

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

NUTLEY FMBA LOCAL 44-A

AND

TOWNSHIP OF NUTLEY

January 1, 2009 TO December 31, 2012



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PREAMBLE

This AGREEMENT entered into 22nd Day of February, 2010 by and between the Township of Nutley, County of Essex, a Municipal Corporation of the State of New Jersey, hereinafter called the "**TOWNSHIP**" and, Superior Officers Association of FMBA Local 44-A hereinafter called the "**ASSOCIATION** or **FMBA**," duly appointed representative of all full time Lieutenants and Captains, employed by the Township, excluding all other fire officers with the exception of the Deputy Chief as stated. The Deputy Chief shall be excluded from the following sections: Section V, Section VI, Section VII, and Section VIII. The Association represents the complete and final understanding on all bargained issues between the Township and the Association.

ARTICLE I

RECOGNITION

A. The Township hereby recognizes the Association as the sole and exclusive representative of all employees in the bargaining unit for the purpose of collective bargaining and all activities and processes relative thereto.

B. It is the intention of the parties that this Agreement be construed in harmony with New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. as amended, the laws of the State of New Jersey, the Ordinances and policies of the Township of Nutley, and the rules and regulations of the Township Fire Division.

ARTICLE II

MANAGEMENT RIGHTS

A. The Township hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties, and responsibilities conferred upon and the vested in it prior to the signing of this Agreement by the laws and constitution of the State of New Jersey, Department of Personnel, New Jersey Public Employment Relations Commission, 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 Township Government and its properties, facilities, and its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Township.
2. To make rules of procedure and conducts, to use improved methods and equipment to determine duties, to decide the number of employees needed for any particular time and to be in sole charge of the quality and quantity of the work required.
3. The right of management to make such reasonable rules and regulations as it may from time to time deem best for the purpose of maintaining order, safety and/or the effective operation of the Department after advance notice thereof to the employees to require compliance by the employees is recognized.
4. To hire all employees, whether permanent, temporary or seasonal, to promote, transfer, assign or retain employees in positions within the Township, in accordance with Department of Personnel Rules and Regulations.
5. To suspend, demote or take any other appropriate disciplinary actions against any employee for good and just cause according to law.
6. Nothing contained herein shall prohibit the Township from contracting out any work.
7. To layoff employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and nonproductive.

8. Nothing contained herein shall be construed to deny or restrict the Township of its rights, responsibilities, and authority under R.S. 40A: 1-1 et. seq. or any national, state or local laws or regulations.
9. The parties recognize that the exercise of managerial rights is a responsibility of the Township on behalf of the taxpayers and that the Township cannot bargain away or eliminate any of its managerial rights. No grievance may proceed beyond Step Four herein unless, it constitutes a controversy arising over the application or alleged violation of negotiable terms and conditions of employment.

ARTICLE III

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 in its behalf will cause, authorize or support, 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 employee from his position, or stoppage of work, or absence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment), work stoppage, slow-down, walk-out or other illegal job action against the Township. The association agrees that such action would constitute a material breach of this Agreement.

B. In the event of a strike, slow-down, walkout, or job action, it is covenanted and agreed that participation in any or all such activity by an Association member shall entitle the Township to invoke any lawful remedy, which may include:

1. Withdrawal of Association Recognition;
2. Such activity shall be deemed grounds for termination of employment of such employee or employees.

C. The Association agrees that it will make every reasonable effort to prevent its members from participating in any strike, work stoppage, slow-down, or other activity aforementioned or from supporting any such activity by any other employee or group of employees of the Township and that the Association will publicly disavow each 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's with the Association order.

D. Nothing contained in this Agreement shall be construed to limit or restrict the Township in its right to seek and obtain such judicial relief as it may be entitled to have in law or in equity in the event of such breach of the Association or its members.

ARTICLE IV

GRIEVANCE PROCEDURE

A. Definition

A grievance is defined as an alleged violation of this Agreement and shall not include disciplinary matters appealable to the Department of Personnel.

B. Purpose

1. The purpose of the grievance procedure is to secure at the lowest possible level, equitable solutions to the grievances which may from time to time arise affecting the terms and conditions of employment. Both parties agree that these proceedings will be kept as formal and confidential as may be appropriate at any level of the procedure.
2. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate members of the fire administration and having the grievance adjusted without intervention of the FMBA provided the adjustment is not inconsistent with the Agreement. The FMBA will be given the opportunity to be present at such adjustment, provided the grievant requests same.
3. The duly authorized FMBA representative or representatives shall, if necessary, be given the time off without loss of compensation to attend grievance Proceedings.

C. Procedures

An aggrieved employee shall institute action under the provisions hereof within ten (10) working days of this occurrence complained. Failure to act within said ten (10) days shall be deemed to constitute an abandonment of the grievance.

1. Step One - An employee with a grievance shall first discuss it with the Deputy Chief with the objective of resolving the matter informally. If the employee is not satisfied with the informal discussion, or if no decision is reached within five (5) calendar days after the informal presentation of the grievance, the employee may discuss the matter formally with the Deputy Chief and shall present to the Deputy Chief a written statement of the grievance. The Deputy Chief shall render his decision in writing within five (5) calendar days after the formal presentation of a written grievance to him.

2. Step Two - If the grievant is not satisfied with the decision under Step One, or if no decision has been rendered by the Deputy Chief within seven (7) days after presentation of the written grievance to the Deputy Chief, the grievant may present the grievance to the Director of Public Safety. The Director of Public Safety shall render his decision, in writing, within seven (7) calendar days after the presentation of the grievance.
3. Step Three - In the event that the grievant is not satisfied with decision of the Director of Public Safety, the grievant or the FMBA, on his behalf has fifteen (15) days in which to request binding arbitration. The arbitrator shall be selected in accordance with the rules and regulations of the New Jersey Public Employment Relations Commission and/or the American Arbitration Association, as the case may be.

D. Arbitration

The arbitrator's decision shall be in writing and shall be issued not later than thirty (30) calendar days after the close of the arbitration hearing. The decision shall set forth the arbitrator's findings of fact, reasons, and conclusion on the issue or issues submitted. The arbitrator's decision shall be binding. The costs for the services of the arbitrator shall be borne equally by the Township and the FMBA, unless however, the applicable State statutes and the New Jersey Public Employment Relations Commission provide to the contrary.

E. Group Grievance

A grievance affecting a group of employees, covered under Article I, may be submitted by the FMBA on behalf of the said named group at Step One of the grievance procedure.

ARTICLE V

SALARIES & LONGEVITY

A. The salary schedule for all employees recognized as being represented by Local 44A shall be set forth below, effective as follows:

1. **Salary Guide for Fire Officers:**

Title	01-01-09	01-01-10	01-01-11	01-01-12
	0.0%	2.5% + \$2500	3% + \$2800	3.5% + \$3100
Lieutenant 1 st year	\$84,693.98	\$87,111.32	\$90,024.65	\$93,475.51
Lieutenant 2 nd year	\$90,136.72	\$92,690.13	\$95,770.83	\$99,422.80
Lieutenant 3 rd year	\$95,579.47	\$98,268.95	\$101,517.01	\$105,370.10
Captain 1 st year	\$101,022.28	\$103,847.77	\$107,263.20	\$111,317.29
Captain 2 nd year	\$106,465.09	\$109,426.59	\$113,009.39	\$117,264.58
Captain 3 rd year	\$111,907.91	\$115,005.40	\$118,755.58	\$123,212.02
Deputy Fire Chief	\$140,148.41	\$143,952.12	\$148,570.68	\$154,070.65
<i>Current Lieutenants appointed prior to 6/8/09 shall be paid as follows</i>				
	\$82,891.29	\$93,427.69	\$101,517.03	\$105,370.12

B. **Provisional or Continuous Acting Captain Time:**

Provisional time as a Captain time shall serve as time accrued towards the three (3) year salary steps as set forth in this section.

C. **Fire Prevention Bureau Differentials**

- 1) The appointed Fire Subcode Official (Firefighter or Fire Officer) shall receive additional compensation in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) annually included in base salary.
- 2) During the absence of the Fire Subcode Official for three (3) or more days consecutively, the next senior Qualified Firefighter or Fire Officer assigned to the Fire Prevention Bureau shall be compensated with an additional rate of \$6.00 per hour for the additional duties assumed. The following criteria must also be met: DCA License Fire Protection R.C.S.
 - a) DCA Fire Protection Subcode
 - b) B.F.S. Fire Inspector/Fire Official
 - c) Full Time assignment to Fire Prevention Bureau

- D. The appointed Fire Official (Firefighter or Fire Officer) shall receive additional compensation in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) annually included in base salary.
- E. The Senior Fire Inspector (Firefighter or Fire Officer) assigned to Fire Prevention shall be compensated with additional compensation in the amount of Two Thousand Dollars (\$2,000.00) annually included in base salary.
- F. Any firefighter or fire officer assigned to Fire Prevention as of January 1, 2010 (excluding senior firefighter assigned) shall be compensated with an additional One Thousand Five Hundred Dollars (\$1,500.00) in base salary annually.
- G. Any fire Officer appointed to the position of Haz Mat Coordinator shall be compensated with an additional One Thousand Two Hundred Dollars (\$1200.00) in base salary.
- H. The appointed Office of Emergency Management coordinator (Firefighter or Fire Officer) shall receive compensation in the amount of Two Thousand Five Hundred Dollars (\$2500.00) annually included in base salary

A. **Longevity:**

- 1. All employees of the Fire Department covered by this Agreement shall be entitled to and be paid longevity pay, in addition to his/her salary, computed according to the following schedule:

Years completed Service	Percentage of Base Salary
Upon the anniversary date of completion of five (5) years	2%
Upon the anniversary date of completion of ten (10) years	4%
Upon the anniversary date of completion of fifteen (15) years	6%
Upon the anniversary date of completion of twenty (20) years	8%
Upon the anniversary date of completion of twenty-four (24) years	10%

Note: Employees hired prior to 6/6/1983 were paid on January 1 of their Anniversary Year

ARTICLE VI

OVERTIME AND HOURS OF WORK

A. Overtime shall be paid for all work performed in excess of the workweek at the rate of one and one half (1½) times the computed hourly rate. Permanent full time employees shall not be paid overtime until said employee shall have worked the regularly scheduled shift.

B. Overtime work will be kept to a minimum, except in cases of emergency, where every attempt will be made to contact the Deputy Chief in advance of overtime being authorized. The reasons for the granting of overtime shall be noted on the overtime sheet and certified by the Deputy Chief.

C. The workweek for bargaining unit employees who perform firefighting duties shall be an average of not more than forty-two (42) hours computed over a period of one (1) fiscal year. The work schedule shall consist of a 24/72-hour work schedule. The day shall consist of a twenty-four (24) hour work period from 0700 hours to 0700 hours the following day. Notwithstanding the above provision. Effective upon the execution of this agreement all Officers overtime pay rate shall be based on eighty (80) hours per pay period.

D. Subject to a maximum accumulation of one-hundred and fifty (150) hours, fire captains shall, when there is mutual agreement with the Deputy Chief, have the option of selecting compensatory time in lieu of Paid Compensation. All Compensation in excess of one-hundred and fifty (150) hours shall be paid.

E. Fire Alarm Bureau and Fire Prevention Bureau - The work week for fire officers assigned to Fire Prevention shall be a ten hour day; working four weekdays each week excluding Township recognized holidays. The schedule will be such that no more than one member assigned to the fire prevention Bureau will be scheduled off each weekday, except when an employee utilizes vacation, PDO, comp time etc.

F. The work week for firefighters working a 5 and 2 schedule shall work an 8 hour work day Monday through Friday excluding Township recognized holidays.

G. In the event any employee is ordered in to work during other than regularly scheduled hours, he shall be paid at the rate of time and one half (1½), for a guaranteed minimum of two (2) hours or for all hours worked, whichever is greater. The Township shall reserve the right to retain the employee for the whole period of compensation

H. Compensation for authorized training shall be contingent upon its successful completion. Compensation is to include mileage, at current federal Government rate, if a town car is not provided, reimbursement for tolls, fees, books or any equipment required for course and pertinent out of pocket expenses Including meals.

a. Elective training by a firefighter to be considered non-mandatory shall adhere to the following. The Department shall pay for the elected course and allow time off when on duty without loss of pay for the course, but no additional compensation shall be given.

I. Upon retirement, all employees who have more than one-hundred and fifty (150) hours of compensatory time shall be paid a lump sum up to one-hundred and fifty (150) hours. All hours above that must be used before the employee retires.

J. The Deputy Chief reserves the right to call a departmental officers' meeting when necessary, for a maximum of ten (10) hours per year.

K. At retirement time, all employees who have compensatory time due, must use the time consecutively. Ten (10) hour days and fourteen (14) hour nights, before they start to use other time off they are due.

L. Whenever a shift is operating with five members on duty as minimum manning, and an officer calling in sick makes the shift short, the officer on duty at the time shall contact another officer of the same rank first (Captain for Captain, Lieutenant for Lieutenant) for overtime before calling in the other rank.

M. The department will create an overtime-rotational list. The list shall be created and utilized for the purposes of recall. The shift commander shall utilize this list when calling in firefighters to work overtime due to manpower or other overtime situations as deemed necessary by the Deputy Chief. Firefighters working less than 6 hours will retain their positions on the chart. The shift commander shall be responsible for completing the overtime slip supplied by the department. This list shall not be used to cover overtime if a member calls in sick, that shall be continued as in the past with the off going shift providing coverage using the shift specific list.

N. A separate department wide rotational overtime list shall be created and utilized for the purposes of outside fire prevention activities. This list shall be utilized for any Outside Duty assignment that requires the presence of a Fire Inspector. To be eligible a member must be certified NJ Division of Fire Safety Inspector and perform inspection while on duty for the fire prevention bureau as requested. All certified inspectors shall be eligible if they choose to be included. The Fire Prevention personnel shall have priority on all outside activities requiring a licensed inspector. The Hourly rates for mandatory extra duty assignments shall be at a rate of time and one-half in accordance with the Annual salary Ordinance.

ARTICLE VII

VACATIONS

Vacations shall be allocated as follows: Completion of one (1) year through the completion of ten (10) 25 workdays. Beginning eleven (11) years through career will be thirty (30) workdays.

When a man is promoted to the position of Lieutenant or Captain he shall also advance to twenty-five (25) work days unless he already has the time of service, Eleven (11) years to be advanced to thirty (30) days.

A. Vacations shall be workdays selected pursuant to Chapter 7 of the Fire Department rules and regulations. All officers hired before June 6, 1993 will receive their vacation increment on January 1st of the year of their anniversary for that increment. All Captains hired after June 6, 1993 will be awarded their increment on the date of their anniversary.

B. Any employee who is on a leave of absence (except work incurred injury leave or workmen's compensation) shall have his/her vacation leave for the year prorated for the time absent.

C. Changes in the scheduling of vacations will not be permitted without the prior approval of the Deputy Chief.

D. If, for any reason, any employee's vacation is canceled or not taken as scheduled, the vacation shall be rescheduled.

E. Any employee of the Fire Department who is entitled vacation leave at the time of retirement or resignation shall receive one day's pay for each day of such leave. If an employee is entitled to vacation leave at the time of his death, his widow, or if there is no widow, his other next of kin, shall receive vacation pay on the same basis as that to which the employee is entitled for vacation leave due at the time of retirement or resignation.

F. Revocation of approved time off by the Township will be done in writing in the person of only the Director or Deputy Chief, only after all other possible solutions to solve the emergency manpower problems or situation have been examined and considered.

G. A request for a day off will supersede a request for hours off, however, if the hours request is first, he/she will have the opportunity to change to a day off request. This being outside of the regular vacation picks.

H. Vacations shall be worked as follows: Shift firefighters one-day shift ten (10 hours) or one night shift fourteen (14) hours. For all other employees a vacation day shall be one work day.

ARTICLE VIII

WORK INCURRED INJURY

A. Employees who are injured, whether slightly or severely, while working, must make an immediate report within twenty-four (24) hours thereof to the Deputy Chief or his/her designated representative.

B. Employees may not return to work without a certification from the Township Physician that he/she is capable of returning to work at employer's expense.

C. Any employee who is injured while acting in the performance of his duty, or while on duty, or who becomes ill as a direct result of his/her employment, shall receive full pay, less the workmen's compensation temporary disability payments to which he/she is entitled during the period of their absence from employment for up to one (1) year.

ARTICLE IX

DEDUCTIONS FROM SALARY

A. The Township agrees to deduct from the salaries of its employees, subject to this Agreement, dues from the Association. Such deductions shall be made in compliance with Chapter 123, Public Law of 1974, N.J.S.A. (R.S. 52:14-15.9) as amended.

B. A check-off shall commence for each employee who signs a property dated authorization card, supplied by the Association and verified by the Township Treasurer during the month following the filing of such card with the Township.

C. If during the life of this Agreement there shall be any change in the rate of membership dues or agency fee, the Association shall furnish to the Township written notice thirty (30) days prior to the effective date of such change and shall furnish to the Township either new authorizations from its members showing the authorized deduction for each employee, or an official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.

D. The Association will provide the necessary "check-off authorization" form and the Association will secure the signatures of its members on the forms and deliver the signed forms to the Township Clerk.

E. Any such written authorization may be withdrawn at any time by the filing of notice of such withdrawal with the Township Clerk. The filing of notice withdrawal shall be effective to halt deductions in accordance with N.J.S.A. 51:14-15e as amended.

F. Notification - Prior to March 1 of each year, the FMBA will submit to the Township a list of those employees who have either become members of the FMBA for the then current membership year nor paid directly to the FMBA the full amount of the representation fee for the membership year. The Township will deduct from the salaries of such employees, in accordance with Article XXIII Representation Fee, the full amount of the representation fee and promptly will transmit the amount so deducted to the FMBA.

G. The Association shall indemnify, defend and save the Township 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 Township in reliance upon salary deduction authorization cards as furnished by the Association to the Township, 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.

ARTICLE X

FUNERAL LEAVE

A. In the event of death in the employee's immediate family, the employee shall be granted the four (4) calendar days off without loss of pay commencing with the day of death, or the day of the funeral. The Director of Public Safety may authorize 2 additional calendar days for extenuating circumstances without the use of sick time as in section F.

B. The "immediately family" shall include only spouse, child, brother, sister, parents, grandparents, step-brother, step-sister, corresponding step-relatives and the aforementioned individuals of the spouse's family.

C. In addition to immediate family as described in section B. The Township shall grant one-day leave without loss of pay to attend a funeral for aunt, uncle, or other relative at discretion of the Director of Public Safety.

D. Reasonable verification of the event may be required by the Township.

E. Such bereavement leave is not in addition to any holiday, day off, vacation leave or compensatory time off falling within the time of the bereavement.

F. Upon a showing of special circumstances or hardship, the Director of Public Safety shall have the option of extending bereavement leave beyond the degree of affinity as set forth in Section B and C above, and may, in these circumstances, authorize the use of sick time to extend the duration of the leave.

ARTICLE XI

INSURANCE

A. The Township shall provide a dental plan, hospitalization insurance coverage and major medical insurance in effect at the end of 1986. Such dental costs shall not exceed one and one-half (1½%) percent of salary costs for all personnel covered by this contract. Any difference in cost between an HMO and the Township insurance coverage shall be borne by the individual employee.

B. The Township shall provide for hospital and medical insurance, inclusive of major medical, for all employees and their families at no cost to the employee. The benefit coverage under the new partial self-insurance arrangement shall be the same as currently provided under the New Jersey State Health Benefits Program. There will be no reductions in any benefits or coverage presently in effect. The Township shall provide for hospital and medical insurance for all retirees and their spouses, excluding employees who elect deferred retirement, for the life of the retirees.

C. Effective January 1, 1987, all future retirees within the meaning of the police and Firemen's Act shall receive a full family dental plan up until age 65 or eligibility for Medicare ensues.

D. Benefits provided under Sections B and C of this Article shall not apply to any employee electing to receive a deferred retirement.

E. Effective January 1, 2009 all newly hired firefighters will be required to enroll in NJ Direct 15 of the New Jersey State Health Benefits Program.

ARTICLE XII

HOLIDAYS DAYS

A. All employees shall receive pay for, in lieu of, fourteen (14) paid holidays. The holidays shall be designated by the Township Commission annually.

B. Employees mutually agreeing to work a "5 and 2" schedule shall be entitled to time off for each of the recognized holidays. Such time off may not necessarily be afforded of the actual day of the holidays as employees may be required to make adjustments due to operational necessities.

C. All members will be entitled to a town day off to be used each year as follows: shift personnel are entitled to one full 24 hour work shift off, day personnel are entitled to one full day shift off. To be used in the calendar year it is issued or it will be forfeited.

ARTICLE XIII

MILITARY LEAVE

A. Any full time employee who is a member of the National Guard, naval militia, Air National Guard or a Reserve component of any of the armed forces of the United States and is required to engage in field training shall be granted a military leave of absence with pay for the period of such training as is authorized by law. This paid leave of absence shall be in addition to his vacation.

B. If the amount of pay the employee receives from the federal or state government for temporary training duty (a period not to exceed fifteen (15) consecutive calendar days of training) is less than the base compensation, which he would have received for the same period he shall be paid the differences by the Township. All eligible employees are required to submit a copy of their military pay voucher before the Township is required to comply with this provision.

C. When an employee not on probation has been called to active duty or inducted into the military or naval forces of the United States, he shall automatically be granted an indefinite leave of absence without pay for the duration of such active military service and all employee benefits shall cease. Such employee may be reinstated without loss of privileges or seniority accrued to the last day worked, provided he reports for duty with the Township within sixty (60) days following his honorable discharge from the military service and provided he has not voluntarily extended the length of his military service.

D. If the military service occurs during a time of war, reinstatement will be allowed up to six (6) months after the date of honorable discharge unless the employee is incapacitated at the time of discharge, in which case reinstatement will be allowed up to six (6) months following his recovery so long as the recovery occurs within two (2) years from the date of discharge.

E. Active duty shall mean more than fifteen (15) days service.

ARTICLE XIV

LEAVE OF ABSENCE

A. Any employee may request a leave of absence without pay, not to exceed six (6) months, by submitting in writing all facts bearing on the request to the Deputy Chief, who will append his recommendations and forward request to the Director of Public Safety. The Director of Public Safety will consider each such case on its own merits, and a decision in one case shall in no event be deemed to have established a precedent in another. Any request for extension of time shall be at the discretion of the Director of Public Safety. Such leave of absence shall not be deemed to be part of the term of employment.

B. Seniority shall consist of the uninterrupted length of accumulated service of each employee. An employee's length of service shall not be reduced by the time lost due to sick or injury leave or authorized leave of absence.

C. Any employee may, with the discretionary approval of the Deputy Chief, be granted special leave with pay, for any days, which he is able to secure another regular employee to work in his place, provided:

1. Such substitution does not impose any additional expense on the Township.
2. Such substitute shall be a member of the paid Uniform Fire Department.
3. The Officer in charge is notified in writing not less than three work days prior to its becoming effective, except in the case of emergency, request may be made by telephone with the approval of the Deputy Chief or his/her designees.
4. The Officer in charge of the tour on which the substitution is to take place is notified of the substitution as soon as practicable.
5. If the Deputy Chief is not available the shift supervisor (Captain or Lieutenant) shall have the discretionary ability to provide a member with the use of a special leave with pay as outlined in C above. The supervisor shall be held responsible for any manpower shortages that occur when they have allowed a time off as stated above with their authorization.

ARTICLE XV

PERSONAL DAYS

1. Employees covered under this Agreement shall be allowed five (5) days of personal business leave. Such leave shall be non-cumulative. (Except as stated in Section 5 below). Such requests will be granted, manpower permitting, by the Deputy Chief or his designee.

2. The employee must give at least twenty-four (24) hours notice prior to utilization of such days.

3. Employees hired after January 1, 1987 shall enjoy the following personal days schedule:

- A. 0 to completion of one (1) year 0 days
- B. One (1) year to completion of three (3) years 1 day
- C. Three (3) years to completion of five (5) years 2 days
- D. Sixth Year forward five (5) days.

4. The number of personal days shall be increased to five (5) days after the completion of five (5) years of services.

A. One (1) unused personal day, that has been denied, shall be carried over to the following year provided that such day be used within the first ninety (90) days or be forfeited. However, if a carried over personal day is denied during the ninety (90) day period the period for use of such day shall be extended ninety (90) days from the date of denial and such ninety (90) days period shall be extended as many times as necessary in the event of further denials.

5. The shift supervisor (Captain or Lieutenant) shall have the discretionary ability to provide a member with the use of a Personal Day or up to fourteen (14) hours compensatory time. These shall not be used in conjunction with each other and shall only be for 1 shift. This shall only be allowed when the Deputy Chief is unavailable and does not affect the minimum manning rule of five (5). A Request form must still be completed and submitted. The supervisor shall be held responsible for any manpower shortages that occur when they have allowed a Personal day or compensatory time as stated above with their authorization.

6. One entire twenty-four (24) hour shift off duty personal time will constitute the use of (2) personal days from the current allotment.

ARTICLE XVI

DISCRIMINATION AND COERCION

There shall be no discrimination, interference or coercion by the Township or by any of its agents against the Association or against the employees represented by the Association because of membership or non-membership or activity or non-activity in the Association Nor shall the Township discriminate in favor of, or assist, any other labor or fire organization which in any way affects the Association's rights as certified representative for the period during which the Association remains the certified representative of the employees. Neither the Township nor the Association shall discriminate against any employee because of race, color, religion, creed, sex, political affiliation, age or national origin. The Township will cooperate with the Association with respect to all reasonable requests concerning the Association's responsibilities as certified representative.

ARTICLE XVII

UNIFORMS AND EQUIPMENT

- A. Effective January 1, 2003, the Township shall voucher system a Six Hundred Twenty Five Dollars (\$625.00) clothing allowance and a maintenance allowance. The employer will select the vendor.
- B. Effective January 1, 2008 the member shall be entitled to annual uniform maintenance of Eight Hundred Twenty Five Dollars (\$825.00). The Township shall issue a check to the employee by the 1st pay period after the first commission meeting upon adoption of the township annual budget. Any member retiring during the year shall have earned the full amount on January 1 and shall be compensated the same.
- C. In addition to the aforementioned clothing account and maintenance allowance, each employee shall be entitled to be reimbursed the replacement costs of any clothing or apparel damaged or destroyed while employed in his capacity as a firefighter provided it is reported to the Deputy Chief in writing within forty-eight (48) hours of occurrence. Replacement costs shall not apply in any instance wherein employee negligence contributed to the destruction of said clothing apparel, nor shall it apply to items of personnel jewelry, excepting wristwatches, which shall be covered to a maximum of Seventy Five Dollars (\$75.00) per occurrence. Prescription eyeglasses shall be covered to a maximum of Two Hundred Fifty Dollars (\$250.00) per occurrence.
- D. Clothing allowance money shall be expended between April 1st and October 31st with the unexpended funds reverting to the Township at the end of each calendar year.

ARTICLE XVII

PERSONNEL FILE

A. Derogatory Material

No derogatory material concerning an employee's conduct service or character shall be placed in his personnel file unless the employee has been given an opportunity to review the material. The employee shall acknowledge that he ha been given the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature does not necessarily indicate agreement with the contents thereof. The employees shall also have the right within five (5) calendar days of such opportunity to submit a written response to such material for attachment to the file copies as part of the permanent record or he shall waive such right.

B. Personnel File

Each employee shall have the right, upon request of the Deputy Chief and at a scheduled appointment time to review the contents of his/her personnel file. Each employee shall be entitled to have a representative of the FMBA accompany him during such review. The employee may receive a copy of any material at the time of review.

ARTICLE XIX

SICK LEAVE

A. **Number of Days**

Fifteen days of paid sick leave shall be granted each year.

B. **Accumulation of Sick Leave**

Sick leave shall accumulate during each employee's tenure.

C. **Use of Sick Leave**

Sick leave may be used by an employee for personal illness or when a member of his immediate Family and household is seriously ill requiring the care or attendance of such employee. Sick leave may also be used by an employee at the birth of his child, provided however that sick leave on each such occasion shall be limited to no more than three (3) days and provided that the employee has accumulated such time. Any employee using sickness in family is restricted to his home or such other place as may be permitted by the Deputy Chief and the Director, provided that the superior Officer on an employee's tour of duty may permit an employee to leave his home for good cause if prior permission is requested; in addition, the Director and Deputy Chief may give permission to permanently relax the restriction to home for good cause and under circumstances which warrant a permanent relaxation.

D. **Physician's Certificate**

Sick leave may not be used unless the Township Physician certifies that it is necessary. The employee shall be required to be examined by the Township Physician or to produce a certificate from a physician at his own expense.

E. The rules and regulations concerning sick leave are hereby incorporated herein.

F. Pursuant to Article III, Chapter 45-10 and 11 of the Code of the Township of Nutley, members of the Department who are eligible for retirement shall be granted a paid sick leave of absence, in lieu of accumulated unused sick time. Payment for such leave may be made in one lump sum upon retirement up to sixteen (16) pay periods per year provided the employee has accumulated sixteen (16) pay periods of sick time. Payments shall be at the same bi-weekly salary the employee was receiving at the end of his period of service

G. The term "retirement" as used in Section "F" of this Article shall not include "deferred retirement" and no such benefits shall be paid to any employee electing to receive a deferred retirement.

H. During sickness or permitted sick leaves, as herein provided, pay shall be at full rate. Thereafter, pay shall cease unless the Director of Public Safety and the Board of Commissioners, by resolution, shall grant a leave of absence with pay to such member of the Department for the balance of the period of such sickness where such sickness

shall be evidenced by the certificate of the Township Physician provided however, that such leave of absence together with permitted sick leave of such a member shall not exceed one year commencing from date of the occurrence of such illness or body injury.

I. Effective January 1, 1991, employees opting to receive payment for accumulated sick time must notify the Township in writing of his/her intention in the preceding calendar year. Failure to provide such notification to the Township shall result in any such payment being deferred until the first pay period following adoption of the Municipal budget in the following year.

J. Employees that do not use any sick time in a six month period, shall be awarded an additional personal day off (PDO) to be taken in the succeeding six month period. Eligibility for this benefit shall be established by the employee through submission of written documentation to the Deputy Chief setting forth the qualifying time period. All such documentation must be received within thirty (30) days of the eligibility period. Failure to comply with this requirement will result in a waiver of the benefit.

K. If an employee is entitled to sick time/sick leave or has not yet been paid for accumulated unused sick time at the time of his/her death, his/her widow/widower, or if there is not spouse, his next of kin shall receive payment on the same basis as that to which the employee is entitled to at the time of retirement or resignation.

L. **Sick Leave Donation Program**

The Township agrees to continue as adopted by resolution to allow Fire Department Employees to donate accumulated sick time to another firefighter or officer who is out of work due to illness or injury and used all of his or her available, sick, vacation, compensation and any other time available. Participation in the program shall be voluntary.

ARTICLE XX

FMBA NEGOTIATING COMMITTEE- ITS RIGHTS AND DUTIES

A. There shall be four members of the FMBA negotiating committee. These members shall be granted leave from duty with full pay for all meetings between the Township and the FMBA for the purpose of negotiating the terms of an Agreement.

B. There shall be two members of the FMBA Grievance Committee granted from duty with full pay for all meetings between the Township and the for the purpose of processing grievances.

C. The President and the Executive Delegate of the FMBA shall be granted leave from duty with full pay for all membership meetings of the FMBA when such meetings take place at a time when such officer is scheduled to be on duty, provided that said delegate gives reasonable notice to the Deputy Fire Chief. The Employer has no obligation to pay for an off duty firefighter to attend meetings covered by this section.

D. CHAPTER 41

AN ACT concerning paid leave for certain police and firefighters who attend conventions and amending N.J.S.A. 11A:6-10 and P.L. 1977, c.347.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

N.J.S.A. 11A: 6-10 is amended to read as follows: Leaves of absence for convention attendance.

(1) 11A: 6-10. A leave of absence with pay shall be given to employees who are duly authorized representatives of an employee organization defined as a "representative" in subsection e. of section 3 of P.L. 1941, c.100 (C.34: 13A-3) and affiliated with the New Jersey Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc. or the Professional Fire Fighters Association of New Jersey to attend any State or national convention of the organization, provided, however, that no more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave, unless more than 10 authorized representatives are permitted such a leave of absence pursuant to a collective bargaining agreement negotiated by the employer and the representatives of the employee organization, and for employee organizations with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave. The leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention, provided that such leave shall be for no more than seven days. The representative so attending shall upon request, submit a certificate of attendance at the convention.

(2) Section 1 of P.L. 1977, c.347 (C.40A: 14-177) is amended to read as follows:
C.40A: 14- 177 Attendance at State, national convention of certain organizations.

The heads of the county offices of the several counties and the head of every department, bureau and office in the government of the various municipalities shall give a leave of absence with pay to persons in the service of the county or municipality who are duly authorized representatives of an employee organization as defined in subsection e. of section 3 of P.L. 1941, c.100 (C.34: 13A-3) and affiliated with the New Jersey State Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc. or Professional Fire Fighters Association of New Jersey to attend any State or national convention of such organization, provided, however, that no more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave, unless more than 10 authorized representatives are permitted such a leave of absence pursuant to a collective bargaining agreement negotiated by the employer and the representatives of the employee organization and for employee organizations with more.-than 5000 members, a maximum of 25 authorized representatives shall be entitled to such, leave. The representative so attending shall upon request, submit a certificate of attendance to the State convention."Leave of absence shall be for a period inclusive of the duration of the convention with reasonable time allowed for time to travel to and from the convention, provided that such leave shall be for no more than seven days.

E. The number of FMBA delegates shall be rounded up after computing the percentage as set forth in section D above.

F. The FMBA must notify the Deputy Fire Chief thirty (30) days in advance of the Convention and whom will be attending.

ARTICLE XXI

RETENTION OF BENEFITS

A. The Township agrees that all benefits, terms and conditions of employment not covered by this Agreement and relating to the status of FMBA members shall be maintained of not less than the highest standards in effect at the time of the commencement of collective negotiations leading to the execution of the Agreement.

B. In order for a past practice to be binding upon the parties, it must be a practice, which is clearly stated and acted upon; and it must be a practice, which is readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

ARTICLE XXII

OUTSIDE EMPLOYMENT AND ACTIVITIES

- A. Employees shall be entitled to engage in any lawful activity and obtain any lawful work while off-duty subject to limitation of this Agreement and statute.
- B. It is understood that the full-time officers will consider their position with the Township as their primary employment. Any regular outside employment or activity must not interfere with the employee's efficiency in his position with the Township and must not constitute any conflict of interest.
- C. If the Township suspects abuse of outside employment (i.e., while on sick leave) then the employer retains the right to verify outside employment and appropriate disciplinary action.

ARTICLE XXIII

REPRESENTATION FEE

A. Representation Fee

If an employee does not become a member of the FMBA during any membership year (i.e., from January 1 to the following December 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the FMBA for that membership year. This fee shall be the maximum allowed by law.

B. Procedures

1. Notification: Prior to March 1 of each year, the FMBA will submit to the Township a 1st of those employees who have neither become members of the FMBA for the then current membership year nor paid directly to the FMBA the full amount of the representation fee for the membership year. The Township will deduct from the salaries of such employees, in accordance with Paragraph 2 below, the full amount of the representation fee and promptly will transmit the amount so deducted to the FMBA.

2. Payroll Deduction Schedule: The Township will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership year in question. The deductions will begin with the first paycheck paid:

- a. ten (10) days after receipt of the aforesaid list by the Township; or
- b. thirty (30) days after the employee begins his employment in a bargaining unit position.

Termination of Employment: If an employee who is required to pay a representation fee terminates his employment with the Township before the FMBA has received the full amount of the representation fee to which it is entitled under this Article, the Township will deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.

3. Mechanics of Deduction and Transmission of Fees: Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the FMBA will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the FMBA.

4. Changes: The FMBA will notify the Township in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee and such changes will be reflected in any deductions made more than ten (10) days after the Township receives said notice.

5. New Employees: On or about the last day of each month, beginning with the month this Agreement becomes effective, the Township will submit to the FMBA a list of all employees who began their employment in a bargaining unit position during the preceding thirty (30) day period. The list will include names, job titles, and date of employment for all such employees.

6. Indemnification of Employer: The FMBA agrees that it will indemnify and save harmless the Township against any and all actions, claims, demands, losses or expenses (including reasonable attorney's fees) in any matter resulting from action taken by the Township at the request of the FMBA under this Article.

ARTICLE XXIV

LEGAL COUNSEL

A. During the term of this Agreement, there may arise instances where the Township provides, at the Township's expense, legal counsel for the defense of a member(s) of the Firemen's Mutual Benevolent Association Local 44A, in accordance with the provisions of N.J.S.A. 40A: 14-155 in any such instance, the Township agrees to furnish to the FMBA Local 44A, or the member(s) thereof involved, a list of attorneys approved by the Township to defend such member(s). The member(s) of the FMBA Local 44A bargaining unit involved shall have the option of selecting from such list the attorney who shall provide his/her or their defense. During the term of this Agreement, the township agrees to add to such list any additional list of attorneys, who shall agree to accept and be bound by the criteria covering compensation as established by the Township for inclusion on such list. Said criteria covering compensation shall not be reduced during the term of this Agreement.

B. Court Time

1. Court time, as referred to in this Article, shall consist of all time, excluding regular tours of duty, during which an employee covered under this agreement shall be required to attend a Municipal Court, County Court, Superior Court, Grand Jury proceeding, or other courts or administrative bodies on departmental related matters.

2. All such required court time shall be considered as overtime and shall be compensated at time and one-half (1½). Overtime will be paid for off-duty court time.

3. When an employee covered under this Agreement shall be required to travel to and from any court or administrative bodies as noted in this Article, such travel time shall be considered and included in the computation of the amount of overtime to which the employee is entitled; provided however, that such travel time shall be computed between the Employer's Fire Department headquarters and the pertinent court of administrative body.

4. The amount of overtime to which an employee may be entitled under this article shall be the actual time required, including waiting time in court or administrative body together with any applicable travel time; provided, however, that the employee's entitlement to overtime under this article shall not be less than two (2) hours of overtime pay.

5. Jury Duty. Personnel on shift work when called for jury duty will give as much notice as possible to the Fire department and will be assigned to days for the period of their jury duty, This will include all forms of court duty. Examples; county, state and federal jury duty; regular court jury and Grand jury duty.

ARTICLE XXV HAZARDOUS MATERIALS

A. All officers on duty or off duty responding as part of the "Nutley Fire Department Hazardous Materials Team (Haz Mat) or as part of the County Environmental Health Act (CEHA), or any other agency which may at anytime undertake the management of such programs, will be entitled to all rights, benefits and coverage provided by this contract and the laws of the State of New Jersey and the United States of America.

B. Membership on the "Nutley Fire Department Hazardous Materials Team" will be open to all members of the Nutley Fire Department as will be "Haz Mat Training". Continuing membership on the team shall be contingent on training that is required for Haz Mat Team members as per State and Federal Regulations. Membership will also be contingent on mandates such as baseline physicals.

C. Haz Mat Team participation while off duty shall be voluntary, not to include CEHA Crews or compensated team members. Activated personnel will be compensated, as in Section E. Officers who are not CREW members may not operate above the operational level as per State and Federal Guidelines. Any officers that choose not to have active Haz Mat Team status shall be considered only at the operational level.

D. Membership on the "CEHA CREW" will also be open to all members of the Nutley Fire Department as well as the training. Membership on the "CEHA CREWS" will be voluntary and severable by the member at anytime. Crewmembers must be technician level trained and meet the requirements set by law for a team member, as well as requirements that are set by the department. Entry onto CEHA crews is contingent upon six (6) months of active Haz Mat Team participation. The member shall then become an alternate crewmember until a permanent slot opens. Alternate crewmembers will be entitled to all benefits of a crewmember. CEHA crewmembers will be eligible for standby compensation having ten (10) months of active service as a crewmember within one (1) calendar year. The ten (10) month requirements shall not take effect until the 1997 calendar year a crewmember starting during or after the 1997 calendar year will begin at the previous year's compensation.

E. All Haz Mat Team members and CEHA crewmembers covered by this contract shall receive any overtime at a time and a half rate. Any team or crewmember that has a time and half rate less than \$35.00 per hour shall be compensated at a rate of \$35.00 per hour.

F. Effective January 1, 2009 all members of the Haz Mat Team shall receive 60 hours compensatory time. Effective January 1, 2010, all members of the Bargaining Unit shall receive sixty (60) hours of compensatory time (each year for the duration of the contract) and a stipend of \$2,500 as of January 1, 2010, \$2,800 as of January 1, 2011, and \$3,100 as of January 1, 2012. The Stipend shall be included in the base salaries for all eligible Haz Mat Team Members and CEHA crewmembers. The sixty (60) hours of compensatory time must be used between January 1 and December 31 of

the given year and shall not be used in the following year. A percentage of the stipend shall be dependent on compliance with section H of this article.

G. If at anytime on duty personnel from shift are involved in a Haz Mat incident and the on duty shift becomes less than one (1) officer and four (4) firefighters, overtime is to be hired to bring the shift back up to the compliment that it was prior to the incident. At anytime the Deputy Chief may modify this and bring the shift back up to the original compliment or a maximum of eight.

H. A list of requirements for Haz Mat Team personnel, as well as the CEHA crew responders, shall be as follows:

- a. Attendance at four (4) of six (6) scheduled drills (drill dates to be scheduled and announced by January 31 of each year for the year. The suit and meter recertification in sections 2 and 3 below are not included in the six (6) drills for this section.)
 - b. Re-certification on Suit use
 - c. Re-certification on Meter use
 - d. Annual physical exam and blood chemistry
- I. The Deputy Chief shall have authority over any provisions of Article XXV, Hazardous Materials, that appears within this contract.
- J. Effective January 1, 2009 all eligible members of the Haz Mat team will be reimbursed for the use of shall receive compensation for the use of their personal cell phone for Haz Mat emergency calls. Fire Officers shall receive twenty dollars (\$20) per month as compensation for the use. These payments shall be made semi-annually in June and December of each year. Notwithstanding the provisions of this section, any payments not made prior to final execution of this agreement shall be made as soon as reasonable possible but no later than 45 days from the actual execution date of this agreement.

ARTICLE XXX
Drug and Alcohol Policy

Effective upon execution of this agreement, the Nutley Fire Department will adhere to the stipulations specified within the Drug and Alcohol Policy Manual adopted by The Township and FMBA Local 44 and 44A, and attached hereto as Appendix A and Drug and Alcohol Forms Appendix B.

ARTICLE XXVI

EDUCATIONAL LEAVE FOR FIRE COURSES

The Township agrees to grant a member leave without loss of pay for fire and related courses that have had prior approval by the department or that the member has been ordered to attend. This section shall not include leave to attend college courses in fire science as part of a college degree program, or a program designed strictly to improve scoring on a promotional exam. A list of training programs shall be provided to the duty captains, as they become available.

Criteria for approval:

1. Prior approval to attend the course has been granted by the department.
2. Only one other member on the same tour has requested off, or the requesting member has secured a suitable replacement.
3. There is no compelling reason to deny request.

New Jersey Division of Fire Safety Certified Fire Inspector or Certified Fire Instructor shall receive time off for certification classes offered by the Division of Fire Safety.

ARTICLE XXVIII

MISCELLANEOUS

A. PROBATIONARY PERIOD

All employees hired during the term of this Agreement shall serve a probationary period of one (1) year from the date of hire. During this probationary period, the Township reserves the right to discharge a probationary employee for any reason. An employee if discharged shall not have recourse through the grievance procedure set forth in this Agreement.

B. SEPARABILITY AND SAVINGS

If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to Federal or State law, then such provision of application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

C. BULLETIN BOARDS

The FMBA will have use of one bulletin board in the firehouse for the purpose of posting notices concerning FMBA business. Nothing contained herein shall permit utilization of bulletin boards for derogatory posting.

D. FIRE PATROL DUTY

The FMBA agrees to participate in the Fire Patrol Program.

E. OUTSIDE ACTIVITIES

Whenever the Temperature outside reaches below thirty-two (32) degrees Fahrenheit or above ninety (90) degrees Fahrenheit all outside training and inspection activities shall be suspended. In addition whenever the wind chill reaches thirty (30) degrees Fahrenheit all outside training and inspection activities shall be suspended. The Deputy Fire Chief or Fire Chief shall have final decision on canceling any training or inspections in relations to this section.

Any time outside training is cancelled some type of indoor training must be completed and any outdoor training that was canceled must be made up.

This section shall not apply to Fire Prevention Bureau or the Hazardous Materials Unit.

F. STATE OF EMERGENCY

In the event a Statewide, Countywide or Municipal declaration of State of Emergency the manpower level of on duty personnel of the Nutley Fire Department shall be eight members assigned to Headquarters Company, including two officers. This manpower shall not include day shift personnel or any member being utilized in an Office of Emergency Management role or position. This shall not in any way hinder the Township from hiring additional manpower above seven if the situation warrants.

G. DEATH OR SERIOUS INJURY

In the event of a line of duty death or serious injury to a member, the shift working may at the discretion of the Deputy Fire Chief be given leave for the balance of the shift and overtime will be used to cover the shift. Critical incident stress debriefing shall be made available to all members.

H. CONTRACT

Each tour to be supplied a copy of the contract, at no cost to member or local.

I. MUTUAL AID PROTECTION

Provides that member is covered in full while responding to returning from or operating at a mutual aid assignment as if member were working in Nutley. This shall include but not be limited to Fire, Hazardous Materials, Confined Space or Emergency Medical assignments.

J. TRAINING OPPORTUNITIES

A list of all available training programs shall be given to the tour commanders on a quarterly basis if there are course available that the department is intending to send firefighters too. The Deputy Fire Chief or the Fire Chief must approve members to attend this course.

ARTICLE XXIX

FULLY BARGAINED AGREEMENT

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable 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.

B. This agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

**ARTICLE XXX
DURATION**

This Agreement shall be in full force and effect as of January 1, 2009 and remain in effect to and including December 31, 2012 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 one hundred fifty (150) days, but not later than sixty (60) days prior to the expiration of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals at Township of Nutley, New Jersey, on this 22nd day of February, 2010.

For the Township



Alphonse Petracco, Commissioner

2/22/10

Date

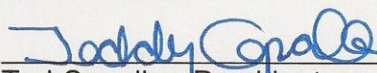


Sandra Carella, Administrative Assistant

2/22/10

Date

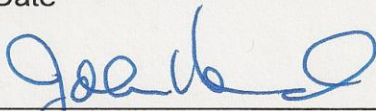
For the FMBA



Ted Capalbo, President

2/22/10

Date



John Hund, Captain/Delegate

2/22/10

Date

Appendix A
Collective Bargaining Agreement 2009-2012

**NUTLEY FIRE
DEPARTMENT**

**EMPLOYEE
ASSISTANCE AND DRUG
AND ALCOHOL TESTING
PROGRAM**

January 2010

TOWNSHIP OF NUTLEY FIRE DEPARTMENT EMPLOYEE ASSISTANCE PROGRAM AND DRUG AND ALCOHOL TESTING POLICY

3.0. PURPOSE

This document establishes policy and procedures for the Nutley Fire Department's Employee Assistance Program and Mandatory Drug and Alcohol Testing Policy ("Policy").

3.1. POLICY STATEMENT

The purpose of the Policy is to provide a mechanism for the recognition and rehabilitation of members of the Nutley Fire Department. In conjunction with existing policies rules and regulations and recognizing the rights of public employees, the Department's Program is designed to help combat the national epidemic in abuse of alcohol and illegal use and trafficking of drugs and to comply with the Drug Free Workplace Act. Its purpose is to preserve and protect the integrity of the Department and to guard against the harmful consequences to the public good caused by the abuse of alcohol and use of or trafficking in illegal drugs. The Department intends to test for alcohol and drugs that have a high potential for abuse, have no medical use in treatment and for which there is no safe protocol for medical use. The type of drugs for which members will be tested shall be limited to those specifically enumerated in this policy.

The principal goal of this policy shall be to assist members who voluntarily seek rehabilitation and to discipline those members who do not voluntarily seek rehabilitation pursuant to this policy and pursuant to existing rules and regulations of the Department. Drug and/or alcohol testing as authorized herein shall occur on the basis of reasonable individual suspicion and drug testing based on those who have been randomly selected.

3.2. ATTACHMENTS

- A. Acknowledgment of Receipt of Nutley Fire Departments Mandatory Drug and Alcohol Testing Policy.
- B. Supervisors Report of Observed Behavior Reasonable Cause Screening.
- C. Order to Submit Reasonable Cause Screening.
- D. Refusal to Submit to Urine and/or Breath Specimen.
- E. Drug and Alcohol Testing Medication Questionnaire (To Be Completed Only After Positive Initial and Confirmatory Test).

3.3. IMPLEMENTATION

This policy is the result of collective negotiations between the Township of Nutley and FMBA Locals 44 and 44A. The Policy shall include:

- 3.3 Implementation
- 3.4 Continued Effectiveness
- 3.5 Cancellation
- 3.6 Annual Review
- 3.7 Access and Distribution of Policy Manuals
- 3.8 Applicability
- 3.9 Sanctions for Violation
- 3.10 Effective Date
- 3.11 Definitions
- 3.12 Amnesty

- 3.13 Employees Subject to Testing
- 3.14 Types of Testing
- 3.15 Specimen Acquisition Procedures for Drug Testing
- 3.16 General Requirements and Procedures for Alcohol Testing
- 3.17 Confirmation Testing for Alcohol Concentration
- 3.18 Consequences of a Positive Drug and/or Alcohol Test Result
- 3.19 Consequences of a Refusal to Submit to a Drug and/or Alcohol Test
- 3.20 Medical Review Officer (MRO)
- 3.21 Employee Assistance Program
- 3.22 Health Benefit Coverage
- 3.23 Disciplinary or Compliance Challenge
- 3.24 Training
- 3.25 Retention of Records
- 3.26 Confidentiality
- 3.27 Possession of Illegal Drugs or Alcohol on Duty
- 3.28 Use and/or Possession of Illegal Drugs Off Duty
- 3.29 Driving While Intoxicated Conviction
- 3.30 Other

3.4. CONTINUED EFFECTIVENESS

If any article, section, subsection, sentence, clause, or phrase of this policy is, for any reason, held to be unconstitutional, contrary to statute, in excess of the authority of the Director/Deputy Chief, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause, or phrase.

3.5. CANCELLATION

This Policy supersedes all previous Fire Department bulletins, directives, orders, notices, rules, and regulations regarding mandatory employee drug and alcohol testing.

3.6. ANNUAL REVIEW

This Policy shall be reviewed annually by the Township and FMBA Locals 44 and 44A. Any modifications pursuant to the annual review shall be reduced to a written memorandum indicating the changes, if any, that were made to this Program. A copy of this Policy shall be maintained at the Company watch desk and issued to all members. The Township agrees to negotiate any new changes prior to their incorporation within this Policy.

3.7. ACCESS AND DISTRIBUTION OF POLICY MANUALS

A copy of the Policy including EAP contact numbers shall be located in the following areas:

Director's Office

Deputy Chief's Office

Captains Office

All individuals who are issued a copy of this Policy and any addendums shall be required to sign an Acknowledgment of Receipt of Employee Assistance and Drug and Alcohol Testing Program form.

3.8. APPLICABILITY

This Policy applies to all uniformed fire personnel with the Township of Nutley.

3.9. SANCTIONS FOR VIOLATION

Any member who violates this Policy shall be subject to appropriate disciplinary action, up to and including termination, pursuant to Sections 3.18 and 3.19 of this Policy.

3.10. EFFECTIVE DATE

This Policy is effective upon the execution of the Collective Bargaining Agreement covering the period January 1, 2009 through December 31, 2012. **All** provisions of this Policy shall be fully implemented sixty (60) days from the effective date of this Policy or completion of distribution of this Policy to all uniformed fire personnel, whichever is later.

3.11. DEFINITIONS

Alcohol Use: The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician: An individual who instructs and assists individuals in the alcohol testing process and operates an Evidential Breath Testing Device (EBT). Such a person has successfully completed a course of instruction concerning the procedures required for conducting alcohol tests and has demonstrated proficiency in the operation of the EBT he or she is using.

Canceled Test: A drug and/or alcohol test that has been declared invalid by the Medical Review Officer (MRO) or Breath Alcohol Technician (BAT). Subject is neither a verified positive or negative test, and includes a specimen rejected for testing by a laboratory.

Chain of Custody: Methodology of tracking specified materials and/or substances for the purpose of maintaining absolute control and accountability from initial collection to final disposition for all such materials and/or substances.

Confirmation (or Confirmatory) Test: A second analytical procedure to identify the presence of a specific drug, metabolite or alcohol concentration of .08 or greater that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy.

Controlled Substances: The terms drugs and controlled substances shall include all derivatives of the following classes of drugs: Marijuana metabolites/THC, Cocaine metabolites, Opiates (Heroin, codeine, morphine etc.) Phencyclidine (PCP), Amphetamines and Ecstasy.

Criminal Drug Statute: A federal or state criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

Drug and Alcohol Program Manager(s): Designee charged with the responsibility of overseeing the operation and administration of the drug and alcohol-testing program. The Township will appoint this designee at the time this Policy is implemented.

Employee: Uniformed member of the Nutley Fire Department.

Employee Assistance Program (EAP): A program provided directly by the Township or through a contracted service provider, or the New Jersey State FMBA to assist employees in dealing with drug or alcohol dependency or other personal problems.

Evidential Breath Testing (EBT) Device: An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's Conforming Products List of Evidential Breath Measurement Devices (CPL).

Fitness For Duty/Medical Clearance Test: Testing performed to evaluate an individual's ability to continue to perform his/her duties as required.

Firefighter: Any duly appointed Nutley Firefighter.

Fire Officer: Any duly appointed Nutley Fire Officer.

Medical Review Officer: Designated doctor or contract physician(s) with appropriate medical certification, training and knowledge of substance abuse conditions, authorized to receive, review, and report laboratory drug and/or alcohol test results.

Possess: To have on ones person or in ones personal effects or under one's control.

Prohibited Drug: Prohibited drugs shall be limited to the following: Marijuana, Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, Ecstasy.

Random Testing: A drug test that is administered to 20% of all uniformed fire personnel every twelve (12) months who are selected periodically on a scientifically defensible random and unannounced basis pursuant to this Policy.

Reasonable Individualized Suspicion: An apparent state of facts or circumstances based on specific contemporaneous, articulatable observations concerning the appearance, behavior speech or body odors of an individual by two (2) or more trained supervisors that would induce a reasonable person to believe that an individual may currently be under the influence of or using drugs or alcohol.

Refusal To Submit To A Test: Failure to provide adequate urine or breath specimen for drug and alcohol testing as required, without valid medical explanation after an employee has received notice of the requirement to be tested in accordance with the provisions of this policy or engaging in conduct that clearly obstructs the testing process.

Training: Written and classroom education about (1) the effects and consequences of drug/alcohol use on personal health, safety and the work environment; and (2) objective conduct that indicates probable drug/alcohol use and abuse.

Uniformed Fire Personnel: Any duly appointed Nutley firefighter or fire officer.

Verified Negative Drug or Alcohol Test Result: A confirmed drug or alcohol test result reviewed by a Medical Review Officer for drug testing or a Breath Alcohol Technician for alcohol testing and determined not to be evidence of use of a prohibited drug or alcohol.

Verified Positive Drug or Alcohol Test Result: A confirmed drug or alcohol test result reviewed by a Medical Review Officer for drug testing or a Breath Alcohol Technician for alcohol testing and determined to be evidence of use of a prohibited drug or alcohol.

3.12. AMNESTY

Any member voluntarily entering a rehabilitation program through the EAP prior to the implementation of this Policy or while it is implemented but prior to a reasonable suspicion or random selection drug and/or alcohol test shall not be subject to the consequences of a positive test result as set forth in Section 3.18.

3.13. EMPLOYEES SUBJECT TO TESTING

Uniformed Fire Personnel may be required to submit to reasonable suspicion drug and alcohol testing or random drug testing.

a. Urine and/or breath specimens shall be ordered from individual uniformed fire personnel when there exists reasonable suspicion to believe that the employee is illegally using drugs or alcohol. Urine or breath specimens shall not be ordered from an employee without the approval of the Director and/or Deputy Chief.

b. Urine and/or breath specimens may be ordered from uniformed fire personnel who have been randomly selected to submit to a drug or alcohol test.

An employee's participation in the Township's drug and alcohol testing program as outlined herein is a condition of continued employment.

3.14. TYPES OF TESTING

3.14.1 Reasonable Suspicion Testing

An employee may be required to submit to a reasonable suspicion drug or alcohol test when a trained supervisor has a reasonable suspicion that the employee is currently under the influence of a prohibited drug or is currently under the influence of alcohol. The request to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulatable observations concerning the appearance, behavior, speech, or body odor of the person. Any combination of the following examples may constitute reasonable suspicion:

- slurred speech
- alcohol odor on breath
- unsteady walking or movement
- an accident involving the employee, Township property or equipment
- where the cause may be symptomatic of suspected use of alcohol
- or drugs
- physical altercation
- verbal altercation
- deviation from employee's normal behavior
- possession of alcohol or drugs
- increased absenteeism or lateness
- performance of work with reduced efficiency or effectiveness
- increased disciplinary actions
- Other documented observations

1. Employees ordered to submit to a drug and/or alcohol test shall be required given an Order to Submit/Reasonable Cause Screening Form (Attachment C).

2. Before an employee is ordered to submit to a drug and/or alcohol test based on reasonable suspicion, the trained supervisors shall prepare a written reports that documents the basis for the reasonable suspicion and complete the Observed Behavior/Reasonable Cause Screening Form (Attachment B). The Director and/or Deputy Chief shall review the report before a reasonable suspicion test may be ordered. Approval may be given by the Director/Deputy Chief or his designee for a reasonable suspicion test based on a verbal report which is followed by the written report and Observed Behavior/Reasonable Cause Screening Form being submitted within two (2) hours of the verbal report. No drug and/or alcohol test may be administered more than twenty four (24) hours after the written report documenting the basis for reasonable suspicion and Observed Behavior/Reasonable Cause Screening Form is completed.

3. A negative result is a condition of employment and a positive result will be cause for discipline, up to and including discharge, pursuant to Section 3.18 of this Policy.

4. Employees who refuse to submit to a drug and/or alcohol test based on reasonable suspicion after being lawfully ordered to do so are subject to the same penalties as those who test positive for the illegal use of drugs and/or alcohol, pursuant to Section 3.18 of this Policy.

3.14.2 Random Drug Testing

Random selection is defined as a method of selection in which each and every eligible employee has an equal chance to be selected for drug testing each and every time a selection is made.

1. The Fire Department has chosen to implement a random drug testing program for their employees. Random drug testing will be implemented sixty (60) days from the effective date of

this Policy, or completion of its distribution or training of fire officers and union representatives, whichever is later.

2. All uniformed fire personnel in the Fire Department are eligible for random drug testing and may be tested at any time during normal working hours.

3. Twenty percent (20%) of the total number of eligible employees shall be tested in a twelve (12) month period. The total number of eligible employees for this unannounced testing will be determined each January and will be based on the total number of employees employed by the Fire Department.

4. Each employee will be assigned a number and the number will be placed in a pool from which a random selection will be made. The pool will be updated on a monthly basis or as needed to include new hires, and delete employees who have retired, resigned or otherwise have been terminated from Township employment. An individual shall be selected by a computer-based random number generator with neutral criteria which ensures that every individual in the pool has an equal statistical chance of being selected and shall remain in the pool even after being tested. Therefore, it is possible for some individuals to be tested several or no times in any given year.

5. A representative designated by each local FMBA shall be permitted to witness the selection process.

6. In the event an employee is not on duty at the time their identifying number is drawn for random testing, he or she will be tested immediately upon reporting for duty. If an employee is on vacation, sick leave, or any other type of leave during a specific test, he/she will be tested upon return to duty.

7. The testing dates will be spread reasonably throughout the year and will not establish a predictable pattern. The number of tests conducted will remain relatively consistent to the extent possible.

8. The process will be unannounced as well as random. Once the employee has been notified by the Drug and Alcohol Program Manager that he/she has been selected for testing, he/she should then report immediately to the collection site. Employees will be individually and discreetly notified to report to the collection site.

9. Once an individual is notified of selection for testing by the Director/Deputy Chief or his designee, the member must immediately report to the collection facility with the Deputy Chiefs designee. The random testing frequency level shall be in conformance with the agreement between the Township and the testing vendor/provider.

10. Any person employed by the Township or Fire Department who has knowledge that random drug testing is to take place (prior to the selection of employees for testing) and informs other employees that either testing is to take place or that a specific employee has been selected for random testing, shall be subject to discipline.

3.15. SPECIMEN ACQUISITION PROCEDURES FOR DRUG TESTING

Employees will be required to sign appropriate forms before testing. An individual who refuses to submit to testing under this policy will be requested to sign a Refusal Form to Submit to Urine and/or Breath Specimen form (Attachment D).

1. In order to safeguard the integrity of the specimen's chain of custody, the following collection procedures will be utilized:

a. Those subjected to testing will be identified upon arrival at the collection facility by photo identification. Testing will not proceed without verification of the identity of the donor. Before

testing, the individual will be given a copy of the specimen collection procedures. A monitor designated by each FMBA may be present throughout the specimen collection process.

b. The donor shall remain in uniform but will be required to take off or remove all jackets, bags, pocketbooks, etc. and wash their hands prior to providing the specimen. The donor will be escorted to an area for providing the specimen that respects the donor's privacy while complying with this Policy. The enclosure shall provide a toilet. In order to minimize embarrassment of the donor and prevent distraction at the collection site, access to the toilet enclosure by others during the entire process will be prohibited.

c. To avoid the risk of adulterated or diluted specimens, water and cleansing agents are prohibited in the enclosure. Similarly, a bluing or dyeing agent will be placed in the toilet. Only one test is to be performed at a time. Testing of another donor will not begin (including the filling out of necessary forms) until the testing process of the current donor is completed and the specimen is placed in a transportation mailer.

d. After a specimen has been produced, the donor shall deliver the container to the collection site personnel. Collection site personnel will verify that 45 milliliters of urine was provided. If the specimen temperature does not fall within a range of 90.5°F to 99.9°F, then the collection site personnel, within 4 minutes, may request that the donor have their oral temperature taken. If the donor's body temperature varies by more than 1.8° from the specimen temperature, the collection site personnel shall request a second specimen for testing. If the donor refuses to have their temperature taken, this shall be grounds to consider the specimen as having been tampered.

e. If the vendor's collection site personnel notes any unusual color or sign of contaminants in the specimen, a second observed specimen shall be requested. In all instances where a second specimen is requested, the original (suspect) specimen shall be forwarded to the laboratory for testing.

f. All samples will be subject to split testing where the urine specimen is split and poured into two specimen bottles by the certified collection site personnel. The collection site personnel shall verify 15 milliliters of the urine specimen is poured by the donor into a second container for split testing. The specimen bottles will then be sealed by the collector in the presence of the donor and then labeled by the collection site personnel in the presence of the individual. The bottles are also to be sealed by placing the chain of custody tamper-proof seal over the top and down the sides. The donor shall initial the evidence seal. This procedure will tamper-proof the specimen and safeguards the chain of custody. The donor shall have the option to provide the collection site personnel with a second independent specimen at the same time the first specimen is collected and shall follow the guidelines established herein.

g. Laboratory and medical personnel are responsible for completing the appropriate chain of custody documentation and ensuring that proper procedures are followed to protect the integrity of the samples and the reliability of the test results. The appropriate chain of custody and control form should be filled out by the collection site personnel and then signed by the donor. The specimen is to be kept in the sight of both the donor and the collection site personnel from the time it is delivered to the time it is being labeled. Both the collection site personnel and the donor must sign the chain of custody forms where indicated.

h. The Fire Department expects all of its employees to exercise good faith when undergoing the screen and ensure that proper test procedures are adhered to. This will guarantee that the final results are accurate. Any employee who obstructs the testing process will be subject to immediate discipline, up to, and including, dismissal.

2. In the event that a urine sample is determined to be invalid or unreliable by the collection site personnel, the laboratory analyzing the sample or by the Medical Review Officer due to circumstances unrelated to the conduct of the donor, the member will be immediately notified of the circumstances requiring a new test. If the urine sample is determined to be invalid or

unreliable due to circumstances related to the conduct of the donor, the donor will be subject to discipline, up to, and including, dismissal.

3. If a donor is unable to provide at least 45 milliliters of urine, the collection site technician shall discard the original sample and initiate shy bladder procedures which includes instruction to drink not more than 40 ounces of fluids during a period of up to three hours. The donor will then attempt to provide a complete sample using a fresh collection container. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the employer notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to submit to a drug test.

4. The initial test will be a Fluorescence Polarization immunoassay analysis.

If the immunoassay test results are negative, no further testing will be required and the results will be reported as negative. If the immunoassay test results are positive, testing shall be discontinued, all samples destroyed and records of the testing, if any, expunged from the employee's file. However, if the immunoassay test results are positive, a more precise test, a gas chromatography/mass spectrometry (GC/MS), must be performed on the specimen. If the confirmatory testing results are negative, all samples shall be destroyed and records of the testing expunged from the employee's file. For the purposes of this Policy, presence of drugs shall be indicated at the following level of drugs or drug metabolites in the urine.

Initial Test	Initial Test Level (mg/ml)	Confirmatory Test Level (mg/ml)
Marijuana	50	15 ²
Cocaine Metabolites	300	150 ³
Opiate Metabolites	2000	2000 ⁴
Phencyclidine	25	25
Amphetamines	1000	500 ⁵
MDMA/MDA (Ecstasy)	1000	500

¹ The lower levels reflect the increased specificity of the GC/MS test procedure.

² Delt-9-tetrahydrocannabinol-9-carboxylic acid.

³ Benzoylcegonine

⁴ Morphine & Codeine

⁵ Amphetamine & methamphetamine

a. Testing will be limited to the presence of drugs and their metabolites. Under no circumstances will the sample be tested for any other purposes. The Fire Department reserves the right to expand the classes of drugs and metabolites tested or modify the initial and confirmatory testing thresholds. In the event this occurs the FMBA will be notified 60 days in advance of any proposed changes and the FMBA shall have the right to negotiate over any proposed changes prior to their implementation.

b. All specimens deemed to be "positive" by the laboratory and Medical Review Officer will be retained in long-term frozen storage for identification and re-testing purposes at the laboratory for a period of one (1) year.

c. For the purpose of this Policy and drug testing procedures, the laboratory used by the Fire Department will be required to perform all the necessary testing procedures and be certified under the Department of Health and Human Services mandatory guidelines for Federal Workplace Drug Testing Program, in addition to being appropriately certified under all applicable local, state and federal licensing and regulatory requirements.

5. Positive test results will be revealed to the individual only after the Medical Review Officer has verified them. These results are confidential medical information and must not be revealed or discussed with anyone in the Fire Department except on an absolute need-to-know basis, and then only after the result has been confirmed. All individuals notified of confirmed positive test results will have 72 hours, from the time of notification, to request that the second (split) specimen be tested. Individuals who receive a positive test result may also request that the second independent specimen be released for testing to a laboratory licensed as a clinical laboratory by the New Jersey Department of Health under the New Jersey Clinical Laboratory Improvement Act to conduct the independent test. A representative of the licensed laboratory shall take possession of the second specimen in accordance with acceptable chain of custody procedures within 60 days of the date the specimen was produced. The employee shall bear the cost for any independent specimen test.

a. An employee must be offered an opportunity to present a legitimate medical explanation in all positive test result cases.

b. The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. The time may be extended up to five (5) days at the discretion of the Medical Review Officer.

c. If the MRO determines that there is a legitimate medical explanation, the MRO must verify the results as negative.

6. Prescription drugs are a cause for concern to the Fire Department if they affect the ability of the individual to work safely.

a. Uniformed fire personnel taking a drug prescribed by a licensed physician must have the drug in its original container which identifies the drug, dosage, date of prescription, and authorizing physician. It is the responsibility of the individual to review with their physician any work restriction(s) that should be observed while on the medication. In cases when use of medication requires work restrictions, it is the responsibility of the individual to report such restrictions to the Director/Deputy Chief or his designee. Failure to properly notify the Director/Deputy Chief or his designee of such work restrictions shall be a violation of this Policy, which may subject the individual to discipline up to, and including, dismissal.

b. In the interest of safety, an individual whose use of prescribed medication necessitates work restriction may be placed on medical leave or modified duty. Once such restrictions are lifted and the individual may safely resume all aspects of their assigned job functions, they will be restored to their prior position.

c. If these procedures are followed, the use of prescription drugs in accordance with the dosage shall not be cause for discipline under this Policy.

3.16. GENERAL REQUIREMENTS AND PROCEDURES FOR ALCOHOL TESTING

Uniformed fire personnel will be required to sign appropriate forms before testing. An individual who refuses to submit to testing under this policy will be requested to sign a "Refusal Form" (Attachment D).

1. Uniformed fire personnel are required to submit to alcohol testing under the following circumstances:

a. Where there is reasonable suspicion to believe that an employee is under the influence of alcohol;

b. When an employee is involved in an on-the-job accident where personal injury or damage to property or equipment occurs where the cause may be symptomatic of suspected use of alcohol; and

c. As part of a follow-up program for treatment of alcohol abuse.

2. The Breathalyzer test will be the method for measuring the level of alcohol present in an individual. The initial sample and confirmation sample will be collected using an evidential breath-testing device (EBT), which is approved by the National Highway Traffic Safety Administration

(NHTSA) and the New Jersey State Police. It is understood and agreed that the test shall not be performed by any Township employee.

3. A trained breath alcohol technician (BAT) who is "trained to proficiency" in the operation of the evidential breath-testing device (EBT) that he or she is using and the alcohol testing procedures will perform all screening tests.

4. A breath alcohol concentration of less than 0.04 will be considered negative and no further testing is required. A breath alcohol concentration of 0.04 or greater will be considered positive and the employee will be suspended from employment immediately and subject to the penalties in 3.18.

5. Those subjected to testing will be identified upon arrival at the collection facility by photo identification. Testing will not proceed without verification of the identity of the donor. Before testing, the individual will be given a copy of the sample collection procedures. A monitor designated by each FMBA may be present throughout the sample collection process. The Vendor's site personnel will be responsible for ensuring that all required forms have been thoroughly and accurately completed by the donor.

6. The alcohol screening and specimen acquisition procedures will be collected and processed using equipment, supplies, and procedures approved by the National Highway Traffic Safety Administration (NHTSA).

3.17. CONFIRMATION TESTING FOR ALCOHOL CONCENTRATION

1. If the result of the initial screening test is an alcohol concentration of 0.02 or greater, a confirmation EBT test will be conducted. The confirmation EBT test must be conducted at least 15 minutes after, but not more than 30 minutes after the completion of the initial test.

2. Before the confirmation test is administered, the BAT will conduct an air blank on the EBT. An air blank is a test of ambient air containing no alcohol to ensure that the EBT is properly calibrated. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the second air blank reading is greater than 0.00, the EBT must not be used to conduct the test.

3. The confirmation test is conducted using the same procedure as the EBT screening test. A new mouthpiece must be used if the screening test was conducted on the EBT.

4. If the initial and confirmatory test results are not identical, the lower number shall prevail.

5. If the result displayed on the EBT is not the same as that on the printed form, the test will be cancelled, and the EBT removed from service. If the test is cancelled, the subject will be re-tested.

6. The BAT will sign and date the form. The employee will sign and date the certification statement, which includes a notice that the employee is prohibited from returning to his or her duties if the results are 0.04 or greater. If the employee's alcohol concentration is above 0.02 but less than 0.04, the employee will be taken off of line duty and subject to additional testing during the remainder of the employee's shift.

7. The penalty for refusing to submit to alcohol testing will be considered the same as testing positive.

3.18. CONSEQUENCES OF A POSITIVE DRUG AND/OR ALCOHOL TEST RESULT

When an employee tests positive for drug and/or alcohol use in violation of this Policy the following will occur:

3.18.1 First Offense

- a. The employee may be immediately suspended without pay from all duties (positive alcohol test of 0.04 or greater) and subject to disciplinary charges. A positive test shall result in a suspension without pay of up to 30 calendar days;
- b. The employee shall immediately be referred to the Township's EAP for evaluation and referral regarding a treatment program.
- c. Upon satisfactory completion of the EAPs referral treatment program, the employee will return to active duty;
- d. If required by the EAPs referral treatment program, the employee will be subjected to follow-up testing to ensure that the employee has no further positive results;
- e. In the event that the employee fails to satisfactorily complete the EAPs treatment program, it shall be considered a Second Offense (or Third Offense depending on the circumstance) subject to the terms and conditions set forth below.

Second Offense

- a. The employee shall be required to comply with all requirement set forth under First Offense above.
- b. Suspension of not more than 3 calendar months without pay

Third/Final Offense

Termination of employment All positive test results shall be subject to a disciplinary hearing conducted by the Fire Department and if the charges are upheld, the penalties set forth herein. Any dispute arising from the interpretation or application of this Policy shall be resolved through the grievance and arbitration procedure of the FMBA collective bargaining agreements.

3.19. CONSEQUENCES OF A REFUSAL TO SUBMIT TO A DRUG AND/OR ALCOHOL TEST

1. Refusal to submit to a test that is required under this Policy will be considered the same as failing the test. Refusal will be determined if the donor:
 2. In the event EAP recommends in-patient treatment, but said treatment is not available under employee's insurance, and employee must utilize out-patient treatment for insurance coverage, an employee required to enter rehabilitation a second time, will be treated as a first offense under this Policy.
 - a. Fails to provide sufficient quantities of breath for alcohol testing as required and after determined insufficient after a medical evaluation;
 - b. Fails to provide an adequate urine sample for controlled substance test without a genuine inability to provide a specimen as determined by a medical evaluation;
 - c. Tamper with or attempts to adulterate the specimen or collection procedure;
 - d. Fails to drink fluids as directed by the collector for the collection process; or
 - e. Refuses or fails to cooperate in the testing process or obstructs the testing process in any way not described here.
 2. The penalty for refusing to submit to alcohol testing as required by this policy shall be the same as a positive reading of 0.04.
 3. Any uniformed fire personnel who refuses to submit to a drug and/or alcohol test ordered in response to reasonable suspicion or random selection, if applicable, shall be subject to the penalties listed in Section 3.18 above as if the employee tested positive in violation of this policy.

3.20. MEDICAL REVIEW OFFICER (MRO)

I. The Fire Department will retain the services of a Medical Review Officer (MRO) who is a licensed physician, knowledgeable in the medical, pharmaceutical, and toxicological aspects of drugs and alcohol. The MRO shall be certified and have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's positive test results together with their medical history.

A. The MRO's responsibilities include but are not limited to the following:

1. Receive and review all testing results;
2. Receive and document a certified copy of the original chain of custody form;
3. Inform the tested donor of their test results in the event of a positive confirmatory test;
4. In the event of a positive result, provide the individual an opportunity to discuss the results and conduct a medical interview to determine whether medical, biological or permitted prescription or nonprescription drug use could be an alternative explanation for the test result. In such an event, the MRO shall attempt to contact the employee at least three (3) times within a 24 hour period. If the employee is contacted and the MRO requests medical documentation to explain the test result, the employee shall have five (5) business days to provide the requested documentation. If the MRO attempts and fails to contact the employee within 72 hours or the employee fails to provide the requested documentation within five (5) business days, the result is recorded as a positive;
5. Order re-testing of the sample or quantitative description of testing results, when appropriate;
6. Consult with laboratory officials and personnel, when appropriate;
7. Determine whether a result is consistent with legal drug use;
8. Provide consultation services to the Director/Deputy Chief or designee;
9. Representation at administrative hearings for challenged results;
10. Provide expert testimony in a court of law;

II. Forward verified results to the Director/Deputy Chief; and

12. Otherwise confirm all activities to the responsibilities of a MRO as defined in the Federal Department of Transportation Drug Testing regulations.

B. In addition to the above, after the laboratory tests the specimen, the results will be forwarded to the MRO for interpretation and evaluation. In the case of positive results, the MRO must further assess and determine whether alternative medical explanations could account for the positive drug screening result before informing the Director/Deputy Chief.

3.21. EMPLOYEE ASSISTANCE PROGRAM

1. Because the Township does not currently provide an Employee Assistance Program (EAP) for members of the Department at this time, the NJ State FMBA Employee Assistance Program shall be utilized for purposes of this agreement. If in the future the Township establishes an EAP for its employees the Township EAP shall be utilized in conjunction with the NJ FMBA EAP. The purpose of this program is to provide members or their family members confidential and professional counseling for any personal concern(s). The program provides limited counseling at no charge. The program is committed to the belief that treatment in the form of counseling can improve personal problems that may be affecting job performance. Any member in need of counseling is encouraged to seek services through the EAP on a volunteer basis. Members may also use the NJ State FMBA Employee Assistance Program with the approval of the Health Director and subject to monitoring by the Township's EAP.

2. When an employee has an alcohol or drug problem, it is the employee's responsibility to notify a representative from the EAP as soon as possible to set up appointment, but no later than prior to being selected for random testing. An employee who does not notify the EAP of any substance abuse

problem and who tests positive for controlled substances and/or alcohol will be subject to the penalties set forth in this Policy.

3. When seeking assistance, an evaluation to determine the severity of a substance abuse problem may be conducted by the Township's EAP. Any lab work or follow-up testing, not covered by the individual's insurance, will be the financial responsibility of the individual.

4. Treatment plans may include recommendations for outpatient, inpatient, residential programs, aftercare and additional substance abuse testing. The cost of any treatment beyond the limits of the program, not covered by the individual's insurance, will be the financial responsibility of the employee.

3.22. HEALTH BENEFIT COVERAGE

In the event a member is terminated pursuant to this Policy as a result of a positive drug and/or alcohol screening, so as not to interfere with the employee's rehabilitation treatment, the Township agrees to continue the employee's health benefit coverage until the end of the calendar month of the effective date of termination.

3.23. DISCIPLINARY OR COMPLIANCE CHALLENGES

Any dispute arising from the interpretation or application of this Policy shall be resolved through the grievance and arbitration procedure of the FMBAs collective bargaining agreements. Nothing herein shall prohibit a permanent employee from challenging the test results or discipline imposed in an appropriate forum.

3.24. TRAINING

All employees shall receive training as to the contents of this Policy. Supervisors will receive additional annual training which shall include (1) signs and symptoms of alcohol and drug abuse; (2) reasonable suspicion testing; and (3) dealing with an employee who fails to abide by this Policy. The Township shall determine the vendor who shall administer the training. The FMBA Local 44 executive board and two (1) representative from each shift may receive training.

3.25. RETENTION OF RECORDS

A. The Township of Nutley shall retain for a period of time of not less than five (5) years the following records relating to this policy:

1. Records of all employee alcohol tests in which said results indicate an alcohol concentration of 0.04 or greater.
2. Records of employee verified positive controlled substances tests.
3. Documentation of refusals to submit to required alcohol and/or controlled substances tests.
4. Breath testing equipment calibration documentation.
5. Employee evaluations, referrals, treatment plans and progress reports.
6. Copies of all training records and contents.

B. The Township of Nutley shall retain for a period of not less than two (2) years, the following records relating to this Policy:

I. All records relating to the alcohol and controlled substances collection process and training. This does not include calibration of breath testing devices as required by Section 3.25(a)4.

C. The Township of Nutley shall retain for a period of not less than one (1) year, the following records relating to this Policy:

1. All records of negative and canceled test.

D. The Township of Nutley shall retain for a period of not less than seven (7) years, the following records relating to this Policy:

1. Collection log books.
2. All documents relating to the random selection process.
3. Documentation of breath alcohol technician training.
4. All documents relating to decisions to administer reasonable Suspicion testing of alcohol and/or controlled substances.
5. All documents generated in connection with decisions on post-accident testing.
6. All documents verifying the existence of a medical explanation of the inability of an employee to provide adequate breath or to provide a urine specimen for testing.
7. The Employer's copy of the Alcohol Testing Form, including the test results.
8. The Employer's copy of the controlled substance test chain of custody and control form.
9. Documents sent by the (MRO) to the Township of Nutley.
10. Documents related to the refusal of any employee to submit to an alcohol or controlled substance test.
11. Documents presented by an employee to dispute the result of an alcohol and controlled substance test administered.
12. Records related to other violations of this Policy.
13. Records pertaining to a determination by EAP, treating facility or counselor concerning an employee's need for assistance.
14. Records concerning an employee's compliance with the recommendations of the EAP, treating facility or counselor.
15. Materials on alcohol misuse and controlled substance use, awareness, and a copy of this policy.
16. Documentation of training requirements of this Policy including the employee's signed receipt of educational materials.
17. Documentation of training provided to supervisors for the purpose of qualifying them to make a determination concerning the need for alcohol and/or controlled substances testing based upon reasonable suspicion.
18. Any and all agreements with the controlled substances testing laboratory utilized by the Township of Nutley for complying with the mandatory guidelines of Federal Workplace Drug Testing Program.
19. Names, positions, and roles of the persons employed by the Township of Nutley who are responsible for maintaining compliance with this Policy.
20. Monthly laboratory statistical summaries of urinalyses performed.
21. This Policy for all uniformed fire personnel of the Township of Nutley.
22. The location of all records and the person responsible for maintaining said records.

3.26. CONFIDENTIALITY

A. Except as required by law or expressly authorized by the employee, the Township of Nutley shall not release employee information contained in records required to be maintained pursuant to Section 3.25.

B. Any affected employee currently employed by the Township of Nutley, may request in writing and obtain copies of any written records pertaining to his/her own use of alcohol and/or controlled substances. There shall be no charge for these records.

C. Employee alcohol and controlled substance records shall be made available to a subsequent employer upon receipt of a written request from the employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the term of the employee request. A fee for copies of such records may be charged consistent with Township Policy.

D. The Township of Nutley may disclose only by a Court Order information required to be maintained under this section pertaining to an employee, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an Alcohol and/or Controlled Substance Test administered under this policy if the Township determines that the employee engaged in conduct prohibited by this policy (including, but not limited to, a Worker's Compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

E. The Township of Nutley shall release information regarding an employee's records as directed by the specific, written consent of the employee which authorizes release of the information to an identified person. Release of information by the person receiving same is permitted only in accordance with the terms of the employee's consent. A fee for copies of such record may be charged consistent with Township Policy.

F. Disclosures, without employee consent, may also occur when (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by medical personnel for a diagnosis or treatment of the employee who is unable to authorize disclosure; and (5) release or use of the information that is otherwise permitted by law.

G. An employee shall receive, at his or her request, the results of any drug or alcohol test performed in accordance with this Policy within a reasonable time after the results are available.

H. When disciplinary action is recommended or proposed under this policy, the laboratory reports will be made available to the employee.

3.27. POSSESSION OF ILLEGAL DRUGS OR ALCOHOL ON DUTY

Members found in possession of illegal drugs on duty shall be required to submit to testing and may be subject to disciplinary charges.

3.28. USE AN/OR POSSESSION OF ILLEGAL DRUGS OFF DUTY

Members arrested off duty for any drug related offense under State or Federal criminal statute may be suspended by the Department without pay pending the outcome of the court proceedings, subject to Civil Service rules and regulations. Upon completion of the court proceedings, the Department may take disciplinary action against the member.

3.29. DRIVING WHILE INTOXICATED CONVICTION

Members convicted for non-felony DWI which involves the suspension of a member's drivers license, may be placed on modified duty as determined by the needs of the Department. Members may also be referred to EAP and be subject to disciplinary charges.

3.30. OTHER

Nothing in this Policy shall make FMBA 44 or 44A liable to the Township or to an employee or to any other person. FMBA 44 and 44A are not responsible for ascertaining or monitoring the alcohol or drug-free status of an employee.

Appendix B
Collective Bargaining Agreement 2009-2012

Nutley FD
Drug and
Alcohol
Program Forms

**Acknowledgment Of Receipt of
Nutley Fire Department
Employee Assistance/Drug and Alcohol Testing Program**

I, _____, acknowledge receipt of the Nutley Fire Department Employee Assistance/Drug and Alcohol Testing Program. In order to continue employment, I will be subject to the Township's drug and alcohol testing program. I further understand:

1. I have been informed that the Nutley Fire Department is to begin drug and alcohol screening of its uniformed fire personnel.
2. A condition of my employment with the Nutley Fire Department is compliance with the testing program for the improper or illegal use of drugs and/or alcohol. The specimen collection procedures have been outlined in the Policy. The procedures will afford privacy and ensure that the specimen is genuine. Violation of this Policy may subject me to discipline, up to and including dismissal.
3. I understand that testing results and records will be maintained in strict confidentiality by the Nutley Fire Department, the testing laboratory and the Medical Review Officer ("MRO").
4. I understand that if I have any questions regarding this Policy, I may contact the Drug and Alcohol Program Manager.

Signed _____ Date _____

Witness _____ Date _____

Nutley Fire Department
Employee Assistance/Drug and Alcohol Testing Program
Supervisors Report of Observed Behavior
Reasonable Cause Screening

Suspected individual: _____

Rank: _____

Reason to Suspect Substance Abuse Includes (Please check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Speech - Slurred | <input type="checkbox"/> Neglect of Duty, Loafing, Idleness |
| <input type="checkbox"/> Speech - Rambling | <input type="checkbox"/> Incompetence |
| <input type="checkbox"/> Eyes - Dilated | <input type="checkbox"/> Serious Mistake |
| <input type="checkbox"/> Eyes - Red Rimmed | <input type="checkbox"/> Chronic Tardiness |
| <input type="checkbox"/> Eyes - Constricted | <input type="checkbox"/> Chronic Illness |
| <input type="checkbox"/> Eyes - Watery | <input type="checkbox"/> Deteriorated Work Performance |
| <input type="checkbox"/> Depression | <input type="checkbox"/> Absenteeism |
| <input type="checkbox"/> Panic | <input type="checkbox"/> Unusual Request to Quit Early |
| <input type="checkbox"/> Confusion | <input type="checkbox"/> Tremors |
| <input type="checkbox"/> Dizziness | <input type="checkbox"/> Anxiety |
| <input type="checkbox"/> Hyperactive | <input type="checkbox"/> Belligerent |
| <input type="checkbox"/> Staggering, Swaying | <input type="checkbox"/> Odor of Alcohol |
| <input type="checkbox"/> Drowsiness | <input type="checkbox"/> Other (Specify) _ |
| <input type="checkbox"/> Work Habits | <input type="checkbox"/> Unexplained Work-Related Accident |

2.REMARKS:

3. Supervisor(s) Completing Form:

Name(s): _____

Rank _____ Date _____

4. Director/Deputy Fire Chief

Name(s): _____ Date _____

Nutley Fire Department
Employee Assistance/Drug and Alcohol Testing Program
Order To Submit
Reasonable Cause Screening

After careful consideration of the information presented that reasonable suspicion exists to order drug and/or alcohol screening under the Nutley Fire Department's Employee Assistance/Drug and Alcohol Testing Program, you are hereby ordered to submit a urine and/or breath specimen.

If both initial and confirming tests are positive, you may be subject to disciplinary action up to and including termination. If you refuse to provide a specimen or attempt to tamper, dilute, or switch a specimen you may be subject to disciplinary action, up to and including termination.

Officer Ordering Test

Name and Title _____

Suspected Individual's Signature

Date

Nutley Fire Department
Employee Assistance/Drug and Alcohol Testing Program
Refusal to Submit to Urine and/or Breath Specimen

I, _____, hereby refuse to provide a urine and/or breath specimen to authorized Nutley Fire Department personnel for the purpose of conducting a drug and/or alcohol screening in accordance with the Nutley Fire Department's Employee Assistance/Drug and Alcohol Testing Program. I recognize that my refusal to submit to testing will be communicated to the Director.

In accordance with the employment policies adopted by the Fire Department, I recognize that my refusal may subject me to discipline up to and including dismissal.

I further recognize that my refusal to submit to testing will be communicated to the Drug and Alcohol Program Manager who is responsible for the administration of the Nutley Fire Department's Employee Assistance/Drug and Alcohol Testing Program.

Signed _____ Date _____

Witness _____ Date _____

COMMENTS:

INABILITY TO OBTAIN EMPLOYEE SIGNATURE

To be completed if no employee signature is obtained. Describe the good faith efforts made to obtain the employee's signature and the reasons why the signature was not obtained.

Supervisor's Name (Print) _____

Supervisor's Signature _____

Date _____

Nutley Fire Department
Employee Assistance/Drug and Alcohol Testing Program
Drug and Alcohol Testing Medication Questionnaire to be Completed Only
After Positive Initial and Confirmatory Test

As part of a positive initial and confirmatory test result under the Nutley Fire Department Employee Assistance/ Drug and Alcohol Testing Program, it is essential that you inform us of all medications you have taken in the last thirty (30) days. Please carefully complete the information below.

CHECK ALL THAT APPLY

During the past thirty (30) days, I have taken the following medication(s) prescribed to me by a physician:

Name of Medication	Prescribing Physician	Date Last Taken

During the past thirty (30) days, I have taken the following nonprescription medications (cough medicine, cold tablets, aspirin, diet medication, nutritional supplements, etc.)

Name of Medication	Prescribing Physician	Date Last Taken

During the past thirty (30) days, I have taken NO prescription or nonprescription medications.

Name (Print) _____

Signature _____ Date _____



New Jersey Firefighter's Mutual Benevolent Association

Employee Assistance Program

Contact Information

FOR CONFIDENTIAL HELP!!

Dan Duffy, Chairman

24 Hour Cell Phone 732-713-3854

Or Leave a Message through the State Office

732-499-9250