzodiazepines), Ketamine, Fentanyl, and Buprenorphine. Benzodiazepines have an initial cut-off of 300 ng/ml and a confirmatory cut-off of 200 ng/ml. Ketamine has an initial and confirmatory cut-off level of 100 ng/ml. Fentanyl has an initial cut-off of 500 pg/ml and a confirmatory cut-off of 300 pg/ml. Buprenorphine has an initial cut-off of 5 ng/ml and a confirmatory cut-off of 2 ng/ml.

B.A.

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

1. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending."
2. A positive test result on the initial drug-screening test will automatically require a confirmation drug test be performed.

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

E.D. Alcohol testing procedure shall be as follows:

1. Alcohol testing shall be conducted by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing Device (EBT). The employee will provide a breath sample. If the employee's alcohol concentration is greater than or equal to .04, a second confirmation test will be performed in accordance with established EBT protocol.
2. An employee's failure or refusal to provide a breath sample will result in a determination that the employee's alcohol concentration is greater than or equal to .04.
3. Confirmation that an employee's alcohol concentration is greater than or equal to .04 shall result in the implementation of those steps set forth under Section 8(B)(1) of this Article (not applicable to post accident testing under Section 2 above).
4. A positive test result under this Section shall not constitute conclusive proof of impairment or use, but shall create a rebuttable presumption subject to challenge through the grievance procedure.
5. Concentrations less than the thresholds listed herein, or initial positives not confirmed by the confirmatory testing shall be disregarded by the City, and may not be referred to or used at any time for any employment or disciplinary purpose whatsoever by the City.

## **Section 6. General.**

- A. The thresholds listed above shall apply to all testing under this Article. Employees will complete a pre-testing consent form each time a test is conducted as part of a testing procedure under this Article. Failure to do so may be insubordination, and just cause for discipline. This is in addition to any signed acknowledgement forms which may have been obtained at the time of employment or any other occasion.
- B. In all drug testing under this Article, only conclusive results are to be reported to the City. A positive urinalysis test will be confirmed by a GC/MS test and reviewed by a Medical

Review Officer before considered conclusive. Both tests must be positive or the results are considered inconclusive, thereby causing a negative test result to be reported to the City.

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

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

D.E. At this time, the City has not identified an MRO who will determine whether a positive test for THCA is consistent with a validly issued THCA prescription or with the performance of safety sensitive job duties; as a result, a positive test result for THCA will be reported as a positive to the City. Only prescriptions issued under Texas' Compassionate Use statute will be considered. In the instance of a positive test, the City will select a medical professional to determine whether the use of THCA is consistent with the employee's job duties and whether the employee is fit for duty in light of the employee's THCA use.

E.F. Once the employee has been notified of a drug test under any provision of this Article, an employee does not have any right to self report use or impairment under this Article, and thereby escape the consequences of violating the Department's rules and regulations, except as provided in this Article; however, it shall be within the Chief's discretion to permit self reporting and to withhold or suspend discipline based upon all relevant facts and circumstances.

## **Section 7. Confidentiality.**

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

## **Section 8. Rehabilitation Treatment and Discipline for Substance Abuse.**

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

1. To preserve the Chief's right to discipline or terminate an employee for on-duty use or impairment in violation of Fire Department Rules and Regulations;
2. To create disincentives for the use and abuse of substances; and
3. To provide a means, together with incentives, to seek and obtain treatment and rehabilitation for any employee who is involved in substance abuse.

B. A positive drug and/or alcohol result under this Article resulting from random testing or reasonable suspicion testing shall have the following consequences:

1. 1st positive result: The employee shall be suspended from the Fire Department for

a period of time not to exceed thirty (30) days. The employee shall further be required to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem. Specifically, the employee must successfully complete an appropriate rehabilitation program as determined by a drug and/or alcohol abuse evaluation expert. The employee may utilize sick leave, vacation or unpaid administrative leave as necessary to complete the rehabilitation program. Verification of the employee's successful completion of the program must be provided to the City by the rehabilitation facility no later than six (6) months from the date of the initial positive result and constitutes a condition precedent to the employee's return to work. Prior to returning to duty the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.04 and/or controlled substance test with a verified negative result. In addition, the City may continue to monitor any employee under this provision by conducting unannounced follow-up testing not to exceed twenty four (24) months following the employee's return to work. An employee's failure to meet the requirements to return to duty herein shall automatically place the employee under Section 8(B)(3) below.

2. The preceding paragraph does not apply to an employee with a positive test result as a result of post accident testing, and the employee shall be subject to discipline up to and including termination depending on the level of impairment and overall circumstances of the incident or episode involved.
3. 2nd positive result: The employee is subject to disciplinary action, up to and including termination.
4. Following the employee's return to work as provided for under Section 8(B)(1), the employee may self-report any relapse into drug or alcohol use to the employee's immediate supervisor who shall immediately take steps necessary to remove the employee from regular duty. Any reported relapse will require the employee to complete another rehabilitation program (under the terms and conditions set forth in Section 8(B)(1) prior to returning to duty. No disciplinary action shall be taken against any employee that self-reports any relapse into drug or alcohol use so long as the self-reporting occurs prior to the employee completing any follow-up testing as provided for under section 8(B)(1).
5. An employee may not unreasonably circumvent the follow-up testing requirements set forth in Section 8(B)(1). To that end, an employee that has been informed of a required follow-up test may not self-report any relapse into drug or alcohol use and thus avoid the follow-up test and the potential disciplinary action associated with a second positive result on more than one (1) occasion.

C. Any employee who voluntarily seeks rehabilitation and treatment shall be entitled to the same leave and benefits that are otherwise applicable under leave policies and the existing coverage definitions in the Master Contract for Health Benefits, provided, however, that the Chief's right to discipline or terminate for on-duty use or impairment shall not be

affected by this provision. An employee entitled to rehabilitation and treatment is not exempted from disciplinary action for violation of any other rules and regulations of the department (e.g. off duty DWI, regulations concerning leave, etc.).

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

#### **Section 9. Union Representation of Members.**

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

Date: \_\_\_\_\_

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For the City

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For the Association

