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AGREEMENT

by and between

CITY OF DUNKIRK, NEW YORK

and

**DUNKIRK PROFESSIONAL
FIREFIGHTERS' ASSOCIATION,
INC.**

LOCAL 616

RECEIVED

APR 11 2005

NYS PUBLIC EMPLOYMENT
RELATIONS BOARD

January 1, 2005

through

December 31, 2007

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AGREEMENT

by and between

CITY OF DUNKIRK

and

DUNKIRK PROFESSIONAL FIREFIGHTERS' ASSOCIATION, INC.

LOCAL 616

**January 1, 2005
through
December 31, 2007**

THIS AGREEMENT, made this 29th day of March, 2005, by and between the City of Dunkirk, by its Mayor, in that behalf duly authorized by the Common Council of the City of Dunkirk, hereinafter referred to as "CITY", and its Dunkirk Professional Firefighters' Association, Inc., Local 616, by its President, in that behalf duly authorized by the membership of the Dunkirk Professional Firefighters' Association, Inc., hereinafter referred to as "ASSOCIATION".

WHEREAS, it is the policy of the parties to the Agreement to continue cooperative and harmonious relationships to insure the orderly and uninterrupted operations of emergency fire protection, and

WHEREAS, it is the intent and purpose of the parties to set forth herein the basic Agreement covering wages and terms and conditions of employment to be observed between the parties hereto in furtherance of the policy as aforesaid,

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE 1 - RECOGNITION

Section 1.01

The CITY recognizes the ASSOCIATION as the exclusive representative of all full-time members of the paid firefighters and lieutenants in the Dunkirk Fire Department, except the Chief, for the purpose of collective bargaining with respect to wages, hours and other terms and conditions of employment.

Section 1.02

When authorized by state enabling legislation, any present or future employee who is not an ASSOCIATION member and declines membership shall have deducted by the CITY for payment to the ASSOCIATION each month during the term of this agreement any agency shop fee deduction in an amount equivalent to the amount of the dues payable by a member. The CITY shall transmit the sums so deducted to the ASSOCIATION in the same manner as specified in Section 2.01 of this agreement. The ASSOCIATION shall establish and maintain a procedure providing for refund, if any, to any employee demanding the return of any part of an agency shop fee deduction which represents the employee's prorata share of expenditures by the ASSOCIATION in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment and not related to the ASSOCIATION'S negotiating expenses and the costs of grievance representation for all members of the bargaining unit.

ARTICLE 2 - DUES CHECKOFF AND AUTHORIZATION

Section 2.01

Upon written authorization from a firefighter on a form provided by the ASSOCIATION, the CITY will deduct from the salary of such firefighter such amounts for membership dues as the firefighter may specify and transmit such sums to the ASSOCIATION within five (5) days after the deduction has been made.

Section 2.02 - Agency Fee Liability Indemnification.

The ASSOCIATION shall indemnify the CITY, and any representative of the CITY, and hold the CITY and any of its employees and officers harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any action taken by the CITY or any of its representatives, for the purpose of complying with the provisions of state law mandating that an agency fee deduction be made from the wages of those members of the bargaining unit who choose not to be ASSOCIATION members.

ARTICLE 3 - WAGES

Section 3.01 - Salary Levels for New Firefighters

It is the intent of the parties to this Agreement to continue all newly hired firefighters to complete four (4) full years of service as firefighters prior to receiving the maximum pay rate for the position under contract in effect at any given time. All firefighters hired during the term of this Agreement shall be in one of the five (5) steps as specified below. As a firefighter proceeds through these steps, he/she shall receive the salary specified below for their step for the year in question.

STEP

	<u>January, 2005</u>	<u>January, 2006</u>	<u>January, 2007</u>
70% Starting Salary	\$31,768.06	\$32,800.52	\$33,866.54
80% Upon completion of 12 months service	\$36,306.35	\$37,486.31	\$38,704.62
90% Upon completion of 24 months service	\$40,844.65	\$42,172.10	\$43,542.69
95% Upon completion of 36 months service	\$43,113.79	\$44,515.00	\$45,961.73
100% Upon completion of 48 months service	\$45,382.94	\$46,857.89	\$48,380.77

Section 3.02 - Salaries

January 1, 2005	3.25%
January 1, 2006	3.25%
January 1, 2007	3.25%

ARTICLE 4 - INSURANCE

Section 4.01

The CITY shall pay for the full premiums for Univera (PPO) health coverage, or comparable coverage by a carrier selected by the CITY. The CITY shall provide and pay Twenty Thousand Dollars (\$20,000.00) term life insurance coverage for each firefighter.

If a firefighter is covered by health insurance from a source other than the CITY, as established by proof of such coverage, and the firefighter drops his/her health coverage by the CITY, then the CITY will pay the firefighter fifty percent (50%) of the premium payment savings credited to the CITY for that firefighter on a monthly basis.

Any changes in this section, including but not limited to changes in carrier or coverage will be made only upon formal communication and meetings with the ASSOCIATION.

Section 4.02

The CITY shall maintain and keep in force a family dental plan, Preventive and Diagnostic (Full Basic and 50% Prosthetic Allowance) including coverage for dependent children to age 23 for the balance of the term of this contract. The CITY shall pay 100% of the cost for this plan.

Any change in this section, including but not limited to changes in carrier or coverage will be made only upon formal communication and meetings with the ASSOCIATION.

Section 4.03

A retiring firefighter may elect to apply all or a portion of the retirement allowance specified in Section 12.02 toward the cost of continuing medical coverage or comparable coverage by a carrier selected by the CITY. The election shall be final and must be made at least two weeks prior to the effective date of retirement. The amount of allowance to be applied toward insurance coverage shall be specified on a form to be provided by the Chief. Thereafter, that amount shall be applied solely to continue applicable insurance until the sum is exhausted. Retirees may, upon exhaustion of the retirement allowance, continue to maintain the same coverage at their expense provided the premiums are paid to the City Clerk at least one month in advance, and, provided further, the insurance carrier permits such continued coverage; the CITY shall, however, make every reasonable effort to continue such coverage for retirees including attempts to obtain such coverage through other insurance carriers.

Section 4.04

The CITY shall maintain and keep in force Univera (PPO) prescription drug coverage and optical coverage upon the following terms and conditions.

The CITY shall pay 100% of the premium for Seven Dollars (\$7.00) generic, Fifteen Dollars (\$15.00) and Thirty-five Dollars (\$35.00) brand name co-pay, without contraception, prescription drug plan.

The CITY shall pay 100% of the premium for Univera Vision Care Plan.

If a firefighter is covered by a vision care plan from a source other than the CITY, as established by proof of such coverage, and the firefighter drops his/her vision care plan coverage by the CITY, then the CITY will pay the firefighter fifty percent (50%) of the premium payment savings credited to the CITY for that firefighter on a monthly basis.

Any changes to this section, including but not limited to changes in carrier or coverage will be made only upon formal communication and meetings with the ASSOCIATION.

Section 4.05

The CITY shall make payment per firefighter to the Health and Welfare fund of the ASSOCIATION as follows:

\$550.00 per firefighter effective January 1, 2005
\$650.00 per firefighter effective January 1, 2006
\$650.00 per firefighter effective January 1, 2007

All of such payment to be made and/or funded by January 31st of each of the years of this contract.

Payment shall be transmitted to the treasurer of the ASSOCIATION for the purpose of providing a self-insurance program for health, medical, hospital, life, dental or other insurance or insurable expenses of the firefighters and their dependents as determined by the ASSOCIATION and administered by it.

Section 4.06

The CITY shall provide member with medical flexible spending account plan in the following amount:

January 1, 2005	\$ 300.00
January 1, 2006	\$ 300.00
January 1, 2007	\$ 300.00

Any medical balance not used by the firefighter shall revert back to the CITY.

ARTICLE 5 - UNIFORM ALLOWANCE

Section 5.01

All firefighters shall be entitled to a uniform allowance. Such allowance shall be paid in the form of two equal lump sum payments to be made to each firefighter on January 31 and July 15 of each year. The annual amounts shall be:

January 1, 2005	\$ 950.00
January 1, 2006	\$1,000.00
January 1, 2007	\$1,050.00

Section 5.02

Upon probationary appointment, a firefighter hired during the term of this Agreement shall receive the uniform allowance for the year immediately upon appointment. A firefighter hired during the term of this Agreement shall be issued, at the expense of the CITY, the following items.

- (1) Turnout Suit - Coat and Pants
- (2) Boots - One (1) Pair
- (3) Helmet
- (4) Gloves - One (1) Pair
- (5) Personal Pocket Mask with replaceable one-way valve
- (6) SCBA Mask

All items shall meet or exceed Occupational Safety and Health Act standards in effect at the time of issuance. Should any firefighter hired during the term of this Agreement not receive a permanent appointment, he/she shall return all of his/her uniform to the CITY.

Section 5.03

If a firefighter reports for duty in a uniform which is determined by any commanding officer to be improper or deficient in any respect, then the commanding officer shall notify such firefighter of the deficiency and will allow the firefighter forty-eight (48) hours to correct the deficient or improper dress. The commanding officer shall record the circumstances and enter a report that shall be placed in the firefighter's personnel file. The commanding officer or the Chief shall, at the time of entry of such report in the firefighter's personnel file, serve notification in writing upon this ASSOCIATION by delivering such notification to one of its officers. A firefighter so notified shall be suspended for one (1) day without pay if such firefighter reports for duty in a uniform previously determined to be improper or deficient and forty-eight (48) hours have elapsed since notification. The one (1) day suspension without pay shall be imposed by a commanding officer as soon thereafter as possible and as the schedule permits.

It is further understood and agreed that Section 75 of the Civil Service Law is waived to the extent that it is otherwise applicable to such disciplinary matter but that a determination by a commanding officer in this regard is a grievable matter pursuant to Article 14. Multiple notification of improper or deficient uniform appearance shall subject a firefighter to disciplinary action in accordance with Section 75 of the Civil Service Law. The failure of the CITY to serve notification upon an officer of this ASSOCIATION shall not prohibit the CITY from taking further disciplinary action or proceedings with respect to such incident or interfere with the suspension. The provision of this section shall not apply to that part of the uniform commonly referred to as "turnout gear".

Section 5.04

The CITY will provide reimbursement for repair or value, whichever is less, of clothing and personal effects damaged or destroyed during the course of, and incident to, the performance of official duties, provided loss is not caused by the negligence of the firefighter and provided further that proof of loss is submitted to the Fire Chief as soon thereafter as practicable. A report of such loss must be made to the Chief or Assistant Chief on duty when such loss is sustained. Personal effects shall include such items as dentures, safety eyeglasses, wristwatches, etc., not covered by Workers' Compensation, but shall not include any finger rings, necklaces or other jewelry not necessary for performing normal duties.

ARTICLE 6 - WORK SCHEDULE

Section 6.01

The normal work week shall be consistent with Chapter 12, Section 1015 of the Unconsolidated Laws of the State of New York (McKinney's Edition), which provides in substance that no firefighter shall be required to work more than an average of forty (40) hours per week, computed during the current fiscal year of the CITY.

Section 6.02

In the event that a firefighter is required to return to or be called back to duty from an off-duty status for any reason whatsoever, such firefighter shall be paid overtime at the rate of time and one-half, that is, time and one-half of one-fifth (1/5) of the member's weekly salary (whether the member works a 15 or 9 hour additional tour of duty). A firefighter shall be considered on off-duty status when he/she is not working his/her scheduled tour of duty. A firefighter working as a relief man, however, shall be considered to be called from an off-duty status only after he/she has completed 20 days of work during his or her cycle. All relief men shall have completed 20 days in his or her cycle of work before any firefighter is recalled for overtime purposes. If all relief men are working a tour of duty, or all relief men have completed 20 days in their cycle of work, then the overtime system shall take effect in accordance with the following schedule.

Notwithstanding the above provisions, compensatory time shall be granted at a straight time rate in lieu of payment of overtime at time and one-half when a firefighter is required to attend training courses provided for in Section 18.01 of this Agreement.

Firefighters shall be eligible for overtime based upon seniority and a schedule for such purpose shall be maintained by the Chief who shall call back the next eligible firefighter for purposes of overtime work. This schedule shall indicate the time and date of each call to an eligible firefighter and also the reason the firefighter is unable to work, including vacation, sickness, on duty, not contact or declining to work. If a firefighter declines to work when contacted by the Chief, he/she shall be bypassed until a completed cycle of the seniority list has been made before eligible for additional overtime work.

A firefighter shall not be required to work neither a double shift nor more than five consecutive calendar days. In the event a firefighter is ineligible for overtime duty because of the foregoing circumstances, his or her name shall remain at the top of the seniority overtime list and the next eligible firefighter shall be called in his or her place. When a firefighter is required to remain on duty beyond the end of his/her regular tour of duty for any reason, he/she shall receive overtime pay at the rate of time and one-half for all time worked in excess of one-quarter hour after the end of such regular tour of duty.

ARTICLE 7 - HOLIDAYS

Section 7.01

All firefighters shall receive an additional compensation at the existing rate of one-fifth (1/5th) of weekly salary for the following full-day holidays and any other days designated by the Mayor as "holidays", whether or not a firefighter is required to be on duty during such holidays.

- New Years Day
- Martin Luther King Day
- President's Day
- Good Friday
- Easter
- Memorial Day/the last Monday in May
- Independence Day
- Labor Day
- Columbus Day/the second Monday in October
- Veterans Day
- Thanksgiving Day
- Christmas Eve
- Christmas Day
- Birthday

Any firefighter required to work on any holidays shall be paid at the rate of time and one-half of the rate set forth above (1/5 of weekly salary) for each holiday worked.

ARTICLE 8 - VACATIONS

Section 8.01

Firefighters who complete the following periods of continuous service shall be entitled to annual vacations as follows:

<u>Complete Years of Continuous Service</u>	<u>Vacation</u>
1 year	2 weeks
5 years	3 weeks
10 years	4 weeks
15 years	5 weeks
20 years	6 weeks

Section 8.02

Vacation pay shall be computed at the regular full-time rate at the time the vacation is taken and no firefighter shall be permitted to waive vacation for the purpose of receiving double pay. If, for any reason, a firefighter is unable to utilize his vacation allowance in the year it is scheduled to be taken, he shall submit a written request to the Mayor to credit the unused vacation time to the following calendar year allowance; provided, however, that this unused vacation credit shall be scheduled after all other vacations for the year have been scheduled pursuant to the provisions of Section 8.03. In order to qualify for a vacation during any calendar year, a firefighter must be on regular duty for the initial day of a calendar year.

Notwithstanding the vacation allowances specified in Section 8.01, a firefighter who has notified the CITY of his intended retirement, shall be granted three (3) additional weeks of vacation upon retirement which allowance shall be granted for the purposes of conversion into its per diem cash equivalent upon retirement. A firefighter shall be required to notify the CITY of his/her intended retirement thirty (30) days in advance of such date in order to be eligible for the additional vacation allowance specified in this paragraph. The CITY shall permit any retiring firefighter to convert all unused and accumulated vacation time into its cash equivalent upon retirement.

Section 8.03

The CITY shall schedule vacations and preference in vacation scheduling shall be based on seniority. Preference of first two weeks shall be drawn by seniority in the first draw; preference of the third week shall be drawn by seniority in the second draw and preference of the fourth week shall be drawn by seniority in the third draw. Preference of fifth week shall be drawn by seniority in the fourth draw and preference of sixth week shall be drawn by seniority in the fifth draw. A maximum of three (3) firefighters will be allowed on vacation at any one time.

Preference for vacations must be submitted to the Fire Chief by the first day in January. If said preferences are not submitted by such date, vacation time shall be scheduled by the Chief after consulting with the ASSOCIATION. Mutual changes, subject to approval by the Chief, shall be allowed; said changes to be requested at least one week in advance, except in an emergency.

Section 8.04

Upon a firefighter's death, retirement or resignation for other than disciplinary reasons, all unused vacation time shall be paid to the firefighter or his/her estate at the daily rate then in effect.

ARTICLE 9 - PERSONAL LEAVE

Section 9.01

Each firefighter shall be entitled to four (4) personal leave days per year. Personal leave days shall be granted upon receipt of a written approval by the Fire Chief. Personal leave days are non-cumulative. It is further agreed that each firefighter shall be entitled to convert one (1) accumulated sick leave day (as provided in Section 10.01) to be used as a personal leave day each year. All requirements for the granting of personal leave days as discussed above shall apply to this fifth personal leave day. A firefighter shall be allowed to convert unused personal leave days to sick leave days at any time.

Section 9.02

Upon written request to the Fire Chief or Assistant Chief, and approval thereof, a firefighter shall be entitled to use a minimum of fifteen (15) compensatory days during each calendar year.

In addition, if on or before December 1st of each year a firefighter submits a request to the CITY, he/she shall be entitled to cash out a maximum of fifteen (15) compensatory days. The value of each compensatory day shall be equal to one-fifth (1/5) of the weekly salary in effect during the year.

Section 9.03

All firefighters shall be granted leave with pay for four (4) days for reasons of bereavement arising from the death of an immediate member of the family. Immediate member of the family shall mean spouse, child, mother, father, sister, brother, mother-in-law, father-in-law, grandparents and grandparents-in-law, brother-in-law and sister-in-law.

The bereavement leave must be taken immediately following the death of the above stated family member.

In the event of the death of a firefighter spouse, child, or parent during his/her regular scheduled days off, he/she may use bereavement leave at the commencement of his/her next shift.

ARTICLE 10 - SICK LEAVE

Section 10.01

All firefighters shall be granted sick leave at the rate of one and one-fourth (1 1/4) days per month. Said sick leave shall be cumulative. A firefighter shall be entitled to use all or any portion of his/her accumulated sick leave in any year while employed. Sick leave shall be cumulative from the date of original appointment.

Section 10.02

Sick leave may be used only for the following reasons: personal illness, physical incapacity, or bodily injury or disease, without loss of pay.

Proof of illness upon request of the Fire Chief, must be furnished for absences of more than three (3) consecutive days. For absences of three (3) days or less, the CITY will not normally require proof of illness, unless in the judgment of the Fire Chief, there is a question of unauthorized usage. Proof of illness shall be a doctor's certificate, but the CITY reserves the right to check further under the proper circumstances.

Section 10.03

The ASSOCIATION shall continue to maintain a system for the accumulation and transfer of sick leave days from one firefighter to another.

Section 10.04

All firefighters shall be permitted to use all earned or accumulated sick time, vacation time or personal leave time as family leave to provide family care and related services in a member's immediate family which shall include spouse, child, father, mother, sister, brother, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparents, grandparents-in-law and grandchild.

It is mutually agreed and understood that the use of family leave shall be subject to the approval of the Chief, or in his absence by the Mayor, with said approval not being unreasonably withheld and in compliance with all relevant State and Federal laws on family medical leave.

ARTICLE 11- CONFERENCES AND CONVENTIONS

Section 11.01

Union officers, representatives and delegates shall be allowed all release time with pay, to participate in negotiations with the employer, adjustment of grievances and arbitration hearings as well as a firefighter directly affected by or participating in such proceedings. However, participation in negotiations shall not result in the payment of overtime for more than two (2) firefighters. The CITY and the ASSOCIATION will try to schedule meetings to minimize the use of overtime. However, time off will not be denied due to the need for overtime.

Section 11.02

Two (2) union officers, representatives, or delegates will be allowed all release time, with pay, to attend conferences, conventions, and seminars of the New York State Professional Firefighters Association and the International Association of Firefighters.

Section 11.03

If a firefighter is elected to a position in the New York State Professional Firefighters' Association, then he/she shall have the right to attend State Association functions without loss of time or pay.

ARTICLE 12 - RETIREMENT

Section 12.01

All retirement plans, which the CITY subscribed to as of January 1, 1979, shall be continued. These include plans under Sections 302(9)(d), 375-c, 375-i, 384(f) and 384-d of the New York State Retirement and Social Security Law, and commencing in January of 1991, Section 384-e of such law.

Section 12.02

When a firefighter elects to retire, he/she shall notify the Chief at least two (2) weeks in advance of his/her intent to retire and his/her anticipated date of retirement. A firefighter shall be entitled to a retirement allowance in the form of cash payment to be paid in accordance with the following provisions. One-half of such allowance not to exceed 108 days shall be paid upon retirement. The balance shall be paid six (6) months after the retirement date. Such final payment shall be made on the basis of a submitted voucher from the retiree. It is understood and agreed that a firefighter, nevertheless, may receive a cash payment upon retirement equal to the value of at least 108 days of accumulated and unused sick leave days standing to his/her credit upon retirement even if such sum exceeds the total of the value of one-half of the sick leave days accumulated by such firefighter.

Such allowance shall equal the converted value of accumulated and unused sick leave up to a maximum of 215 days for firefighters, effective January 1, 2006. The value of each accumulated sick day for the purpose of converting sick leave into said allowance shall equal one-fifth (1/5) of the weekly salary of the retiring firefighter based on the salary schedule in effect at the time of retirement. A firefighter may elect to apply all or a portion of such retirement allowance to continue and extend health insurance coverage, in accordance with the procedure established in Article 4.

It is understood that the retirement allowance provided herein is considered a reward for faithful and competent service and in no event shall a firefighter who is discharged or resigns for disciplinary reasons be eligible or entitled to the same.

ARTICLE 13 - DEATH BENEFIT

Section 13.01

The Resolution adopted by the Common Council as it relates to the provisions of Section 208-b of the General Municipal Law pertaining to death benefits for beneficiaries of firefighters shall be continued. Death benefits as prescribed in that section shall be payable in accordance with the terms and upon the conditions therein specified. Said resolution shall not be modified repealed or rescinded during the term of this Agreement.

Section 13.02

The CITY shall provide a reimbursement payment for funeral and burial expenses not to exceed Ten Thousand dollars (\$10,000.00) to the family or estate of any firefighter who is killed in the performance of official duties or dies as a result of injuries sustained in the performance thereof.

ARTICLE 14 - GRIEVANCE PROCEDURE

Section 14.01

A grievance shall mean any claimed violation, misinterpretation, or inequitable application of the terms and conditions of this contract, or of the existing laws, rules, procedures, regulations, administration orders or work rules which relate to or involve employees' health or safety.

Section 14.02

Step 1 An employee having a grievance will discuss it with the Fire Chief or Assistant Fire Chiefs, and a representative of the Union, with the view of settling the grievance informally. No alleged grievance shall be entertained unless presented at this first stage within ten (10) consecutive days after the aggrieved party knew or shall have known of the act and conditions on which the alleged grievance is based; unless so presented, it shall be deemed waived.

Step 2 If the grievance is not resolved in Step 1, the dispute may be submitted, in writing, to the Chief within ten (10) consecutive days after notice to the firefighter that the grievance cannot be resolved informally. Such notice shall be in writing. The Fire Chief shall respond in writing within ten (10) consecutive days.

Step 3 If the grievance is still not resolved in Step 2, it shall be submitted in writing to the Mayor within ten (10) consecutive days who shall then render his decision, in writing, within ten (10) consecutive days.

If the grievance is not resolved or settled after the Mayor's decision, either party may request that the grievance be submitted to binding arbitration. That said request must be made in writing to the Mayor within fifteen (15) consecutive days after the Mayor has rendered his final decision. Such period shall not commence until written notice of the Mayor's decision is received by the Grievant.

Section 14.03

The arbitrator shall be selected by mutual agreement between the parties within seven (7) consecutive days after the formal request for arbitration. If the parties are unable to agree upon an arbitrator within such time, the grieving party shall submit the grievance within thirty (30) consecutive days after such period to agree has expired to the Public Employment Relations Board. Grievances not so filed within the required time period shall be considered waived and not entitled to consideration.

The parties shall be bound by the rules and procedures of the Public Employment Relations Board. The decision of the arbitrator shall be binding upon both parties.

Notwithstanding any provisions of the rules or procedures of the Public Employment relations Board, the cost for the services of the arbitrator, including expenses, if any, shall be borne equally by the City and the Association.

ARTICLE 15 - SUPERVISORY POSITIONS

Section 15.01

The Lieutenant on each shift shall operate the rescue truck. In the event a vacancy occurs on the rescue truck for a particular shift, then the vacancy shall be filled, if at all, in accordance with the bidding procedure set forth in Section 16.01. Nothing in this section shall prevent the CITY from abolishing any or all of the Lieutenant positions. The issue of assignment of Lieutenant is referred to the Labor Management Committee for discussion.

Section 15.02

A lieutenant shall be named to the position of Municipal Training Officer (MTO), and assume all duties and responsibilities of this position as defined by New York State. The stipend for this position shall be in the following amount:

2005	\$650.00
2006	\$750.00
2007	\$850.00

ARTICLE 16 - APPARATUS VACANCIES

Section 16.01

All vacant assignments to apparatus that the CITY determines should be filled shall be posted within five (5) days after such determination is made. Any firefighter desiring to be transferred to such assignments shall submit their written request to the Chief within ten (10) days after such posting. The Chief shall prepare a list of applicants, and appointments thereto shall be made by seniority provided the most senior firefighter has the ability to perform such duties. An appointee shall be allowed up to five (5) working days to train with another experienced operator in order to make the transfer smooth and orderly. If the most senior firefighter is bypassed in selection for such vacancy, said firefighter and the President of the ASSOCIATION shall be advised in writing of the reason therefore and may if he/she believes the Chief is in error, file a grievance concerning the same. In the event the CITY places new requirements upon any such vacancy, the most senior firefighter shall be given the opportunity to meet such requirements and all costs shall be borne by the CITY. All vacancies occurring because of illness or extended leave of absence not to exceed one year excluding those injured in line of duty, shall be filled by the senior relief person, said relief person shall be considered on regular status and schedules as such. The word "vacancy" in this section shall refer only to apparatus assignment and shall in no way be construed so as to require the CITY to fill a vacant position as it occurs.

Section 16.02 - Transfers and Reassignments

A firefighter shall not arbitrarily be transferred or assigned.

Section 16.03 - Recall

In the event all of the CITY'S regularly manned fire apparatus are committed to a fire scene or emergency situation, and in order to insure the safety and welfare of the members of the Dunkirk Fire Department and the residents of the CITY, the Fire Chief shall make every attempt to recall the number of firefighters that he deems necessary from the off-duty shift, to man the CITY'S reserve pumper, if any, and dispatch office, prior to any request for mutual aid from outside departments.

Recall shall be made from any of the off-duty firefighters. Said recall shall not affect a firefighter's position on the overtime schedule as outlined in Section 6.02.

Any firefighter recalled from an off-duty shift shall be granted overtime at a rate of time and one-half for a minimum of two (2) hours,

The Department will publish an order that if a career officer responds, he/she will be placed in an on-duty position.

Section 16.04

In the event a state of emergency or disaster is declared in the City of Dunkirk by the Mayor or someone acting in his behalf, members of the Association will be recalled in accordance with the needs of the situation as determined by the Fire Chief.

Section 16.05

If the Chief is unavailable outside the City of Dunkirk due to an emergency for one (1) hour, and an Assistant Chief is unavailable, a Lieutenant shall serve in such capacity and accept responsibilities for work in this position, and shall be compensated with a 5% premium above the Lieutenant rate. The Lieutenant will become acting Chief, and will not be assigned to an apparatus.

Section 16.06

During normal and usual operations of the Fire Department, the CITY shall not replace or substitute the members of this ASSOCIATION in his/her jobs or assignments with non-association members, of the CITY employees or volunteer firemen, except as required during mutual aid situations.

During the term of this Agreement, the CITY shall maintain existing Fire Department staff levels at not less than twenty-five (25) full-time members of the Dunkirk Professional Firefighters Association, Local 616.

The City shall make every effort to have a replacement for a vacancy due to retirement in place to start employment as soon as the retirement takes effect. In the event of a vacancy due to death or resignation, the CITY shall make every effort to have a replacement in place as soon as possible.

Section 16.07

Upon notification to the Fire Chief or Assistant Fire Chief, any firefighter shall be allowed to attend a regular or special union meeting while on duty providing such attendance shall not exceed one and one-half (1½) hours, and further providing the Fire Chief or Assistant Fire Chief determines that the absence shall not adversely affect the work of the department.

ARTICLE 17 - LABOR-MANAGEMENT COMMITTEE

Section 17.01

The parties agree to establish a Labor-Management Committee to provide a forum to discuss and attempt to resolve matters of mutual concern. The Committee shall be comprised of an equal number of representatives from the CITY and the ASSOCIATION. Representatives of both parties shall convene at mutually agreeable times, if desired by the other party. The party requesting the meeting shall submit a written agenda a minimum of one (1) week in advance of the scheduled meeting to the appropriate representatives.

Section 17.02

A Health & Safety subcommittee of the Labor-Management Committee shall be created consisting of two (2) representatives of the CITY appointed by the Mayor, who shall serve at the pleasure of the Mayor, and two (2) representatives of the ASSOCIATION duly appointed by said ASSOCIATION. The subcommittee shall meet not less than once per calendar quarter and at such other times as called for by any two (2) representatives. Decisions shall be by a majority vote of the entire membership of the subcommittee.

The Health and Safety subcommittee shall from time to time review the safety and health conditions of the City's Fire Department and based on this review, it may:

- (1) recommend the correction of hazardous physical conditions or unsafe work methods, including training procedures; and
- (2) recommend changes or additions to protective equipment, protective apparel and devices for firefighting.

A recommendation shall include a target date for implementation. The subcommittee's recommendations shall be made to the appropriate public officer or body of the CITY having jurisdiction over the complained-of-condition. It is expressly understood that any recommendation involving the expenditure of monies that were not budgeted for may only be implemented after the Common Council makes the necessary budget transfers.

The CITY shall make all reasonable attempts to implement any recommendations above described by the target date.

ARTICLE 18 - TRAINING

Section 18.01

Upon notification to the Chief and on recommendation of the Chief or Health and Safety subcommittee, and with approval of the Mayor, a minimum of two (2) firefighters shall be granted time off without loss of time or pay for any of the following training programs:

- (1) E.M.T. training and refresher courses
- (2) Firematic courses at the New York State Academy
- (3) Niagara Mohawk Safety School
- (4) Any other courses that the Chief or Health & Safety subcommittee deems essential for the upgrading of Personnel performance.

All reasonable and necessary costs incurred by a firefighter as a direct result of participation in said training program(s) shall be borne by the CITY. If a firefighter is required to attend a training program on a normally scheduled day off, all such hours spent participating in the training program shall be considered time worked, and the firefighter shall be granted compensatory time off on an hour-for-hour basis for said hours.

Section 18.02

The ASSOCIATION may request approval for attendance at certain specialized schools or courses for training that would be deemed advantageous to the CITY. Said approval to be given by the Chief and the Mayor. Expenses such as books and course fees shall be borne by the CITY. Firefighters shall suffer no loss of pay for attendance at said schools or courses.

Section 18.03

All new hires will be sent to an approved Basic Training academy for State certification at the next available certification class.

Section 18.04

The ASSOCIATION shall be notified of all training opportunities, and will make recommendations to the Chief as to members attending. All training class participation shall be at the discretion of the Chief and with the approval of the Mayor.

ARTICLE 18A - SUBSTANCE ABUSE

Section 18A.01

The CITY and the ASSOCIATION recognize illegal drug usage as a threat to the public welfare and the employees of the Fire Department. Thus, the parties will take the necessary steps, including drug testing, to eliminate illegal drug usage. It is the goal of this policy to prevent and rehabilitate rather than terminate the employment of firefighters who are abusing drugs. No members of the Fire Department shall be discharged for illegal drug use without first having been offered the opportunity to discontinue use by treatment for chemical dependency.

Section 18A.02

The City of Dunkirk has a strong commitment to providing safe, healthy work environment for all employees, reducing the potential for accidents and injuries, and maintaining a high standard of job performance, attendance and quality at all of its facilities.

The purpose of this policy is to state the City of Dunkirk's philosophy with respect to the use/abuse of controlled substances and to define an approach to dealing with this significant issue at the work place.

Section 18A.03

The City of Dunkirk does not condone substance abuse. It is the individual employee's responsibility to maintain a satisfactory performance level and to acknowledge any substance abuse related problem and seek assistance. It is also recognized that substance abuse is a treatable problem, and we will assist any employee by helping him understand the problem and correct it before it impairs performance and jeopardizes employment. The City of Dunkirk has an Employee Assistance Program available to all employees and family members to assist employees with substance abuse problems, as well as other personal problems that could affect performance.

Section 18A.04 - Definitions

Alcohol or alcoholic beverage - any beverage, or food, that may be legally sold and consumed and has an alcoholic content as defined by the State Liquor Authority.

Drugs - any substance (other than alcohol) capable of altering the mood, perception, pain level, or judgment of the individual consuming it.

Prescribed Drug - any substance prescribed for the individual by a licensed medical practitioner.

Illegal Drug - any drug or controlled substance, the sale or consumption of which is illegal.

Section 18A.05 - Alcoholic Beverage

No alcoholic beverage will be brought onto, sold, passed or consumed on CITY premises.

Bringing or being impaired by the consumption of alcoholic beverages while on the CITY premises or on working time will be cause for disciplinary action pursuant to Article 75. This would also pertain to any time a member is operating a vehicle or equipment owned or leased by the CITY, whether or not the member is entitled to compensation from the CITY.

The member shall be permitted to consume alcoholic beverages in a city park except during any period the member is entitled to compensation from the CITY.

Section 18A.06 - Prescription Drugs

No prescription drugs shall be brought onto or consumed on CITY premises by an employee other than the employee for who the drugs are prescribed by a licensed medical practitioner, and shall be used only in the manner, combination and quantity prescribed.

Section 18A.07 - Illegal Drugs

The use of illegal drugs or controlled substances or possession of same will be cause for disciplinary action under Article 75.

The sale, trade or delivery of illegal drugs or controlled substances by an employee to another person or vice-versa is cause for discipline under Article 75.

Section 18A.08 - Safety of Work Force, Work Rules

Blood and Urine Tests

In order to insure the safety of all CITY employees, the following work rules and procedures apply to the CITY.

The CITY reserves the right to request any employee to submit to urine tests for determining use of drugs and/or alcohol if it is believed there is just cause.

After an employee has been tested and confirmed positive, he may be required to submit to further blood and/or urine testing.

Random testing programs for drugs or alcohol is prohibited. If new legislation is enacted on the Federal or State level requiring such testing, this issue shall be addressed through further negotiations with the union on the methods of implementation of such legislation.

Any employee who is found to be improperly in possession of alcohol, or in possession of illegal drugs, or illegally in possession of prescription drugs on CITY property will be subject to disciplinary action under Article 75.

A medical file shall hold drug-testing information in a locked cabinet not in a personal file. The medical file shall be maintained by the testing physician or clinic that will be mutually agreed to by the CITY and the ASSOCIATION.

Section 18A.09 - Employee Assistance Program (EAP)

It is the CITY'S practice to provide rehabilitation assistance to employees with substance abuse problems through the insurance plan for those employees enrolled. CITY employees also have the availability of an Employee Assistance Program. This program may be initiated by employee self-referrals or supervisor/management referrals.

Any employee who needs the support of such rehabilitation programs can do so voluntarily, in confidence, by contacting representatives of the Employee Assistance Program.

If an employee admits to substance abuse, the individual will be encouraged to voluntarily enter a rehabilitation program or private counseling program with periodic reevaluation by the employee's physician. The employee must demonstrate reasonable progress toward satisfactory performance, and the CITY expects that the employee will remain free of future substance abuse. These programs may be covered under the medical insurance programs or other insurance plans.

Referral to the Employee Assistance Program may be used as a substitute for appropriate disciplinary action, if agreed between the parties.

Section 18A.10 - Confidentiality

All testing results, referrals to an EAP or disciplinary action related to drug/alcohol use/abuse will be kept in strict confidence, as required by law. The unit chairman of the local ASSOCIATION shall be notified of all testing results. All testing will be the responsibility of Brooks Memorial Hospital.

Section 18A.11 - Just Cause Testing

In cases in which an employee is acting in an abnormal manner (for example: irregular behavior, slurred speech, uncoordinated movement, gait, stupor, excessive giddiness, unexplained periods of exhilaration and excitement or impaired judgment) and a supervisor has just cause to believe that the employee is under the influence of a controlled substance, the CITY may require the employee to go directly to the medical clinic to provide a urine specimen for laboratory testing. The supervisor must have received training in the signs of drug intoxication in a prescribed training program that is endorsed by the CITY and the ASSOCIATION.

Just cause means suspicion based on specific personal observations that the CITY representative can describe concerning the appearance, behavior, speech or breath odor of the employee. The supervisor must make a written statement of these observations within twenty-four (24) hours of the observed behavior. Just cause shall not be based solely on second-party observation and reports.

ANY DEVIATION FROM THE LANGUAGE IN THIS POLICY SHALL BE A NEGOTIATED ITEM.

ARTICLE 19 - PRESENT ROUTINE AND CUSTOM AND SCOPE OF AGREEMENT

Section 19.01

The provisions of this agreement shall supersede any provisions heretofore made to the extent that they are specifically covered herein. Any matters that are a regular part of the present routine and custom of the Fire Department shall continue in force and effect if not covered by the provisions of this Agreement.

Section 19.02

The parties acknowledge that, except as otherwise expressly provided herein, they have fully negotiated with respect to the terms and conditions of employment and have settled them for the term of this Agreement, and no verbal statement shall vary the provisions herein.

Section 19.03

Consistent with the New York State Taylor Law and the decisions of the courts and the Public Employment Relations Board thereunder, the ASSOCIATION does hereby reserve the right to negotiate the impact upon the terms and conditions of employment of members of the Fire Department that will or may result from any changes in Department policy, practices or procedures made by the CITY or its agents in the management, control and direction of the Fire Department. Such demand shall be made in writing by the President of the ASSOCIATION to the Chief of the Fire Department, provided such demand shall be made within thirty (30) days after notification from the CITY that it has executed a change in the above.

ARTICLE 20 - SEVERABILITY

Section 20.01

In the event that any article, section or other provision(s) of this Agreement is or shall be found at any time by a Court of competent jurisdiction to be contrary to law, then said article, section or provision shall not be applicable, performed or enforced, except to the extent permitted by Law, but the remainder of this Agreement shall continue in full force and effect.

ARTICLE 21 - COPIES OF AGREEMENT

Section 21.01

The CITY shall provide a copy of this Contract to all currently employed firefighters, and shall provide a copy to all newly hired firefighters within one (1) week of their first day of work. The Contract shall be printed in its current format and the cost and expenses of printing shall be borne equally by the parties except that the ASSOCIATION shall be required to pay no more than One Hundred Dollars (\$100.00) for its share of the printing.

ARTICLE 22 - RECORDS

Section 22.01

All official files, documents, memoranda and records with respect to an individual firefighter's performance, vacation, seniority, Civil Service classification and status, discipline and any other records maintained or required to be maintained with respect to personnel functions shall be filed with the office of the Fire Chief.

ARTICLE 23 - LONGEVITY INCREMENTS

Section 23.01

Firefighters shall receive the following longevity schedule:

	<u>1/1/05</u>	<u>1/1/06</u>	<u>1/1/07</u>
After completion of 5 years -	\$ 300	\$ 300	\$ 300
After completion of 10 years -	\$ 450	\$ 450	\$ 450
After completion of 15 years -	\$ 650	\$ 650	\$ 650
After completion of 20 years -	\$ 850	\$ 850	\$ 850
After completion of 25 years -	\$ 950	\$1,000	\$1,050

ARTICLE 24 - RESIDENCY

Section 24.01

Any firefighter hired or promoted after January 1, 1999, shall reside in the City of Dunkirk at the time of appointment and continue to reside in the City of Dunkirk for a period of four (4) years from the date of appointment. Thereafter, the firefighter may reside within a ten (10) mile radius from the City of Dunkirk. This provision shall not apply to anyone hired prior to January 1, 1999.

ARTICLE 25 - MANAGEMENT RIGHTS

Section 25.01

Except as expressly limited by other provisions of this Agreement, all the authority, rights, and responsibilities possessed by the City of Dunkirk are retained by it, including, but not limited to, the right to determine the mission, purposes, objectives and policies of the CITY; to determine facilities, methods, means and number of personnel for the conduct of the CITY'S programs; to administer the merit system, including the examination, selection, recruitment, hiring, appraisal, training, retention, promotion, assignment or transfer of employees pursuant to law; to direct, deploy and utilize the work force; to establish specifications for each class of positions, and to classify or re-classify and to allocate or reallocate new or existing positions in accordance with law and the provisions of this Agreement.

ARTICLE 26 - OUTSIDE EMPLOYMENT

Section 26.01

No firefighter shall engage in employment with an entity other than the City of Dunkirk, if said employment shall in any way interfere with the ability of the firefighter to perform the duties of the position held with the CITY. A firefighter shall notify the Chief of any outside employment within a reasonable time of accepting such employment.

ARTICLE 27 - TERM

Section 27.01

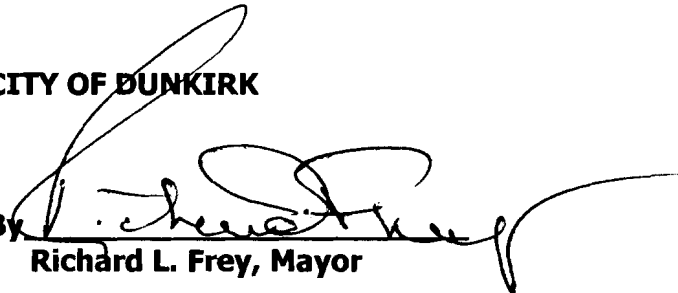
This Agreement shall be effective from the 1st day of January, 2005, and continue in full force and effect until December 31, 2007, and from year to year thereafter unless on or before August 1, prior to any expiration date, either party may give notice to the other to commence negotiations for the following year. The parties shall meet no later than fifteen (15) days after such notice.

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR PROVIDING ADDITIONAL FUNDS THEREFORE SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN ITS APPROVAL.

**"THE CITY OF DUNKIRK IS AN AFFIRMATIVE ACTION,
EQUAL OPPORTUNITY EMPLOYER"**

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 29th day of March, 2005.

CITY OF DUNKIRK

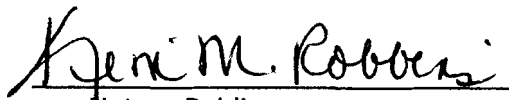
By 
Richard L. Frey, Mayor

**DUNKIRK PROFESSIONAL FIREFIGHTERS
ASSOCIATION, INC., LOCAL 616**

By 
Keith Ahlstrom, President

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) ss:
CITY OF DUNKIRK)

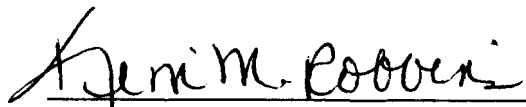
On this 29th day of March, 2005, before me personally came Richard L. Frey, who being by me duly sworn, did depose and say that he resides in the City of Dunkirk; the he is the Mayor of the City of Dunkirk, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed by order of the Common Council of said City, and that he signed his name thereto by like order.


Notary Public

KIM M. ROBBINS #01R05060886
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires May 28, 2006

STATE OF NEW YORK)
COUNTY OF CHAUTAUQUA) ss:
CITY OF DUNKIRK)

On this 29th day of March, 2005, before me personally came KEITH AHLSTROM, who being by me duly sworn, did depose and say that he resides in Dunkirk, New York; that he is the President of the Dunkirk Professional Firefighters' Association - Local 616, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his named thereto by like order.


Notary Public

KIM M. ROBBINS #01R05060886
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires May 28, 2006

APPENDIX A

- (1)** Firefighters shall receive an annual salary as set forth in Section 3.01 of this Agreement
- (2)** All lieutenants shall receive an additional allowance of seven (7%) percent and nine (9%) percent effective January 1, 2003, above the firefighter salary schedule.
- (3)** All firefighters who have qualified as Emergency Medical Technicians (EMT) shall receive an additional allowance of Nine Hundred Sixty-Five Dollars and Eighty-Eight Cents (\$965.88) in 2005. This amount shall be increased to Nine Hundred Ninety-Seven Dollars and Twenty-Seven Cents (\$997.27) in 2006. An additional amount shall be increased to One Thousand Twenty-Nine Dollars and Sixty-Eight Cents (\$1,029.68) in 2007.
- (4)** All firefighters who have qualified in Fire Prevention and Arson Investigation shall receive an additional allowance of Two Hundred Fifty Dollars (\$250.00) in 2005, Three Hundred Dollars (\$300.00) in 2006, and Three Hundred Fifty Dollars (\$350.00) in 2007.
- (5)** Effective January 1, 2002, all firefighters must be certified as Emergency Medical Technicians. All firefighters who do not currently possess certification are excused from this requirement.

If in the future any firefighter fails the certification test and/or refresher course, the firefighter will be required to maintain a CPRD or similar course certification.

(6) Physical Fitness Program

The parties agree to review such a program under the provisions of Section 17.01 Labor Management Committee as to the type of program to be established.

RESOLUTION #19-2005
NEW BUSINESS
March 1, 2005

By Entire Council:

**RATIFICATION OF AGREEMENT BETWEEN THE
CITY OF DUNKIRK AND THE
DUNKIRK PROFESSIONAL FIREFIGHTER'S ASSOCIATION, INC.
LOCAL 616 FOR
JANUARY 1, 2005 TO DECEMBER 31, 2007**

WHEREAS, the City of Dunkirk and the Dunkirk Professional Firefighter's Association, Inc. Local 616 ("Local 616") have been involved in labor negotiations to reach an agreement on a new Collective Bargaining Agreement to replace the previous Collective Bargaining Agreement between the parties which expired on December 31, 2004; and

WHEREAS, after negotiations, the City and Local 616 have signed a Memorandum of Agreement regarding said proposed contract; and

WHEREAS, the Civil Service Law requires that this Common Council review and vote upon the issue of ratification of the proposed Collective Bargaining Agreement, now, therefore, be it

RESOLVED, that the Dunkirk Common Council hereby ratifies and approves said Collective Bargaining Agreement and directs the Mayor to execute said agreement between Local 616, on behalf of the City of Dunkirk for the years 2005, 2006 and 2007.

Carried. All voting aye.

MEMORANDUM
OF
UNDERSTANDING

**CITY OF DUNKIRK'S RESPONSES TO DUNKIRK
FIREFIGHTERS LOCAL 616 CONTRACT PROPOSAL**

February 16, 2005

The following proposal and future negotiated proposal is contingent upon 616 Union, 912 Union and Management Union opting into Univera Insurance.

1. Article 1: Remain the same
2. Article 2: Remain the same.
3. Article 3: Wages
 - 3.01: The City agrees to the wage steps remain the same.
 - 3.02: 2005 – 3.25%
2006 – 3.25%
2007 – 3.25%
4. Article 4:
 - 4.03 : Remains the same.
 - 4.05: 2005 - \$550.00 per member
2006 - \$650.00 per member
2007 - \$650.00 per member

NEW:

4.06: The City shall provide the member with a \$300.00 medical flex card for 2005, 2006 and 2007. Any medical balance shall revert to the City.
5. Article 5: 2005 - \$ 950.00 per member
2006 - \$1000.00 per member
2007 - \$1050.00 per member
6. Article 6: Remain the same.
7. Article 7: Remain the same
8. Article 8: Remain the same.

9. Article 9: OK from 12 to 15.
10. Article 10: Remain the same.
11. Article 11: Remain the same.
12. Article 12: 215 cash out for all members, effective 1/1/06
13. Article 13: Remain the same.
14. Article 14: Remain the same.
15. Article 15:
- | | |
|------|----------|
| 2005 | \$650.00 |
| 2006 | \$750.00 |
| 2007 | \$850.00 |
16. Article 16: 16.05 – New Language.
- If the Chief is unavailable outside the City of Dunkirk due to an emergency for one (1) hour, and an Assistant Chief is unavailable, a Lieutenant shall serve in such capacity and accept the responsibilities for work in this position, and shall be compensated with a 5% premium above the Lieutenant rate. The Lieutenant will become acting Chief, and will not be assigned to an apparatus.
17. Article 17: Remain the same.
18. Article 18.03: New Language:
- All new hires will be sent to an approved Basic Training Academy for State certification at the next available certification class.
19. Article 18.04: Needs to add language that all class participation is at the discretion of the chief and with the approval of the mayor.
20. Article 18A.: Remain the same.
21. Article 19: Remain the same.
22. Article 20: Remain the same.
23. Article 21: Remain the same.

24. Article 22: Remain the same.
25. Article 23: Add language:
2005 - After completion of 25 years - \$ 950.00
2006 - After completion of 25 years - \$1,000.00
2007 - After completion of 25 years - \$1,050.00
26. Article 24: Any Firefighter hired or promoted after January 1, 1999, shall reside in the City of Dunkirk at the time of appointment and continue to reside in the City of Dunkirk for a period of four (4) years from the date of appointment. Thereafter, the Firefighter may reside within a ten (10) mile radius from the City of Dunkirk.
27. Article 25: Remains the same.
28. Article 26: Remains the same.
29. Article 27: Need to input new dates.
30. EMT Stipend: 2005 – 3.25%
2006 – 3.25%
2007 – 3.25%
31. Stipends for Fire Prevention Program and Arson Investigation:
2005 - \$250.00
2006 - \$300.00
2007 - \$350.00
32. The City submits its' initial proposal C-1.

Kath Allt
3-1-05

Semi Waller
3-1-05

CITY OF DUNKIRK
Fire Department

Procedure for the Implementation
of General Municipal Law, Section 207-a

Section 1 - Intent

This procedure is intended to implement the express language of Section 207-a of the General Municipal Law and is not intended to reduce any benefits that firefighters are entitled to pursuant to Section 207-a of the General Municipal Law.

For the purpose of this Article, "business day" shall mean Monday through Friday excluding any holiday when the City Hall is closed for regular business.

Section 2 - Notice of Disability or Need for Medical or Hospital Treatment

- (a) A firefighter or anyone acting on his behalf, who claims a right to benefits under Section 207-a of the General Municipal Law either because of a new illness or injury or the recurrence of a prior illness or injury shall make written notice and application for those benefits within ten (10) business days of when the firefighter reasonably should have known that the illness or injury would give rise to the claim of entitlement to 207-a benefits. The written notice and application shall be presented to the Chief and/or the Personnel Administrator on the form which is made a part of this procedure (See Appendix "A" - Form 1).
- (b) The firefighter shall provide a medical authorization for the City to obtain copies of his relevant medical records from his treating physician or other health care provider (See Appendix "A" - Form 2). The City will provide the firefighter, without cost to the firefighter, a copy of the records and reports provided to the City pursuant to the authorization as well as any records or reports by physicians, health care providers, or other experts who examine the firefighter on behalf of the City. The medical authorization shall contain a confidentiality statement prohibiting the use or release of the firefighter's medical records except for purposes authorized by this Procedure including any hearing undertaken pursuant to Section 7.
- (c) The firefighter or his representative shall also fill out a report notifying the Retirement System of his or her claim for on-the-job injury. The form should be returned with the 207-a Application for transmittal by the Personnel Administrator's office. The form is attached hereto as Appendix "A" - Form 3.
- (d) In the event of a personal inability by the firefighter to give notice, such notice may be made by another acting on behalf of such firefighter. If known, the notice shall describe the nature of the injury or sickness and the name of the treating physician.

- (e) The failure to satisfy any time limits specified above shall render a notice of filing untimely and shall preclude an award of any benefits pursuant to Section 207-a of the General Municipal Law; provided, however, that the City Personnel Administrator shall have the discretionary authority to excuse a failure to provide notice or file a report upon good cause shown.

Section 3 - Status Pending Determination of Eligibility for Benefits

- (a) The firefighter shall be placed on sick leave pending determination of his eligibility for Section 207-a benefits.
- (b) In the case of any employee who has no sick leave time accrued to his/her credit, the City will advance sick leave for the purposes of this Section until such time as a final determination pursuant to Section 4 or Section 7 (as applicable), below, is made. In the event that the employee is denied 207-a eligibility and either the employee does not appeal this denial or after appealing the denial, the denial of benefits is upheld, the employee will reimburse the City in time (sick or vacation time) or money, at the option of the employee, for the sick leave time advanced.
- (c) In the event that an employee is found to be eligible for 207-a benefits, the employee will have all used sick leave credits restored.

Section 4 - Benefit Determinations

- (a) The City shall promptly review a firefighter's application for Section 207-a benefits and shall determine his eligibility within fifteen (15) business days after the Chief or the Personnel Administrator receives the application.
- (b) In determining the application, the City may require a more detailed statement from the firefighter than that contained on the application. The City may take statements from witnesses and may send the firefighter to a physician or physicians of its choice for examination at the City's expense.
- (c) The determination will be made in writing to the firefighter, setting forth in detail any and all reasons for the determination. In the event that the application is denied, the City will simultaneously provide the firefighter, without cost, a copy of all information produced or acquired by it, in connection with the firefighter's application and determination for Section 207-a benefits. The City will continue to provide the firefighter with additional medical information subsequently produced or acquired.

Section 5 - Assignment to Light Duty

As authorized by the provisions of Subdivision 3 of Section 207-a, the Department, acting through the Chief or the City Personnel Administrator, may assign a disabled firefighter specified light duties, consistent with his/her status as a firefighter. The Chief, prior to making a light duty assignment, shall advise the firefighter receiving benefits under Section 207-a that his/her ability to perform a light duty assignment is being reviewed. Such a firefighter may submit to the Chief or the City Personnel Administrator, any document or other evidence in regard to the extent of his/her disability. The Chief or the City Personnel Administrator may cause a medical examination or examinations of the firefighter, to be made at the expense of the City. The physician selected, the firefighter and his/her physician, shall be provided with the list of duties and activities associated with a proposed light duty assignment. The City's physician shall make an initial evaluation as to the ability of the disabled firefighter to perform certain duties or activities, given the nature and extent of the disability. If the firefighter's physician does not agree that the firefighter is medically able to perform the light duty assignment, he must express, in writing, those elements of the light duty assignment which the employee cannot perform and the specific medical reasons which preclude the firefighter from performing the duties. If there is a disagreement between the City's physician and the firefighter's physician as to the firefighter's fitness to perform one or more portions of the duties of the light duty assignment, those portions cannot be assigned until the dispute is resolved pursuant to Section 7. It is understood that assignment to light duty is temporary and that a firefighter so assigned does not have any entitlement to a continued light duty assignment for an indefinite duration of time.

Nothing contained herein shall require the Department to create light duty assignments.

Section 6 - Termination of Benefits

- (a) Salary payments provided by Section 207-a(1) shall terminate upon the employee being retired pursuant to an accidental disability retirement or a performance of duty disability retirement as set forth in the Retirement and Social Security Law. Nothing herein shall preclude the continuation of 207-a benefits pursuant to 207-a(2), if appropriate.
- (b) The City will not discontinue Section 207-a benefits without the consent of the firefighter unless the firefighter's treating physician certifies that he is medically able to return to work and the firefighter refuses to do so. In the event that the City believes that the benefit should terminate and the firefighter does not consent, or his physician does not certify that he is able to return to work, the City may utilize the provisions of Section 7 in order to receive a determination from the arbitrator regarding the firefighter's continued eligibility for benefits.

Section 7 - Dispute Resolution Procedure

In the event that the City denies an application for Section 207-a benefits, seeks to discontinue Section 207-a benefits, there is a dispute about whether a firefighter is capable of performing a specific light duty assignment, or there is an issue with respect to outside employment, the matter will be submitted directly to arbitration pursuant to the rules of the Public Employment Relations Board. A hearing shall be held within sixty (60) days of appointment except that the deadline may be extended upon mutual consent. The arbitrator shall render his/her decision within thirty (30) days of the closing of the record. The determination of the arbitrator shall be final and binding on the City and the firefighter, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information. The cost of arbitration shall be borne equally by the City and the firefighter.

Section 8 - Disability Retirement

Consistent with Section 207-a, the City may file an application on the firefighter's behalf for retirement under Sections 363 or 363-c of the New York State Retirement and Social Security Law. Any injured or sick firefighter who is receiving 207-a benefits shall permit reasonable medical inspections in connection with such an application for accidental disability retirement or performance of duty disability retirement.

Section 9 - Continuation of Contract Benefits

For the first ninety (90) days of leave pursuant to Section 207-a, a firefighter will continue to accrue all contract benefits. After ninety (90) days, the firefighter shall not accrue any contract benefits except for wages, applicable longevity and health insurance. In the event that the firefighter is assigned to light duty (pursuant to Section 5 above) the firefighter will be entitled to all contractually negotiated fringe benefits with respect to holidays, clothing, vacation, sick leave, etc.

Section 10 - Outside Employment

If, as a result of an investigation, the City determines that a firefighter receiving benefits pursuant to 207-a has engaged in paid outside employment, the City shall provide written notice of such determination. The notice shall specify in detail any and all reasons and the factual basis for those reasons for the determination. The firefighter may appeal the determination pursuant to Section 7 herein. The arbitrator shall have the authority to determine the amount of benefit to be reimbursed, if any, and direct the manner in which such reimbursement shall be made. The City, upon request, must be provided with a W-2 form or tax returns or other proof other than sworn statements by the firefighter. The firefighter may redact irrelevant information from the income tax information requested by the City, e.g., spousal income.

Section 11 - Hazardous Exposure

A firefighter who reasonably believes he or she may have been exposed to a health hazard, e.g., AIDS, Hepatitis-B, biological or chemical toxins, etc., as a result of the performance of his or her duties, may file a hazardous exposure incident form (See Appendix "A" - Form 4) at the time of the exposure. The exposure form will be maintained by the City in the firefighter's personnel file.

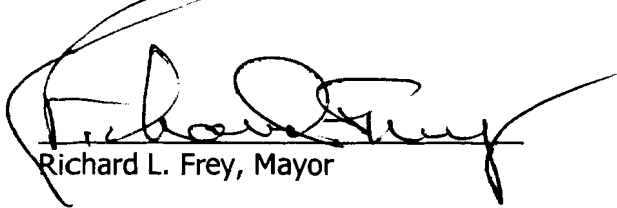
If a firefighter claims a job-related injury due to exposure to a health hazard, then he or she must comply with the Notice of Disability filing requirements of Section 2 as well as the other requirements of this Article.

Section 12 - Exclusivity of Procedures

These procedures are the sole exclusive procedures for determining a firefighter's eligibility for benefits under Section 207-a. As such, a firefighter shall have no right to challenge decisions of the City regarding eligibility or continued eligibility for 207-a benefits under the grievance machinery included in any collective bargaining agreement to which the firefighter or his or her collective bargaining representatives are a party.


Either party may file a grievance for a violation of these procedures. In that case, the scope of the arbitrator's authority will be solely to determine whether the procedures were complied with or violated.

FOR THE CITY OF DUNKIRK


Richard L. Frey, Mayor

Dated: 3-29-05

FOR THE DUNKIRK PROFESSIONAL
FIREFIGHTER'S ASSOCIATION


Keith D. Ahlstrom, President

Dated: 3-29-05

City of Dunkirk Fire Department
General Municipal Law Section 207-a
Application

1. _____
Name of Firefighter
2. _____
Address
3. _____ 4. _____
Telephone Number Age
5. _____
Name of Supervisor
6. _____
Current Job Title
7. _____
Occupation at Time of Injury/Illness
8. _____
Length of Employment
9. _____ 10. _____ 11. _____
Date of Incident Day of Week Time
12. Name of Witness(es)
 - a. _____
 - b. _____
 - c. _____
13. Describe what the Firefighter was doing when the incident occurred. (Provide as many details as possible. Use additional sheets if necessary.) _____

14. Where did the incident occur? Specify. _____

15. How was the claimed injury or illness sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed. Use additional sheets if necessary.) _____

16. When was the incident first reported? _____

To whom? _____

Time _____

Witness (if any) _____

17. Was first aid or medical treatment authorized? _____

By whom? _____

Time _____

18. Name and address of attending physician _____

19. Name of hospital _____

20. State nature of injury and part or parts of body affected _____

21. Will the Firefighter be returning to duty? _____

When? _____

Date of Report

_____, New York _____
Signature of Injured Firefighter

Release of Confidential Medical Information

I do hereby authorize any physician, nurse, or other health care provider who has attended, examined or treated me, or any hospital at which I have been examined or treated, to furnish the City of Dunkirk, New York, or its duly authorized representative, with any and all medical and billing information which may be requested regarding my injury of _____ and treatment rendered therefore. (insert date)

Signature of Firefighter

Printed Name of Firefighter

Date

- This release is given upon the condition that any records provided pursuant to this medical release will be provided simultaneously to the firefighter. Any cost for these copies will be paid by the City of Dunkirk, New York. The health care provider is not authorized to prepare any special medical reports or otherwise communicate about the firefighter's condition.

CONFIDENTIALITY

The medical records released are to be used solely by the City to carry out its obligations under Section 207-a of the General Municipal Law, administering the contractual 207-a procedures, or where the release is authorized or required by law. For 207-a purposes they may only be accessed by the attorney for the City, the Chief of the Fire Department, the City Personnel Administrator and their designated medical experts or to others authorized by the attorney for the City for the purpose of presenting evidence at 207-a hearings. If release of these records to others is authorized or required by law, the City will provide written notification to the firefighter listing the records released and to whom the records were released. Access without the firefighter's consent by any other individuals will be considered a breach of the City's contractual obligation to keep these records confidential.

REPORT OF EXPOSURE

Name _____

Position/Rank _____

Date of claimed exposure _____

Substance to which the firefighter claims to have been exposed _____

Place (address) where claimed exposure took place _____

Name of witnesses to exposure _____

Was the exposure investigated? _____

By whom? _____

Date

Signature of Firefighter

Date

Signature of Firefighter

* This form is to be used by a firefighter to report a claimed exposure to hazardous substances. A copy of this report will be placed in the firefighter's personnel file.

Contract: City of Dunkirk

State of New York)
) ss.:
County of)

_____, being duly sworn, deposes and says that he/she has read the foregoing notice and knows the contents thereof; that the same is true to the knowledge of deponent except as the matters therein stated to be alleged upon information and belief; and that as to those matters he/she believes to be true; any false statements herein may subject the deponent to the penalties of perjury.

Sworn to before me this _____ day of _____, 20_____.

Notary Public - Commissioner of Deeds