

**Memorandum of Agreement between The City of Beverly (the "City") and  
Local 1669, IAFF, (the "Union")**

This Memorandum of Agreement ("Agreement") between the City of Beverly ("City") and Local 1669, IAFF ("Union") is effective as of the date upon which both parties have executed this Agreement.

WHEREAS, the City and the Union have concluded negotiations over terms for Collective Bargaining Agreements to succeed the Collective Bargaining Agreement between the parties covering the period July 1, 2011 through June 30, 2014 ("7/1/2011-6/30/2014 CBA");

WHEREAS, the City and the Union have agreed to extend the 7/1/2011 - 6/30/2014 CBA through 6/30/2015 with the changes set forth in paragraphs 5 and 7 below (the "7/1/2014-6/30/2015 CBA") followed by a three year Collective Bargaining Agreement effective July 1, 2015- June 30, 2018 (the "7/1/2015-6/30/2018 CBA") with the following changes only.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties mutually agree that the provisions as outlined below shall be incorporated into a new Collective Bargaining Agreement and shall replace any language in the previous Agreement where language for such Article or Section is included herein.

All changes shall become effective as of the date specified; if no effective date is specified, changes shall become effective as of the date this agreement is signed, ratified and funded. Neither the increases in wages or in any other benefit apply to any position nor person not in the bargaining unit as of the date the 7/1/2015-6/30/2018 CBA is signed and ratified.

Specific language changes to the previous Agreement are as follows:

1. Term of New Contract (Article 40, p. 30)

There shall be two new contracts. The first to be in effect for a one (1) year period from July 1, 2014 - June 30, 2015. The second contract shall be effective for the three (3) year period from July 1, 2015 - June 30, 2018. Applicable date changes shall be made to the title page, Article 40, and in other appropriate provisions of the Contract to reflect the term of the new contracts.

2. Provisions of the New Contract

Except as modified by this Memorandum of Agreement, and except for such technical matters as date changes, all other provisions of the July 1, 2011 through June 30, 2014 Contract shall be carried over intact into the successor Contract.

3. Article V, Sec. 2. Wages

7/1/2015 2%  
7/1/2016 2%  
7/1/2017 2%

4. Article V, Sec. 8. Educational Compensation

Effective 7/1/16, the annual educational compensation payment will be increased by \$600. The first \$600 of annual educational compensation will be considered base pay for all purposes. Effective 6/30/18, the annual educational compensation payment will be increased by an additional \$600.

5. Article V, Sec. 10. Emergency Medical Technicians

A. Union members who are certified as EMT's shall receive a payment in the amount of \$900 into their base pay as of 7/1/14 in recognition of their duties as first responders. In consideration of this payment, union members are expected to continue to act as EMT's and will abide by all procedures and protocols enacted by the Chief related to the members' role as EMT's. Members will further use any technology, procedures, and protocols approved and mandated by the Chief related to their role as first responders. The parties agree that this payment is in exchange for any future changes to technology and/or protocols, which may be utilized by employees in their role as first responders. The union hereby acknowledges that technology covered by this clause will include, but not be limited to, Narcan, Apsirin, and epi-pens.

6. Article V, Sec. 15. Educational Incentive Program.

Effective 7/1/17, eligible employees will receive an additional .25% increase to base pay for the following certifications: Firefighter I, Firefighter II, and HazMat (Responder Awareness and Operational Technician).

7. Article V, Sec. 16. Progression

Add new section: An employee shall be eligible to advance from one pay step to the next after one year of continuous service in each step. Increments may be withheld for unsatisfactory performance. The Chief shall have the right to establish and amend from time to time performance standards and an evaluation process for employees.

The performance standards and evaluation process agreed to are attached hereto as Exhibit A. Union members shall receive a payment into their base pay as of July 1, 2014 in consideration of this agreement. The amount of the payment shall be as follows:

Firefighter	\$287.00
Lieutenant	\$330.00
Captain	\$380.00
Deputy Chief	\$437.00

8. Article X, Sick Leave, Sec. 1C Change 250 to 200.

Employees on the payroll as of the date of execution of this MOA shall be grandfathered and thus exempt from this change. (A list of grandfathered employees will be provided to the union within 30 days.)

9. Article X, Sick Leave, Sec. 3 Change 100 days (50% of 200 maximum) to "75 days (50% of 150 maximum)."

Employees on payroll as of the date of execution of this MOA shall be grandfathered and thus exempt from this change. (A list of grandfathered employees will be provided to the union within 30 days.)

10. Article XV. Seniority

Add the following language.

For purposes of breaking ties in seniority, the Chief will look to time in grade and then, if there is still a tie, to rank on Civil Service list, and if there is still a tie, to rank on Civil Service promotional list.

11. Article X. Sick Leave

Insert new Section 5 entitled "OPEB" that reads as follows:

Effective October 1, 2016, and annually thereafter on October 1, the City will reduce sick leave for each full time employee by one day of sick leave (10 hours). This will apply for all employees hired on or after July 1, 2015. It will also apply to current employees with five or more years of service as of October 1 of each year. The City will contribute the value of such day to the OPEB fund. Sick days shall be taken from their yearly accrual allotment. This day shall not affect the employee's eligibility for sick leave incentive."

12. Grievance Language:

Add the following language: "The failure of the grieving party to present a grievance within and the failure of the grieving party to advance a grievance within any of the time limits set forth in the grievance procedures shall each be deemed a final abandonment and waiver of the grievance. Failure of the City to reply to a grievance within the time limits specified shall constitute a denial of the grievance entitling the grievance to advance to the next step, and starting the time period within which the grievance must be advance or waived. The time limits specified may be extended only by the mutual agreement of the parties in writing in each instance to a date certain. Failure to specify such date shall make the agreement unenforceable. This shall not create a duty on the City's part to file for arbitration."

13. Direct Deposit Insert new Article: All payments of payroll related items to any member will be made by the city treasurer by direct deposit to a bank account of the member's choosing. All members shall provide the information necessary to make such direct

deposits to the accounting department within sixty (60) days of the execution of this agreement.

14. Drug Testing as Presented in the City's Revised 3(a) statement and sent to the parties thereafter. (Insert new Appendix into CBA as per exhibit B).
15. License Loss Policy attached as presented in the City's 3(a) statement. (Insert new Appendix into CBA as per exhibit C)
16. Clean Slate language:

In return for the bargained for consideration contained in this MOA, the Union hereby agrees to withdraw and dismiss any and all grievances, arbitrations, charges of prohibited practice, and any other proceedings or litigation in whatever forum, with prejudice. Said withdrawals shall be made within 30 days of ratification of this agreement.

17. Remove Article X, Section 2. Replace with the following language:

Article X, Section 2

A sick leave incentive program will award employees not using sick days in any three month (quarterly) period with 1 "Healthy Day." Employees not using a sick day during 4 consecutive quarters will be awarded an additional Healthy Day. Healthy Days awarded under the program shall be used only when they do not create overtime. At the employee's discretion, accumulated Healthy Days may be credited to the employee's sick leave bank for the purposes of sick leave buy back.

18. Off-duty employees shall be paid at time and a half for attendance at non-pro board classes not to exceed one (1) day annually (day = 10 hours). Trainings must be approved in advance by the Chief.
19. This Agreement is subject to the following:
  - A. Ratification by both the City and the Union; and,
  - B. An appropriation by the City Council each year of sufficient monies to fund the cost increases for such year of this Agreement.

This Agreement entered into this 24<sup>th</sup> day of May, 2017.

**City of Beverly**

By: 

Paul Cotter, Chief

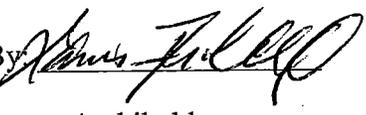
**Local 1669, IAFF**

By: 

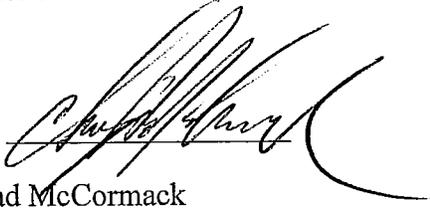
Eric Fowler, President

By: 

Kevin Smith, Vice President

By: 

James Archibald

By: 

Chad McCormack

# Exhibit A

## Employee Evaluation Overview Guide

### City of Beverly Fire Department Employee Evaluations Overview Guide General

#### Considerations and Guidelines

The evaluation of an employee's daily work activities is an important means for management and the employee to ensure that continued high standards of performance are achieved. The intent of employee evaluation is to provide feedback to the employee about his/her level of performance in order to:

1. allow the employee to work towards improving any recognized deficiencies;
2. allow the employee to realize that the Department recognizes outstanding performance;
3. promote a feeling of confidence by the employee regarding the fairness and value of the process;
4. provide the Department with an accurate measure of employee performance for the purpose of ensuring qualitative and quantitative service to the City of Beverly.

#### Procedures for Employee Evaluation

Once each year, each employee of the Beverly Fire Department will be evaluated. The employee's immediate supervisor (referred to as the Evaluator) will conduct the evaluation. This evaluation will be based on the position and assignment of the employee for the previous six- (6) month period. The Employee Evaluation Review Form (EERF) (see attached copy) will be filled out completely and signed by the Evaluator. The employee being evaluated will be given a copy of the form and called for a feedback session after the Evaluator completes the EERF. The employee will be given notice prior to the call back session. Upon satisfactory completion the EERF will be sent to the Chief for signature and placement of the form in the individual's personnel file. The areas to be evaluated and discussed include the following:

1. **Job Knowledge:** This factor measures the knowledge of accepted work practices necessary for satisfactory or above average performance of duties. Depending on the job, this factor may concern such elements as knowledge of operating procedures, necessary paperwork involved in the job, techniques or equipment involved in the performance of the job or other related tasks performed. This may include information secondary to the actual performance of the job, such as knowledge of street locations enroute to an emergency scene, etc.

2. **Quality of Work:** This factor measures the degree of accuracy with which an employee performs his/her work. It concerns such elements as attention to job procedures and reliability in meeting commitments.
3. **Quantity of Work:** This factor measures job productivity. It concerns the ability of an employee to complete his/her scheduled work.
4. **Adaptability:** This factor measures an employee's versatility and ability to cope with unfamiliar work. It concerns such elements as learning speed, ability and willingness to deal with new assignments, and interest in broadening job knowledge.
5. **Independence:** This factor measures an employee's ability to perform his/her job with a minimum of supervision. It concerns such elements as judgment, initiative, and ability to make decisions based on experience and skills.
6. **Work Relationships:** This factor measures an employee's ability and willingness to get along with peers, supervisors, and persons from the public and private sector that they come in contact with.
7. **Safety:** This factor measures an employee's attention to, and a willingness to follow, any safety procedures or details relating to their own job and to any other duties required of them. Also, the ability to recognize and to act on resolving any observed unsafe conditions
8. **Appearance/Neatness:** This factor deals with an employee's general appearance while on the job. It concerns such elements as cleanliness; personal grooming, neatness of clothing and wearing the prescribed Department uniform.

Additionally, the following areas will be completed for all supervisory personnel:

9. **Leadership:** This factor measures the supervisor's ability to communicate objectives, inspire motivation and teamwork and to build and maintain morale.
10. **Planning and Organization:** This factor measures the supervisor's ability to anticipate conditions, plan ahead, and establish priorities and meet schedules.
11. **Development of Subordinates:** This factor measures the supervisor's ability to give instruction and guidance, delegate effectively and attention given to evaluation and training.

**Evaluator Responsibility:** All supervisors who conduct employee evaluations have a responsibility to both the employee and Department to adhere to the following criteria throughout the process:

- a thorough knowledge of the duties and responsibilities of the employee(s)
- objectivity
- fairness
- impartiality
- documentation and
- disregard for previous performance problems, which did not occur during the rating period.

The evaluation shall be based strictly on rating the employee regarding the eleven- (11) categories listed. Personal feelings shall not enter into the process at any time.

Supervisors shall attempt to provide training and/or counseling to their subordinates as a means for improvement.

When supervisors are being evaluated for job performance, their ability to make proper and fair evaluations of their own subordinates shall be considered, and this evaluation shall become part of the supervisor's record.

It shall be the responsibility of the Department to provide each supervisor (Evaluator) with training in how to conduct a proper performance evaluation on their subordinates.

For the purposes of this Employee Evaluation Program the following information about supervisory positions is to be used:

- Lieutenants supervise firefighters on their assigned apparatus and group
- Captains supervise Lieutenants assigned to their group and firefighters assigned to Engine 1 and rescue 1 on the Captain's group
- Captains are supervised by the Deputy Chief
- Fire Prevention Officer is supervised by the Deputy Chief

**Rating and Summary Evaluations:** The Evaluator shall apply the following ratings to each category of the evaluation and to the overall summary evaluation:

1. **Outstanding:** Applies to performance that significantly exceeds expected results (specific details must be included with the form).
2. **Fully Satisfactory:** Applies to performance that exceeds expected standards.
3. **Satisfactory:** Applies to performance that meets expected standards.
4. **Needs Improvement:** Applies to performance that is lacking in one or more areas, but which is generally acceptable. This rating implies that the employee has exhibited the potential to perform at the Satisfactory level.

**5. Unsatisfactory:** Applies to performance that is significantly below average. This rating indicates that performance is unacceptable and warrants some sort of administrative action (specific details must be included with the form).

Prior to the beginning of a "Rating Period" it shall be the responsibility of the Evaluator to ascertain that the employee fully understands their job responsibilities and the evaluation process, including the fact a "rating" could occur at any time during the "Rating Period" if it is deemed necessary.

If an employee's performance is obviously being deemed as Unsatisfactory throughout the "Rating Period", the employee shall be notified in writing of this fact at least ninety (90) days prior to the end of the reporting period by the supervisor. This notification will be placed in the employee's personnel file and will remain there until time of the formal evaluation.

Upon completion of the evaluation the Evaluator shall complete the Employee Evaluation Review Form and submit it to the Chief. The Evaluation Review Report will then be reviewed and signed by the Chief and a copy placed into the employee's personnel file.

**Feedback/Counseling Session:** Following review at the Chief's level, the Evaluator shall schedule a Feedback/Counseling session with the employee. The employee may choose to comment in writing on the form, or on an attachment, concerning the entire evaluation or any specific area. The signature of the employee does not necessarily indicate his/her agreement with the evaluation only that he/she has read the evaluation report. A copy of the evaluation report will be given to the employee if so requested.

**Review at the Chief's Level:** The employee shall be afforded the opportunity to dispute the evaluation or any portion of it, by requesting a review with the Chief. It is the Chief's responsibility to determine whether the report is fair and accurate. The employee shall be provided with a copy of both the report and review (if applicable).

**Utilization and Retention of Reports:** Employee Evaluation reports shall be used by the administration to assist to identify areas that may require retraining, to help the employee determine personal career goals and objectives, to assist in the selection of employees for advanced training, and to aid in selecting employees for special assignments. Additionally they will become one of the factors considered for Civil Service promotions within the Beverly Fire Department.

**Job Descriptions:** To ensure that all Evaluators use the same standards for evaluations, job descriptions for each rank and specialty are included as part of the Employee Evaluation Program. These job descriptions are found in the Employee Evaluation Review Form Guide section.

**Employee Evaluation Form:** the Employee Evaluation Review Form is attached as a separate document.

## Review Form Guide

### City of Beverly Fire Department Employee Evaluation Review Form Guide

#### Part 1 – Job Performance

##### Employee Rating Instructions

Each factor in Part 1 is divided into descriptive phases indicating varying levels of performance. Evaluate each employee on those factors, which are relevant to his/her job. For each relevant factor circle the choice that more closely describes your observation of the employee's performance over the total evaluation period. Ratings should reflect an objective evaluation of the employee's actual performance rather than their potential. Each rating **must** be accompanied by specific details attached on a separate sheet.

**A Job Knowledge:** How well does the employee know the job?

5. **Outstanding:** Exceptional and diversified knowledge, understanding of job and related tasks.
4. **Fully Satisfactory:** Well informed on job and related work, rarely needs assistance and instruction but asks when it will save time.
3. **Satisfactory:** Good understanding of job and related work.
2. **Needs Improvement:** Knows job fairly well, regularly requires supervision and instruction. Shows desire to improve.
1. **Unsatisfactory:** Limited job knowledge. Shows little desire or ability to improve.

**B Quality of Work:** Consider accuracy, thoroughness and dependability in performing job duties correctly and completely

5. **Outstanding:** Maintains high standards. Exceptionally accurate and thorough.
4. **Fully Satisfactory:** Consistently accurate and reliable. Seldom makes a mistake.
3. **Satisfactory:** Normally thorough with minimum of errors.
2. **Needs Improvement:** Work is occasionally inaccurate or incomplete.
1. **Unsatisfactory:** Errors/omissions are frequent.

**C Quantity of Work:** Consider amount of work regularly produced; output.

5. **Outstanding:** Produces an exceptionally large volume of work.
4. **Fully Satisfactory:** Accomplishes more than required on consistent basis.
3. **Satisfactory:** Output of work is sufficient for job requirements.
2. **Needs Improvement:** Completes fewer assignments than normally expected.
1. **Unsatisfactory:** Output of work is inadequate to meet requirements of job.

**D Adaptability:** Consider ability to anticipate conditions and apply common sense to solution of problems.

5. **Outstanding:** Exceptionally innovative in resolving simple to complex problems and coming up with new ideas.
4. **Fully Satisfactory:** Strong, creative approach to problem solving and developing of new solutions
3. **Satisfactory:** A solid reflection of what needs to be done and how to do it.
2. **Needs Improvement:** Unable to function without having tasks clearly defined by supervisor
1. **Unsatisfactory:** Needs constant guidance.

**E Independence:** Consider effort applied to assignments; seeking out assignments

5. **Outstanding:** Self-starter consistently seeks additional responsibility and finishes work ahead of schedule.
4. **Fully Satisfactory:** Accepts and carries out assigned responsibilities in consistent manner with minimum supervision.
3. **Satisfactory:** Usually goes ahead on own judgment. Occasionally seeks added responsibility.
2. **Needs Improvement:** Requires prompting to complete minimum requirements.
1. **Unsatisfactory:** Wastes time. Does not seek work. Requires constant supervision.

**F Work Relationships**

5. **Outstanding:** Shows superior strength in developing relationships with people, encourages others to express their point of view.
4. **Fully Satisfactory:** Very considerate, helpful and tactful in interacting with other people.
3. **Satisfactory:** Deals with others in an appropriate manner. Adapts readily to changes in work environment.
2. **Needs Improvement:** Tends to have difficulty working with others and following instructions of supervisor.
1. **Unsatisfactory:** Frequently antagonizes those with whom employee comes in contact.

**G Safety**

5. **Outstanding:** Consistently practices, actively promotes safety on the job. Offers suggestions to improve safety, remedies unsafe situations immediately.
4. **Fully Satisfactory:** Is familiar with safety rules and does not deviate from them.
3. **Satisfactory:** Familiar with safety rules. Deviations are infrequent.
2. **Needs Improvement:** Deviates from safety rules on the job. Exposes self to potential accidents or potential damage to tools or equipment.
1. **Unsatisfactory:** Deviation from department safety regulations on the job. Causes or exposes others to serious accidents.

**H Appearance**

5. **Outstanding:** Uniform neat, well pressed. All insignia, name tag, badge and service pin(s) worn, shoes/work boots polished, etc.

4. **Fully Satisfactory:** Uniform neat, well pressed. Insignia, name tag, badge and service pin(s) usually in place and worn.
3. **Satisfactory:** Uniform worn. Insignia, name tag, badge and service pin(s) occasionally missing.
2. **Needs Improvement:** Uniform dirty, wrinkled. Insignia, name tag, badge and service pin(s) not worn/missing.
1. **Unsatisfactory:** Department uniform not worn.

## Part 2 – Specific Skills

### Complete for Supervisory Personnel Only

#### I Leadership

5. **Outstanding:** Respected, inspiring leader. Generates unusually high degree of cooperation, productivity.
4. **Fully Satisfactory:** Motivates employees to perform effectively. Capable, consistent leader.
3. **Satisfactory:** Generally motivates employees to satisfactory performance.
2. **Needs Improvement:** Tends to be inconsistent in instructions. Has some difficulty exercising authority and control over subordinates.
1. **Unsatisfactory:** Unable to effectively direct work or command respect of subordinates. Has difficulty communicating objectives.

#### J Planning and Organization

5. **Outstanding:** Consistently displays unusual flexibility in planning and coordinating work. Can be relied upon to be ahead schedule.
4. **Fully Satisfactory:** Versatile in approach to establishing priorities, dealing with changes and coordinating activities. Consistently can be relied on to meet schedule.
3. **Satisfactory:** Able to plan work schedules with assistance. Usually meets scheduled deadlines with little prompting.
2. **Needs Improvement:** Needs much assistance in planning work duties and schedules. Does not often meet schedule. Must be reminded to complete assignments.
1. **Unsatisfactory:** Supervisor cannot plan work assignments and does not complete assignments even after being reminded.

#### K Development of Subordinates

5. **Outstanding:** Able to plan assignments to maximize employee performance and potential in an outstanding manner.
4. **Fully Satisfactory:** Effectively uses employee's capabilities and provides strong guidance to develop subordinates.
3. **Satisfactory:** Generally knows the capabilities of subordinates and makes assignments and delegates accordingly.
2. **Needs Improvement:** Has difficulty delegating responsibility effectively. Gives little attention to development of subordinates.
1. **Unsatisfactory:** Does not delegate responsibility. Pays no attention to development of subordinates

**Review Form**

**City of Beverly Fire  
Department  
Employee Evaluation Review Form**

The following Employee Evaluation Review Form is a tool to be used by you and your supervisor to evaluate your performance during the evaluation period listed below. This evaluation review is intended to provide you with an opportunity to speak directly with your supervisor about your performance and also to discuss future expectations. At the conclusion of the interview, your supervisor will complete the Employee Evaluation Review Form and ask you to sign the Form to indicate that you have seen and discussed the information on the form. The Review Form and all other material considered relevant will be turned in to the Chief of the Department.

If you disagree with the evaluation you should sign the Review Form and in the comment space provided add any comments you have about the review. Your signature does not mean that you agree with the review only that you have seen and discussed the evaluation with your supervisor. You may also submit a request in writing for a re-evaluation from your supervisor, if you still disagree with that evaluation, you may submit a request in writing to the Chief for re-evaluation. Any questions that you have regarding the evaluation process may be directed to your supervisor or the Chief of the Department.

Employee \_\_\_\_\_ Rank \_\_\_\_\_

Evaluator \_\_\_\_\_ Rank \_\_\_\_\_

Evaluation Period: From \_\_\_\_\_ To \_\_\_\_\_

Employee: A copy of this report has been reviewed and explained to me: my signature does not necessarily indicate agreement with the evaluation.

---

Employee signature \_\_\_\_\_ Date \_\_\_\_\_

Chief: This Employee Evaluation Review Form has been reviewed and signed by the employee and will be placed in their personnel file after it is reviewed by the Chief.

---

Chief signature \_\_\_\_\_ Date \_\_\_\_\_

**Employee Evaluation Review Form**

Employee: \_\_\_\_\_

Evaluation period from \_\_\_\_\_ to \_\_\_\_\_

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**All ratings must be accompanied by specific details attached on a separate sheet.**

	Outstanding	Satisfactory		Needs Improvement	
1. Job Knowledge	5	4	3	2	1
2. Quality of Work	5	4	3	2	1
3. Quantity of Work	5	4	3	2	1
4. Adaptability	5	4	3	2	1
5. Independence	5	4	3	2	1
6. Work Relationship	5	4	3	2	1
7. Safety	5	4	3	2	1
8. Appearance/Neatness	5	4	3	2	1

**Supervisory Personnel Only**

9. Leadership	5	4	3	2	1
10. Planning/Organization	5	4	3	2	1
11. Development of Subordinates	5	4	3	2	1

Employee's initials: \_\_\_\_\_

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

**Employee Evaluation Review Form**

Employee: \_\_\_\_\_

Evaluation period from \_\_\_\_\_ to \_\_\_\_\_

Supervisor's Comments:

I have personally reviewed and explained this Evaluation Review Form to the employee.

\_\_\_\_\_  
Signature Date

Employee's Comments:

I have read and understand this Evaluation Review Form.

\_\_\_\_\_  
Signature Date

# Exhibit B

## CITY OF BEVERLY'S POLICY FOR

### ALCOHOL AND SUBSTANCE TESTING/REHABILITATION

The City and the International Association of Firefighters, Local 1669, hereinafter, the "Union" recognize that the mission of the Beverly Fire Department requires the maintenance of a drug and alcohol free work environment effectuated through the use of an employee testing/screening program. Therefore, the City and the Union agree to implement the following testing protocol which shall provide for "probable cause" testing, certain post-incident testing and shall also provide for the rehabilitation of any such employee found to be in violation of this protocol. It is the general intent of the parties to create a humanitarian program where both treatment and discipline are integral components.

#### **1. Probable Cause**

Subject to the provisions of this article, an employee shall be subject to testing, if the Chief or Officer in Charge believes there is probable cause that the employee has used, possessed, or is under the influence of alcohol or any substance that would impair the employee's ability to perform his duties, as determined by the Fire Chief or Officer in Charge. If the initial determination is made by the Officer in Charge, he/she shall consult the Fire Chief and they shall jointly decide whether probable cause exists and if the employee should be referred for testing. Determination of "probable cause" shall comport with legally accepted constitutional guidelines under state and federal law. The employee shall be advised by the Chief in writing, (and in a manner which protects the privacy of the employee), of the facts and circumstances constituting his/her determination of "probable cause", and such notice shall also inform the employee of his/her rights and obligations under this article prior to testing.

#### **2. Challenges**

If the employee or the Union challenges the probable cause upon which the City relies, the employee must still provide the test sample immediately, according to the procedures and safeguards set forth below. The Union reserves the right to file a Grievance in accordance with the provisions of this Agreement in the event the employee is disciplined or discharged based on the results of the test.

### 3. Critical Incidents

Subject to the provisions of this article, an employee may be subject to testing if involved in a "critical incident" which is defined as an event which:

- (a) Occurs on Department property, on Department business or during working hours;

and

- (b) Initially appears to have been caused wholly or partially by the employee's actions;

and

- (c) Results in either:
  - (i) A fatality or
  - (ii) A serious injury to any person including the employee;
  - (iii) Damage to property that reasonably appears to be in excess of \$10,000.00.

### 4. Procedures and Safeguards for Drug Tests

The testing provided for in this article shall be subject to the following procedures:

- (a) Testing performed may be urinalysis and/or breathalyzer as determined by the Chief in his or her discretion.
- (b) The collection shall be conducted at such location as may be determined by the Chief which may include, at his or her option, ~~the Beverly Fire Department~~ <sup>ACC</sup> by a certified technician from an agreed laboratory, the Beverly Police Department by a certified technician from an agreed laboratory, a collection facility, or a health facility, or collection by some other qualified individual (e.g. breathalyzer operator). Testing shall take place at a laboratory or collection facility that ensures:

- (i) The reliability of the samples taken;
- (ii) The prevention of tampering with said samples;
- (iii) Adequate protection of privacy which shall include the individual's right to provide the sample in a private, but secure, environment so as to assure the reliability and integrity of the samples; and
- (iv) It is not Beverly Hospital, unless agreed to by the Union and the Employee.

- (v) The City will attempt to use a laboratory or collection facility that is able to provide test results within 24 hours of a sample being submitted, at a reasonable cost to the City.
- (c) With respect to urinalysis, the testing facility shall split the sample taken in two parts, with one such sample being properly preserved, should a question as to the reliability of the result of the first sample occur. Alternatively, two samples may be taken at the same time. In the event of a positive test, as set forth herein, the employee and/or the Union may have the preserved sample tested by an independent laboratory of their choice, within 48 hours of being notified that the first sample tested positive, subject to section (d) herein.
- (d) Urinalysis testing shall be performed at a laboratory that has been certified by either a state or federal agency to provide such urinalysis testing. In the event the initial urinalysis test is positive, a second method of testing shall be immediately be administered. This second test shall employ a methodology different from the first and the second test shall be equal to the reliability of (GC-MS) Gas Chromatography – Mass Spectrophotometers or greater.

#### **5. Status of the Employee After Positive Test**

In the event of a positive urine test and/or a positive breath test, the employee will be (in the first instance) relieved of duty and shall use such vacation, sick pay, and/or any other compensable leave to the extent available including sick leave bank, or put on leave without pay if not, until his/her return to work following completion of an employer and Union approved drug rehabilitation program (which may be inpatient or outpatient, including but not limited to counseling). The City may also suspend the employee subject to the provisions of M.G.L. Chapter 31 and/or the parties' collective bargaining agreement.

After successful completion of said rehabilitation program as confirmed by such program or other professional mutually agreed to by the City and the Union, the employee may return to duty subject to Section F. The employee shall be subject to follow up random testing, not to exceed four (4) tests per year, for a period of four years.

In the event of a subsequent (second or more) positive drug or alcohol test, the employee may be subject to immediate disciplinary proceedings, up to and including termination, but shall be availed of all of his/her rights under M.G.L. Chapter 31 and/or the parties' collective bargaining agreement. Only a suspension exceeding six (6) months or termination hereunder may be subject to arbitratable review. If any employee is found to test positive for a prescription drug for which he/she has lawful prescription and which is being taken in accordance with such

lawful prescription and does not affect his ability to perform his job, said employee shall not be subject to discipline under this article.

Testing by the City shall be at the sole expense of the City. Said reporting shall be maintained in a confidential manner and said reports shall only be provided to the Chief.

In the event of a positive confirmed test result, the written test report shall be provided both to the Chief and to the employee, who may provide it to the Union at his/her discretion. In the absence of a confirmed positive report (or a false positive deemed to be a negative) the testing laboratory shall keep all other test results confidential.

#### **6. Voluntary Rehabilitation**

Any employee who voluntarily enters a rehabilitation program shall be granted leave with pay to the extent that the employee has accumulated time off available to him/her. If the employee has no such leave available, he/she may be granted leave from the employee sick leave bank subject to the rules and conditions of the sick leave bank.

An employee who completes voluntary rehabilitation shall be returned to duty upon submitting proper clearance to do so from the rehabilitation facility involved. Such treatment shall be paid for by the employee's health insurance program. Any costs over and above that covered by insurance shall be paid by the City. In no event shall voluntary participation in counseling, inpatient, outpatient or other rehabilitation modules be considered as a "first positive" for the purpose of any subsequent discipline imposed pursuant to this overall testing protocol. "Voluntary participation" is defined as participation in rehabilitation that is not the result of a positive test (urinalysis or breathalyzer) as provided for in section 4 herein.

#### **7. Promotion Testing**

Candidates/employees selected for promotion will be required to submit to testing in accordance with the procedures contained herein. Failure to successfully pass such test before promotion will disqualify such candidate from promotion.

8. The foregoing policy in no way limits the Chief's ability to discipline the employee separate and apart from any consequences enforced due a positive urinalysis and/or breath test, if the related facts, circumstances, or events warrant discipline. This policy is strictly limited to the issue of a positive urinalysis or breath test.

# Exhibit C

## City of Beverly's Proposed License Loss Policy

### (Same Policy Accepted by Both Police Unions)

- A. Driving is a requirement of the job of all City Firefighters. The City requires that employees maintain a valid driver's license. The requirements of this policy are intended to be positive, in that it promotes progressive rehabilitation for the individual rather than simply punishment as a means of deterrence.
- B. This Policy commences on \_\_\_\_\_ and is not intended to be retroactive. The consequences for loss of license only apply to losses of a driver's license after the enactment of this policy.
- C. "Loss of License" shall include the suspension, revocation, expiration, or any other loss of the employee's driver's license or right to operate a motor vehicle, in any jurisdiction, for any reason whatsoever.
1. The City will not allow any individual to operate a City vehicle, or a personal vehicle while conducting work for the City, without a valid driver's license.
  2. Employees are required to notify their Department Head, or for Police Officers, the Chief of Police, or for members of the Fire Department, the Fire Chief, of any loss of license, in any jurisdiction, immediately. Failure to do so may result in termination.
  3. Leave for any time necessitated by a loss of license will be the sole responsibility of the member and in no way shall there be an additional burden on the City of Beverly to cover the time or position. If the employee is not able to perform his/her job due to the suspension of his/her license, he/she will not be allowed to work and will not be paid. An employee who is not able to perform his/her job due to the suspension of his/her license may use vacation and personal time if he/she has it available.
  4. The consequences of license loss are outlined below. To be counted as a subsequent offense (Second or Third Offense), the subsequent offense(s) must be within a ten year period from the time that the employee's license is reinstated by the Commonwealth of Massachusetts.
- D. First Offense:
1. Written Warning
  2. No Suspension, however, the provisions of C(3) are applicable in that if an employee cannot do his/her job, he or she will not be allowed to work and will not be paid.

The Chief is under no obligation to reassign duties to accommodate an employee whose license has been suspended.

3. The employee is required to participate in the Employee Assistance Program (EAP) and follow the EAP's recommendations and to fully participate in and complete the EAP's recommendations to the satisfaction of the Department Head/Chief.
4. Non-participation or non-compliance with the recommendations of the EAP will result in suspension without pay until the employee fully participates and complies with the EAP recommendations. Failure to participate or comply with EAP recommendations for a period of 30 days may result in termination.
5. The Chief, at his discretion, may depart from the foregoing if circumstances warrant (i.e. accidental non-renewal).

E. Second Offense:

1. 60 day suspension without pay.
2. The employee will return to the EAP and follow its recommendations.
3. The employee is required to participate in the EAP and follow the EAP's recommendations and to fully participate in and complete the EAP's recommendations to the satisfaction of the Department Head/Chief.
4. Non-participation or non-compliance with the recommendations of the EAP will result in suspension without pay until the employee fully participates and complies with the EAP recommendations. Failure to participate or comply with EAP recommendations for a period of 15 days may result in termination.

F. Third Offense:

1. Automatic termination
- G. The foregoing Offense Consequences/Steps apply only to a loss of license that does not exceed 90 days. In the event that an employee has a license loss that exceeds 90 days, the Chief/Department Head may impose such consequences, including termination, as the Chief/Department Head deems appropriate under the circumstances.
- H. The foregoing policy in no way limits the Chief's ability to discipline the employee separate and apart from any consequences enforced due to the loss of license, if the facts, circumstances, or events that led to the suspension warrant discipline. This policy is strictly limited to the issue of loss of license.