

AGREEMENT BETWEEN
CITY OF BRIGANTINE, NEW JERSEY



BRIGANTINE CITY BEACH PATROL
LIFEGUARD ASSOCIATION



JANUARY 1, 2007 – DECEMBER 31, 2009

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ARTICLE I

Purpose

This Agreement is entered into between the City and the Association to promote and ensure harmonious relations, cooperation, and understanding between the City and the lifeguards; to prescribe the rights and duties of the City and lifeguards; to provide for the resolution of the legitimate grievances, all in order that the public safety of the Brigantine Beach shall be expedited and effectuated in the best interest of the people of the City of Brigantine, its visitors and the lifeguards and the City.

ARTICLE II

Recognition

A. The City recognizes the Association as the exclusive bargaining representative for seasonal lifeguards of the City of Brigantine. Excluded are the lieutenants, senior lieutenants and captains; beach badge inspectors and bookkeepers; dispatchers and maintenance personnel; and all other non-lifeguard employees of the City.

B. The title "lifeguard" shall be defined as those employees employed to guard the City's swimming areas and shall include the plural as well as the singular.

ARTICLE III

Management Rights

A. The City of Brigantine retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitution of the State of New Jersey and of the United States, including, but without limiting the generality of the foregoing, the following rights:

1. The executive management and administrative control of the beach patrol, the properties and facilities of the City, and the activities of its lifeguards. (Class A guards will be assigned to a specific beach during the season, but Beach Patrol supervisors reserve the right to move the Class A guard as they deem necessary.)
2. To make and amend rules of procedure and conduct, to determine methods and equipment, to determine work schedules, to decide the number of members needed, and to be in sole charge of the quality and quantity of the work required.
3. To hire, direct, promote, transfer and assign all members, and subject to the provisions of the law, to determine their qualifications and conditions of continued employment. (Class A guards will be assigned to beaches at which rookie school is being held, so long as it does not leave a protected beach without Class A guard and so long as the beach is open to the public. The Class A guard may assist, where possible, and provide non-binding input concerning his judgment about the rookie's progress and qualifications.)
4. To suspend, discharge or take any other appropriate disciplinary action against any lifeguard, subject to the provisions of Article 10 of this Agreement.
5. To relieve lifeguards of duty because of lack of work.
6. To take whatever actions may be necessary to carry out the mission of the beach patrol in emergency situations.
7. To determine the length of the beach season, the hours of lifeguard coverage, the number of beaches to be protected and the number of guards at each beach.
8. The City reserves the right with regard to all other conditions of employment not reserved to make such changes as it deems desirable and necessary.

B. In the exercise of the foregoing powers, rights, authority, duties and responsibilities of the City, the adoption of policies, rules, regulations and practices and the furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of New Jersey and of the United States.

C. Nothing contained herein shall be construed to deny or restrict the City of its rights, responsibilities and authority under any National, State, County or local laws or regulations.

ARTICLE IV

Non-Discrimination

A. The City and Association agree that there shall be no discrimination against any member because of race, creed, color, religion, sex, national origin, political affiliation, or physical or mental disabilities, so long as said disability does not prevent the person from performing his/her duties as a lifeguard.

B. The City and the Association agree that all members covered under this Agreement have the right without fear of penalty or reprisal to form, join, and assist any member organization or to refrain from any such activity. There shall be no discrimination by the City or the Association against any member because of the member's membership or non-membership or activity or non-activity in the Association.

ARTICLE V

Maintenance of Work Operations

A. The Association hereby covenants and agrees that during the term of this Agreement, neither the Association nor any person acting on its behalf will cause or authorize, nor will any of its members take part in any strike (i.e., the concerted failure to report for duty or willful absence of any member from his position, work stoppage of work, or absence in whole or in part, from the full, faithful and proper performance of the member's duties of employment), work stoppage, slow-down, walk-out or other illegal job action would constitute a material breach of this Agreement.

B. The Association agrees that it will make a reasonable effort to prevent its members from participating in any strike, work stoppage, slow-down, or other activity aforementioned or supporting any such activity by any other member or group of members of the City, and that the Association will publicly disavow such action and order all such members who participate in such activities to cease and desist from same immediately and to return to work, and take such other steps as may be necessary under the circumstances to bring about compliance with the Association order.

C. Nothing contained in this Agreement shall be construed to limit or restrict the City in its right to seek and obtain such judicial relief as it may be entitled to have in law or in equity for injunction or damages, or both, in the event of such breach of the Association or its members.

D. The City agrees that it will not engage in the lockout of any of its members.

ARTICLE VI

Grievance Procedure

A. The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of employment under this Agreement.

B. The term "grievance" as used herein means an appeal by an individual member or the Association on behalf of an individual member or group of members, the interpretation, application or alleged violation of the terms and conditions of this Agreement. Disputes concerning terms and conditions of employment controlled by statute or administrative regulation, incorporated by reference in this Agreement, either expressly or by operation of law, shall not be processed beyond Step One herein.

C. The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent:

Step One

The aggrieved of the Association shall institute action under the provisions hereof within seven (7) calendar days after the event and an earnest effort shall be made to settle the differences between the aggrieved member and the OIC (officer in Charge, i.e.; captain, senior lieutenant) for the purpose of resolving the matter informally. Failure to act within seven (7) calendar days shall be deemed to constitute an abandonment of the grievance.

Step Two

If no agreement can be reached orally within five (5) calendar days of the initial discussion with the captain/OIC, the Association may present the grievance in writing within two (2) calendar days thereafter to the City Manager. The written grievance at this Step shall contain the relevant facts and a summary of the preceding oral discussion, the applicable Section of this contract violated, and the remedy requested by the grievance. The City Manager or his designated representative will answer the grievance in writing with five (5) calendar days of receipt of the written grievance.

Step Three

If the Association wishes to appeal the decision of the City, it shall have the right to submit the dispute to arbitration within ten (10) calendar days of receiving the City Manager's written response, by sending the City Manager notice of its intention to arbitrate and otherwise complying with the rules and regulations of

the New Jersey State Board of Mediation. The costs for the services of the arbitrator shall be borne equally by the City and the Association.

D. The parties direct the arbitrator to decide, as a preliminary question, whether he has jurisdiction to hear and decide the matter in dispute. The arbitrator shall be bound by the provisions of this Agreement and shall the Constitution and Laws of the State of New Jersey, and shall be restricted to the application of the facts presented to him involved in the grievance. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provisions of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding.

E. The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If any grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied, and the Association may proceed to the next step within the time limits calculated beginning from the last day that the City's response at the prior step was due. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

ARTICLE VII

Dues Deduction

A. The City agrees to deduct twelve dollars and fifty cents (\$12.50) from each paycheck up to the maximum of twenty-five dollars (\$25.00) per member during the 2007, 2008, and 2009 seasons. These deductions will be taken from the salaries of the members' subject to this Agreement who sign a properly dated authorization card. A check shall be issued to the Association in the week following payday including the money deducted from paychecks issued on the prior payday. Such deductions shall be made in compliance with Chapter 123, Public Law of 1974, N.J.S.A. (R.S.) 52:14-15, 9e as amended.

B. A check-off shall commence for each member who signs a properly dated authorization card, starting with the first paycheck and continuing until the proper monetary amount as cited in paragraph A has been collected.

C. The amount to be deducted from each paycheck and the maximum referred to in sub-paragraphs A and B above may be modified by the Association, provided:

- Each member signs an authorization card reflecting the proper amount to be deducted.
- The deductions for all members for whom deductions are to be made shall be identical.

D. The Association shall indemnify, defend and save the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the City in reliance upon salary deduction authorization cards as furnished by the Association to the City, or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association, advising of such changed deduction.

E. This Dues Deduction article shall be inapplicable in the event that the Association or the members violate the provisions of the Maintenance of Work Operations article of this Agreement.

ARTICLE VIII

Employee Representation

A. The Association shall notify the City as to the names of the elected Officers of the B.C.B.P.L.A.

B. The Association reserves the right to have a non-employee representative in all matters including negotiations, provided, however, that such representative shall not be permitted to visit with lifeguards during working hours at their work stations for the purpose of discussing Association representation matters without prior notification and approval of the Chief or OIC.

C. The Officers of the Association shall be permitted, when off-duty, to visit the members during working hours at their work stations for the purpose of discussing Association representation matters by obtaining permission from the Chief or OIC. An officer of the Association shall be permitted, when on duty, to investigate grievances requiring immediate attention by obtaining permission from the Chief or OIC.

D. Members of the Association reserve the right to be accompanied and represented by an officer of the Association when a member is summoned to the office of the Chief or City Manager involving disciplinary actions.

ARTICLE IX

Personnel Files

A. Upon prior notice to the City Manager or his designated representative, all lifeguards shall have access to their individual personnel file. Any such request shall not be unreasonable denied or delayed.

B. The City shall not insert any adverse materials into any file of the member, unless the member has had an opportunity to review, sign and receive a copy of such adverse material, and the officer has met with him to inform him of the infraction and to hear his response (which response will be provided in a respectful fashion).

C. The member shall have the right to respond in writing to any complaint, negative report, or disciplinary warning entered into his individual personnel file, and said response shall also be attached to or written directly on the disciplinary warning in the member's individual personnel file (at the City's option).

ARTICLE X

Discharge And Suspension

- A. No member who has commenced his fourth (4th) season shall be discharged, suspended or otherwise disciplined, without just cause. The City will notify the Association within twenty-four (24) hours of the disciplinary action by hand delivery or by a professional service (US Mail, Western Union, Federal Express). Prior to a member's commencement of his fourth (4th) season, the member may be discharged, suspended or otherwise disciplined at the discretion of the City.
- B. A grievance by an member who has commenced his fourth (4th) season, claiming that he has been unjustly discharged or suspended, must be submitted to the City within seven (7) calendar days of the disciplinary action; otherwise, the same will be considered to have been made for just cause.
- C. The Association may grieve and obtain binding arbitration under the provision of this Agreement as to whether a member who has commenced his fourth (4th) season has been discharged, suspended or otherwise disciplined for just cause.
- D. A member will be deemed to have completed a season for purposes of this Article if they have worked thirty (30) days in the same season.
- E. A member may be terminated if they can not obtain or pass mandatory certifications in CPR as provided and paid for by the City as a term of employment. The member must be allowed (2) two opportunities to pass any required tests leading to these certifications. A lifeguard may be terminated if he cannot obtain a required certification after he has been given (2) two opportunities to pass any required tests leading to these certifications.

ARTICLE XI

Rehire of Lifeguards

A. Lifeguards who miss 1 or 2 seasons may be rehired as returning guards. A guard shall not be denied rehire in order to hire new guards. The returning guard must notify the Captain of his intentions before the beginning of the season.

B. If a situation arises where guards who have missed 1 or 2 seasons are returning in a year that no new guards are being hired, the returning guards will be rehired on seniority, but will not replace or “bump” a probationary guard.

C. Guards who miss 3 seasons and over will have to re-test with new hire guards of that season. Upon qualifying for rehire, said guards have priority on rehire over new hires.

D. Alternate guards who did not work in the season for which they were tested must requalify for the following season. Alternate guards who are called to work a portion of the season will be deemed hired for the next season on the BCBP. The alternate guard who works a minimum of thirty (30) days in the season will qualify for 1 year of service in that year. Alternate guards who do not work a minimum of thirty (30) days will qualify for rehire in the following season, but with no seniority. It is understood, however, that forty (40) days are required to move to the next salary step. (See Article XIV(E))

E. Members who have completed their third (3) season in good standing shall be offered re-employment for each succeeding season, provided that they otherwise maintain their eligibility for employment as a lifeguard, and that adequate funds are approved for the city budget.

ARTICLE XII

Working Conditions

A. Equipment assigned for use by lifeguards and EMT's shall be in proper working order. When a boat or other piece of equipment is deemed by the Chief, OIC, or Equipment Maintenance Officer (EMO) to be unfit for work, no member that is covered by this Agreement shall be disciplined for his refusal to use said unfit equipment.

B. Each lifeguard shall receive upon his first day of work the following items of Beach Patrol uniform:

ROOKIES:

1. One (1) whistle with lanyard
2. One (1) sweat shirt with hood
3. One (1) pair sweat pants
4. One (1) tank top
5. One (1) T-shirt
6. One (1) long sleeve T-shirt
7. Two (2) pairs of useful lifeguard shorts
8. One (1) hat that shades face, ears and neck or baseball type cap*
9. 24 fluid ounces of SKIN CANCER FOUNDATION approved sun screen of 30 SPF or higher.

LIFEGUARDS – SECOND AND THIRD YEARS

1. One (1) whistle with lanyard
2. One (1) WIND-BREAKER WITH HOOD
3. One (1) pair sweat pants
4. One (1) tank top
5. One (1) T-shirt
6. One (1) long sleeve T-shirt
7. Two (2) pairs of useful lifeguard shorts
8. One (1) hat that shades face, ears and neck or baseball type cap*
9. 24 fluid ounces of SKIN CANCER FOUNDATION approved sun screen of 30 SPF or higher.

*The City strongly urges all employees to wear the shading hat, as opposed to the baseball type cap.

C. In addition to the above issued uniforms and equipment, female lifeguards shall require: Two (2) Speedo bathing suits (to be issued on the first day of work).

D. Each lifeguard shall also be issued a rain poncho with hood.

E. Beginning in each lifeguard's fourth year of employment, in lieu of the allotment in "B" above, he/she shall receive a credit of \$150.00 per season with which he/she can purchase only those items needed from an approved list. The approved list for such employees will include the following items: Rash Guards and Surf Fins ("Da Fins" brand flippers.)

F. The City shall provide one (1) optional skin cancer screening each season.

ARTICLE XIII

Work Week and Overtime

A. A basic work week shall consist of forty (40) hours of work in five (5) days during the week (defined as Friday through Thursday). Attendance at meetings, time spent receiving CPR, lifesaving and first aid training during the summer season when such training is provided by or under the direction of the City, and such assignments as picking up or delivering radios to headquarters are considered work hours.

B. The City shall pay lifeguards at their regular rate if the lifeguard is assigned to work longer than the scheduled 8-hour day. This is to include emergencies (unless recalled under Paragraph C of this Section, below) and special events, such as the Brigantine Bayfest, the Brigantine Triathlon, surf contests, or other such events, which would require the professional training of the lifeguards of the BCBP.

C. Overtime - Recall for Emergencies: Any lifeguard who is recalled for an emergency by the BCBP Chief or his designee shall be paid at a rate of time and one half their regular hourly rate for all hours worked pursuant to such recall and shall be guaranteed a minimum of two hours of premium pay for each emergency recall.

D. Overtime - Work Past Closing: Any lifeguard who is requested by the BCBP Chief or his designee to work past the beach closing time of 5:30 p.m. will receive overtime pay at the rate of time and one half their regular hourly rate for all time actually worked.

E. Overtime - Sixth Day: All lifeguards regularly scheduled to work 40 hours or less shall be paid at the overtime rate of time and one half their regular rate for all hours worked over forty (40) in the workweek. Any lifeguard volunteering to work a regularly scheduled sixth day shall not be paid overtime until he or she has exceeded forty-eight (48) hours in the work week.

ARTICLE XIV

Salaries, Premiums, Bonus, Pay Period

A. Salaries: The daily rates for the 2007, 2008 and 2009 seasons shall be as follows:

Years of Employment	2007	2008	2009
1	\$76	\$78	\$80
2	\$77	\$79	\$81
3	\$79	\$81	\$83
4	\$82	\$84	\$87
5	\$84	\$86	\$89
6	\$86	\$88	\$91
7	\$88	\$90	\$93
8	\$90	\$92	\$95
9	\$92	\$95	\$97
10	\$113	\$116	\$119
11 – 15	\$123	\$126	\$130
16-20	\$128	\$131	\$135
21+	\$144	\$158	\$152

B. Premiums: Paid to members holding the following certifications on a daily rate:

Lifeguard Training	\$6.00
Lifeguard Instructor	\$7.00
Water Safety Instructor	\$7.00
CPR Instructor	\$7.00
EMT	\$9.00

C. It will be the responsibility of the Chief and officers of the Beach Patrol to insure that lifeguards with the above certifications will be utilized to maximize their effectiveness during Beach Patrol operations. It will be to the responsibility of the certified lifeguards to adhere to the directives of the Chief and officers of the Beach Patrol in contributing the use of their certifications during Beach Patrol Operations.

D. Bonus: Any member who begins work on or before July 4th and works to and including labor day weekend will receive a bonus of \$2.00 per day for each day worked, up to a maximum of \$150.00. Any member who is disciplined for no-call, no-show or is suspended for three or more days at any point during the season will not be eligible to receive any bonus, regardless of the number of days worked.

E. A member who works forty (40) days in one season shall be deemed to have completed a year of service and will move to the next steps on the salary scale upon return in the following season.

F. Exceptions to the requirements of the bonus are extended to those lifeguards who must serve a military obligation in the summer (National Guard / Reserve Training). The number of days of military obligations will be honored as days towards the bonus. This exception will also be honored as days towards completion of a full season (See subparagraphs D and E).

G. Pay Period: Members shall be paid bi-weekly on Friday for work performed through Thursday of the prior week (eight (8) days earlier).

ARTICLE XV

Injury Leave

A. In the event a lifeguard becomes disabled by reason of a service-connected injury or illness and is unable to perform his duties, the period between the injury and the lifeguard being determined to have reached maximal medical improvement or the employee is medically cleared to return to work, whichever comes first and as determined by the City's physician, shall count as days worked for the purpose of Bonus eligibility. Further, for the purposes of Pension calculations, during this period, the lifeguard shall be considered to have worked his or her regular schedule. The disability period described herein shall, under no circumstances, extend beyond one (1) year from the date of the injury. Nothing herein shall be construed as providing any period of paid leave or to require the payment of any wages for any time not actually worked.

B. Any lifeguard who is injured, whether slight or severe while working, must immediately, or as soon as practically possible, report said injury to the BCBP Chief.

C. It is understood that the lifeguard must file an injury report with the BCBP Chief so that the City may file the appropriate Worker's Compensation Claim. Failure to report said injury may result in the failure of the lifeguard to receive any benefits under this Article.

D. The lifeguard shall be required to present evidence by a certificate of a physician designated by the insurance carrier that he is unable to work and the City may reasonably require the lifeguard to present such certificate from time to time.

E. If the City does not accept the certificate of the physician designated by the insurance carrier, the City shall have the right, at its own cost, to require the lifeguard to obtain a physical examination and certification of fitness by a physician appointed by the City.

F. In the event the City appointed physician certifies the lifeguard fit to return to duty, injury leave benefits granted under this Article shall be terminated.

G. If the City can prove that an lifeguard has abused his privileges under this Article, the lifeguard will be subject to disciplinary action by the City. If the lifeguard is found to be in violation of this Article, he shall be subject to disciplinary action by the City to the extent which is provided within this Agreement and any Ordinance in effect governing the City of Brigantine.

ARTICLE XVI

Bereavement Leave

A. In the event death in the lifeguard's immediate family, the lifeguard shall be granted time off without pay from the day of death up to and including the day of the funeral, but in no event to exceed five (5) days (seven (7) days were attendance at the funeral requires overnight travel.) Time off under this provision shall count as days worked only for the purpose of Bonus eligibility and Pension calculations.

B. The term "immediate family" shall include spouse, child, grandparent, parent, brother, sister or spouse's parent, or any other relative living in the lifeguard's household.

ARTICLE XVII

Personal Days

A. In lieu of any other paid time off, members shall be eligible for paid personal days, at a time mutually agreed upon between the Chief/OIC and the member (unless the member is using a personal day for unexpected sickness). Personal days may not be used in partial days. Personal days are only for members who begin work on or before July 4.

Personal Days :

<u>Years of employment</u>	<u>Number of Days</u>
1	1
2	1
3	2
10 and up	3

B. In order to encourage attendance at the end of the season, the City will buy back unused personal days at the end of the season at the individuals' daily rate of pay.

ARTICLE XVIII

Pension

The **Association** and the members waive any right to participate in any pension plan to the extent permitted by applicable law. In the event that the law changes, each guard will have his pension contributions returned to him (not the City's contribution) with interest, provided the law so permits.

ARTICLE XIX

Legal Representation

The City will provide legal representation for any member with respect to any action or legal proceeding arising out of and directly related to the member's lawful actions performed in the course of and within the scope of his or her duties as a member of the City of Brigantine Beach Patrol. The foregoing shall not apply to any disciplinary proceeding instituted by the City against the member or any criminal complaint instituted as a result of any complaint on behalf of the City.

ARTICLE XX

Court Attendance Time

Any member required to appear in court on City-related business as a witness on his or her day off or time off shall be compensated for all time actually spent in Court at his or her overtime rate. This provision shall not apply with respect to any litigation to which the City is a party and the member's attendance as a witness is not at the request of the City.

ARTICLE XXI

Separability and Savings

Each and every clause of this Agreement shall be deemed separable from each and every other clause of this Agreement. To the extent that any clause or clauses shall be finally determined to be in violation of any law, then in such event, such clause, or clauses, only to the extent that any may be so in violation, shall be deemed of no force and effect and unenforceable without impairing the validity and enforceability of the rest of the Agreement, including any and all provisions in the remainder of any clause, sentence or paragraph in which offending language may appear.

ARTICLE XXII

Fully-Bargained Agreement

This agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargaining issues which were or could have been the subject of negotiations. During the term of this agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement.

ARTICLE XXIII

Gender

When “he” or “his” is used in this Agreement, it shall include the female gender as well.

ARTICLE XXIV

Duration

This agreement shall be in full force and effect as of January 1, 2007, and shall remain in effect to and including December 31, 2009, without any reopening date. This agreement shall continue in full force and effect from year to year thereafter, until one party or the other gives notice, in writing, no sooner than the August 1 and no later than the October 1 prior to the expiration of this Agreement of a desire to change, modify or terminate this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals of the City of Brigantine, New Jersey, on this 11th day of May, 2007.

Brigantine City Beach/Patrol Lifeguard Association

By: [Signature]
5/11/07 (Date)

City of Brigantine
Atlantic County, New Jersey

By: [Signature]
5-11-07 (Date)