

TABLE OF CONTENTS

ARTICLE	SUBJECT	PAGE
	Agreement	4
1	Union Recognition.....	5
2	Management Rights	6
3	Strikes	9
4	Dues Deduction.....	10
5	Vacancies and Promotions	11
6	Seniority	15
7	Probationary Employees	16
8	Bulletin Boards	17
9	Leave of Absence and Sick Leave Bank	18
10	Grievance and Arbitration Procedures	19
11	Holidays	23
12	Annual Leave	25
13	Hours of Work and Overtime.....	30
14	Authorized Use of Private Automobiles.....	32
15	Temporary Assignment to a Higher Classification.....	33
16	Sick Leave	34
17	Union Representatives and Activities.....	37
18	Insurance	39

TABLE OF CONTENTS (cont)

ARTICLE	SUBJECT	PAGE
19	Uniforms and Equipment.....	40
20	Bereavement Leave	42
21	Wages.....	43
22	Retirement Plan	47
23	Jury Duty and Appearances as a Witness	48
24	Alcohol and Drug Testing.....	49
25	Physical Examination and Workers' Compensation.....	52
26	Rules and Regulations.....	54
27	Time Off for Voting.....	55
28	Military Leave.....	56
29	Educational Leave.....	57
30	Specialty and Education Incentive Pay	58
31	Tuition Reimbursement	60
32	Firefighter's Bill of Rights	61
33	Employee Rights.....	62
34	Appendices and Amendments	63
35	Separability	64
36	Entire Agreement	65

TABLE OF CONTENTS (cont)

ARTICLE	SUBJECT	PAGE
37	Duration of Agreement	66
38	Health and Safety.....	67

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Port Orange, hereinafter referred to as the "City", and the Port Orange Professional Firefighters Association, Local 3118, IAFF, AFL-CIO, PFF, FLA., hereinafter referred to as the "Union".

The use of male gender in this Agreement is intended as a neutral term and it shall be construed to include both male and female employees.

WITNESSETH:

WHEREAS, This Agreement reduces to writing the understandings of the City and the Union to comply with the requirements contained in Chapter 447, Florida Statutes, as amended; and

WHEREAS, This Agreement is designed to provide for an equitable and feasible procedure for the resolution of differences concerning the enforcement of this Agreement in accordance with grievance procedures contained herein; and

WHEREAS, This Agreement is entered into to promote a harmonious relationship between the Union and the City and to encourage more effective employee service in the public interest; and

WHEREAS, The Union understands that the City is engaged in furnishing essential public service which affects the health, safety and welfare of the general public; and the Union recognizes the need to provide continuous and reliable service to the public; therefore, it is hereby agreed:

ARTICLE 1

UNION RECOGNITION

1.1 The City recognizes the Union as the exclusive collective bargaining representative for those employees in the following bargaining unit, as defined in PERC Certification #777, dated February 19, 1988.

Included: All Firefighter/EMT's, Driver Engineers, Paramedics, Fire Prevention Specialists and Fire Lieutenants.

Excluded: Chief, Shift Commander, Battalion Chief, Division Chief, EMS Manager/Commander, Public Education Specialist. Reserve Firefighters, temporary employees and all other employees.

ARTICLE 2

MANAGEMENT RIGHTS

- 2.1 The Union recognizes that it is the function of management to determine and direct the policies, mode and method of providing its services without any interference in the management and conduct of the City's operations on the part of the Union or any of its representatives.
- 2.2 The City shall continue to exercise the exclusive right to take any action it deems necessary or appropriate in the management of its operations and the direction of its work force. The City expressly reserves all rights, powers and authority customarily exercised by management, including all inherent and common law management rights and functions which the City has not expressly modified or delegated by express provisions of this Agreement. Nothing in this Agreement shall be construed to limit or impair the right of the City to exercise its own discretion in determining whom to employ, and nothing shall be interpreted as interfering in any way with the City's right to alter, arrange, or change, extend, limit or curtail its operations or any part thereof unless specifically addressed in this Agreement.
- 2.3 Without limiting the provisions of Sections 2.1 and 2.2, but in order to clarify some of the more important rights retained by management, the City shall have the following management rights:
- (a) To determine the size and composition of the work force, including the number or composition of employees assigned to any particular operation, shift or turn;
 - (b) To determine the number and type of equipment, vehicles, materials, and supplies to be used, operated or distributed;
 - (c) To hire, rehire, promote, lay-off and recall employees;
 - (d) To reward or reprimand, discharge or otherwise discipline an employee for just cause;
 - (e) To evaluate, maintain, and/or improve the efficiency of employees;
 - (f) To create, abolish, or change job classifications and to determine job content and minimum qualifications for job classifications, and the amount and type of work;

- (g) To determine the assignment of work;
- (h) To discontinue, temporarily or permanently, in whole or in part its operations and to transfer, or assign all or any part of its operations to new facilities;
- (i) To require an employee to take a physical or mental examination, given by a health service or a physician or psychiatrist selected by the City;
- (j) To determine the location, method, means and personnel by which operations are to be conducted;
- (k) To determine work schedules, work cycles, starting and quitting times, and the number of hours and shifts to be worked. Provided, that the City will give the Union seven (7) calendar days notice of any change;
- (l) To make or change rules, policies and practices not in direct conflict with any provision of this Agreement;
- (m) To assign overtime work.

2.4 The City reserves and retains in full and completely any and all management rights, prerogatives and privileges except to the extent that such rights, prerogatives and privileges are specifically limited by some express provision of this Agreement, and has no obligation to bargain over the decision to exercise such rights, prerogatives and privileges, or the effect of such decisions.

2.5 The City's failure to exercise any function or right hereby reserved to it, or its exercising any function or right in a particular way, shall not be deemed a waiver of this right to exercise such function or right, nor preclude the City from exercising the same in some other way not in conflict with the express provisions of this Agreement.

2.6 If it is determined by the City that civil emergency conditions exist, including but not limited to riots, civil disorders, hurricanes or other extreme weather conditions, or similar catastrophes the provisions of this Agreement may be suspended during the time of the declared emergency except monetary benefits.

2.7

It is agreed that every incidental duty connected with operations enumerated in job descriptions is not always comprehensive and the employees at the discretion of the City may be required to perform duties not within their specific job descriptions.

ARTICLE 3

STRIKES

- 3.1 The Union and bargaining unit members shall have no right to instigate, promote, sponsor, engage in, or condone any work stoppage, boycott, slow-down, strike, intentional disruption of City operations, or to withhold services for any reason. Each employee who holds a position in the Union occupies also a position of special trust and responsibility in maintaining and bringing about compliance with this Article, the strike prohibition of Section 447.505, Florida Statutes, and the Constitution of the State of Florida, Article 1, Section 6.
- 3.2 The Union, its officers, agents, stewards and other representatives agree that it is their continuing obligation and responsibility to maintain compliance with this Article and the law, including their responsibility to abide by the provisions of this Article and the law by remaining at work during any interruption which may be initiated by others; and including their responsibility, in the event of breach of this Article or the law by other employees, and upon the request of the City, to encourage and direct employees violating this Article or the law to return to work, and to disavow the strike publicly.
- 3.3 In addition to the penalties set forth in Section 447.507, Florida Statutes, any and all employees who violate any provision of the law prohibiting strikes or this Article may be disciplined, up to and including discharge, by the City.
- 3.4 The circuit courts of this State shall have jurisdiction to enforce the provisions of this Section by ex parte injunction and contempt proceedings, if necessary.
- 3.5 For the purpose of this Article, it is agreed that the Union shall be responsible and liable for any act committed by any of their officers, agents, and/or representatives, which act constitutes a violation of State law, City ordinance, or policy or the provisions herein. In addition to all other rights and remedies available to the City under State law, in the event of a breach of the provisions herein, the City shall have the right, without further notice, to suspend this Collective Bargaining Agreement and withdraw recognition from the Union.

ARTICLE 4

DUES DEDUCTION

- 4.1 Upon receipt of a written authorization from an employee covered by this Agreement, the City will deduct from the employee's pay each pay period the amount owed to the Union by each employee for dues. No authorization shall be allowed for payment of any collection of fines penalties or special assessments. The City shall remit monies collected to the Treasurer of the Union within ten (10) days following the payday in which the deduction is made. The City remittance will be deemed correct if the Union does not give written notice to the City within thirty (30) calendar days of a remittance, of its belief with reasons stated therefore that the remittance is incorrect. It shall be the responsibility of the Union to notify the City Manager or his designee in writing of any change in the amount of dues to be deducted at least sixty (60) days in advance of said change.
- 4.2 The Union shall indemnify the City and hold the City harmless against any and all suits, claims demands and liabilities which arise out of or by reason of any action taken or not taken by the City for complying with any of the provisions of this Article. If there is an amount deducted in excess of what is authorized by this Agreement, the employee affected shall seek recourse with the Union and not the City.
- 4.3 An employee may revoke his authorization for deduction of dues provided the employee gives thirty (30) days written notice to the City and the Union. Upon receipt of such notification, the City shall terminate dues on the pay date immediately following the expiration of the thirty (30) day notice period.
- 4.4 No deduction shall be made from the pay of an employee for any payroll period in which the employee's net* earnings for that payroll period are less than the amount of dues to be checked off.
- (*) Net earnings shall mean net after required deduction of federal taxes, social security, pensions, credit union, and health and life insurance.
- 4.5 In the event the Union delivers additional dues authorization to the City Human Resources Director, it is agreed and understood that the City shall have thirty (30) days from the date of delivery in which to commence the dues deduction procedures.

ARTICLE 5

VACANCIES AND PROMOTIONS

5.1 Whenever a budgeted promotional vacancy occurs in a Lieutenant or Driver Engineer classification the City shall promote an employee to fill such vacancy within thirty (30) days from an existing eligibility list. However, if the current list has less than three (3) names remaining on the list, the City may either promote from this list or retest, at the City's option. Should there be no valid list at the time a vacancy occurs, or should the City elect to retest as indicated above, the City shall initiate actions to establish a new list within thirty (30) days, provided personnel are qualified for promotion. Upon certification of the new eligibility list, the budgeted vacancy shall be filled within fourteen (14) days.

5.2 An eligibility list will be established within fourteen (14) days following completion of the promotional process and will remain in effect for a period of two (2) years from that date. A promotion process will only be given if personnel meet all certification qualification requirements and minimum time in grade for promotion. If the eligibility list has less than three (3) persons, a new test may be given at any time at the City's option.

5.3 PROMOTION TO DRIVER ENGINEER

In order to participate in the Driver/Engineer promotional process personnel must have successfully passed Fire Service Hydraulics and Fire Apparatus Operations. Personnel must also have at least two (2) years with Port Orange Fire & Rescue.

Ranking on the promotional list for Driver/Engineer will be established using the following scoring system:

Driver Engineer Written Exam	40 points
Pump Practical Exercise	30 points
Driving Practical Exercise	30 points

5.4 ELIGIBILITY FOR LIEUTENANT'S PROMOTIONAL PROCESS

Eligibility ~~is~~ **for the Lieutenant's Promotional Process means:**

a.) five (5) years of continuous service as a Port Orange career fire fighter, driver/engineer or paramedic;

b.) ~~of~~ four (4) years of continuous service as a Port Orange career fire fighter, driver/engineer or paramedic with an Associate Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field; or

c.) three (3) years of continuous service as a Port Orange career

fire fighter, driver/engineer or paramedic with a Bachelor Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field.

5.5 PROMOTION TO LIEUTENANT

In order to be promoted to a Lieutenant position, **eligible** candidates shall be evaluated on two selection components: practical skills Assessment Center and a written examination. Practical skills Assessment Center may rate candidates on many sub-components, including tactical, interpersonal, **and** leadership skills.

A. ASSESSMENT CENTER

A “Development Team” consisting of the City Human Resources Director, the Fire Chief, and a Fire Department Division Chief (the latter chosen by the Human Resources Director and the Fire Chief) shall develop an Assessment Center designed to measure the practical skills needed by a Lieutenant to successfully perform the duties of the position. The Fire Chief and the Human Resources Director may hire or contract with an outside consultant in developing all or part of the process.

In developing appropriate Assessment Center exercises, the Development Team will solicit input from the Department’s Lieutenants. The Development Team shall also establish “critical behaviors” for each Assessment Center exercise at the time of developing the exercises.

B. WRITTEN EXAMINATION

The Development Team shall develop a written examination which measures knowledge needed by a Lieutenant to successfully perform the duties of the position.

C. RANKING OF LIEUTENANT CANDIDATES

Ranking on the Lieutenants eligibility list shall be based on the following performance scores:

Assessment Center	up to 70 points
Written Exam	up to 30 points

5.6 ADDITIONAL POINTS – ALL PROMOTIONS

Additional points for formal education, ~~and~~ longevity, certifications, and military service will be awarded after the written ~~test~~, exam and Assessment Center ~~and oral interview~~ scores have been tabulated. These points apply to both Driver Engineer and Lieutenant promotions. Points will be awarded as follows:

EDUCATION: (Only one (1) Degree may be counted)

Four (4) Year Fire Service Related Degree <u>meeting state supplemental standards</u>	3 Points
Four (4) Year Non Fire Service Related Degree	2 Points
Two (2) Year Fire Service Related Degree	2 Points
Two (2) Year Non Fire Service Related Degree	1 Point

CERTIFICATIONS~~Certifications~~: (Only the highest level may be counted)

Fire Officer II – 3 points
Fire Officer I – 2 points

one Employees that have Municipal Fire Inspector certification shall receive (1) point. Employees that have one or more Fire Service Instructor certifications shall receive one (1) point.

MILITARY VETERAN:

Military veterans with honorable discharges shall receive one (1) point.

LONGEVITY:

Eligible candidates will receive one quarter (.25) point for each consecutive year of Port Orange Fire Department service to a maximum of five (5) points. The closest anniversary date to the processing date will be used to determine points. In the event of a tie score at the conclusion of the entire testing process, the senior eligible candidate will be ranked ahead of the candidate with less seniority.

5.7 After testing is complete, a listing will be made of all qualified applicants. The Chief then will have authority to choose one (1) of the top three (3) candidates for the vacant position. The written ~~test grade, practical exercise,~~ exam and Assessment Center scores, and points for seniority, ~~and education credits,~~ certifications, military service and longevity (if applicable) will all be compiled to determine the final score.

Candidates will be listed in the order of the final score achieved. The Fire Chief will choose one of the eligible candidates from those with the top three final scores. No eligible candidate can be passed over more than twice. "Passing over" shall be defined as a candidate of lower position on list being selected over a higher-ranking candidate for a permanent promotion. (If candidate # 2 is selected over candidate #1 this would be a passover. If candidate #2 is selected over candidate #3, this would not be a passover for candidate #3). An eligible candidate, however, may ask to be passed over as many times as that candidate wishes during the process period without adverse affects or loss of position on the list. ~~An eligible candidate, however, may ask to be passed over as many times as that candidate wishes during the process period without adverse affects or loss of position on the list.~~

- 5.8 Employees who have been promoted to a new classification or selected to fill a vacancy within the bargaining unit shall serve a one hundred eighty (180) calendar day probationary period in the new classification or filled position, with the exception of a newly-promoted Lieutenant who does not hold at least a Fire Officer I certification, who will serve a one (1) year probationary period. If at any time during the probationary period the promoted employee is found not to have the aptitude or ability for the position to which they were promoted, the employee will be returned to their former classification, and all moves made as a result of their promotion shall be reversed, including (if necessary) the termination of newly-hired employees.

Newly-promoted Lieutenants who do not hold at least a Fire Officer I certification will be required to attain this certification within one (1) year of promotion. Failure to attain this certification within one (1) year of promotion will result in the employee being returned to his or her former classification.

ARTICLE 6

SENIORITY

- 6.1 For the purpose of this Agreement, there are three (3) types of seniority: seniority in rank, seniority in the Department, and seniority with the City. Seniority in rank is defined as the length of continuous, uninterrupted service at a specific rank, classification or grade within the Fire and Rescue Department and shall be used for the purposes of this Article. ~~Employees hired on the same day will be placed on the seniority list in the order of their social security numbers with the lowest number having the highest seniority for all purposes.~~

Seniority in the Department is defined as the length of continuous, uninterrupted service within the Department and shall be used for purposes of vacation or annual leave, those with the Department the longest having first choice for when they wish to take annual leave.

Seniority with the City is defined as the length of continuous, uninterrupted service with the City and shall be used for purposes of leave accrual, those with the City the longest accruing leave at the greatest rate.

Employees hired on the same day will be placed on the a seniority list in the order based upon the last four (4) digits of their social security numbers with the lowest number having the highest seniority for all purposes.

- 6.2 Continuous service shall be considered as having been interrupted when the employee:

- (a) Resigns;
- (b) Is discharged;
- (c) Takes unauthorized leave of absence leave; or
- (d) Is absent due to a lay-off for more than one (1) year.

- 6.3 In the event of a lay-off or elimination of a classification within the Department the following factors as listed below shall be considered by the City; however, only where "b" and "c" are relatively equal shall Seniority be the determining factor for the employees under consideration:

- (a) Seniority in rank as defined in Section 6.1;
- (b) Ability to perform work in a satisfactory manner and prior conduct;

or;

(c) Physical fitness.

6.4

Employee will be recalled from a lay-off in the inverse order of their lay-off, by job classification, provided the employee is still qualified to perform his work. Provided further that recall rights shall continue for a period of one (1) year from the date of an employee's lay-off. The City shall notify the employee of all job openings in the employee's former classification during the one (1) year period. Such notification will be mailed to the employee's last known address. The laid-off employee must accept the recall option within five (5) calendar days of receipt, or the employee will be considered to have forfeited any recall right.

An employee on lay-off shall retain his seniority for one (1) year following his layoff, but shall not accrue seniority while on lay-off. Group insurance benefits shall be continued in accordance with the Consolidated Omnibus Budget Reconciliation Act, as amended.

6.5

In the event of a Reduction in Force or lay-off at the Commander rank, a Commander will have the right to roll down to the Lieutenant rank and shall be subject to this bargaining unit's contract.

ARTICLE 7

PROBATIONARY EMPLOYEES

- 7.1 All new members in the Department shall be classified as probationary employees for the first three hundred and sixty five (365) calendar days of continuous, uninterrupted employment during which time such employees may be laid-off, disciplined, or discharged at the sole discretion of the City. Shorter periods of employment shall not be cumulative. Provisions as to seniority shall not apply to probationary employees; rather, seniority shall date back to the initial or adjusted date of employment after an employee successfully completes his probationary period. If more than one employee is hired on the same day or has the same adjusted date of employment, seniority shall be determined by the sequence of their social security numbers, and the employee with the lowest social security number being considered the employee with the most seniority, subject to the provisions of Article 6.
- 7.2 Employees who have been promoted to a new classification or selected to fill a vacancy within the bargaining unit shall serve a one hundred eighty (180) calendar day probationary period in the new classification or filled position, with the exception of a newly-promoted Lieutenant who does not hold at least a Fire Officer I certification, who will serve a one (1) year probationary period. If at any time during the probationary period the promoted employee is found not to have the aptitude or ability for the position to which he was promoted, the employee will be returned to his former classification, and all moves made as a result of his promotion shall be reversed, including the termination of newly-hired employees.
- 7.3 The employee's starting date of employment for purposes of calculating his probationary status and seniority shall be adjusted if the employee takes leave without pay. For example, should an employee take five (5) days of leave without pay, the employee's starting date of employment will be adjusted by moving the employee's original date up five (5) days. Should the employee be in his probationary period at the time he takes leave without pay, the employee's probationary period shall be extended in proportion to the days he was on such leave.
- 7.4 The City shall have the right to extend the probationary periods set forth in sections 7.1 and 7.2, for a period of ninety (90) calendar days, in lieu of discharging the employee.

ARTICLE 8

BULLETIN BOARDS

8.1 The City shall provide the Union with space for a Bulletin Board two (2) feet by two (2) feet in size.

8.2 The Union agrees that it shall use space on the Bulletin Board provided for in Section 8.1, for the positing of the following:

Notices of Union Meetings
Election of Officers (not including representation elections)
Reports of Union Committees
Recreational & Social Affairs of the Union
Notices of Meetings by Public Bodies
Notices of Ratification Meetings
Minutes of Meetings

In no event shall the Bulletin Board be used to post political material or controversial material which adversely reflects upon the City of Port Orange, its independent agencies, its employees, elected officials, or any labor organization among its employees.

8.3 All material or notices must bear the signature of the Union president and said signature must be dated.

8.4 Failure of the Union to follow the procedures for the proper posting of material and notices on the Bulletin Board shall result in the material or notices being removed from the Bulletin Board.

ARTICLE 9

LEAVE OF ABSENCE

- 9.1 The City of Port Orange will grant ~~up to twelve (12) weeks of family and medical leave during any twelve month (12) period~~ leave to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and in accordance with the City Family and Medical Leave Act Policy. This Policy, as amended from time to time, is set forth in the City's Administrative Policies Manual as Policy 1-22.
- 9.2 ~~The City Manager shall have the sole discretion to grant or deny a leave of absence under circumstances which are not covered by the Family and Medical Leave Act. The maximum length of time for this type of leave of absence shall be twelve (12) weeks. If such a leave is granted, the employee must first use any accrued annual leave and sick leave. The remainder of the leave of absence will be unpaid. Requests for a leave of absence under this Section must be made in writing. The leave of absence request may be approved in full, modified or denied as specified in writing by the City Manager.~~
- 9.32 Longevity increases, merit increases, and any other increases for which an employee may become eligible based in whole or in part on length of service with the City shall not be credited during any period of leave of absence without pay. An employee shall return from leave of absence to the same step of his salary grade as at the time of commencement of leave of absence
- 9.43 If permitted by the Retirement Plan, an employee may maintain his/her retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.

ARTICLE 10

GRIEVANCE AND ARBITRATION PROCEDURES

10.1 In a mutual effort to provide harmonious working relations between the parties to this Agreement, it is agreed to and understood by both parties that there shall be a procedure for the resolution of grievances.

10.2 For the purpose of this Agreement, a grievance is defined as a claim or complaint that an employee or group of employees may have that the City has violated a specific provision of this Agreement during the term of this Agreement.

10.3 Grievances may be taken up during the working time of the grievant upon mutual agreement between the City and Union.

10.4 All grievances must be reduced to writing and must contain the following information:

- (a) The specific Article and Section of the Agreement alleged to have been violated by the City;
- (b) A statement of the grievance, giving a description of the facts, dates and times of the events involved in the alleged violation, and the remedy desired by the grievant;
- (c) Signature of grievant (or the signature of all employees in the case of a group of employees filing a single grievance) and date(s) signed; and in the event that the Union is filing a "class action" grievance on behalf of its members, the grievance shall be signed by the Union President;
- (d) Designation of the Union representative (must be an elected officer or steward) if the grievant requests Union representation.

Unless the grievance is presented in the manner set forth in this Section, it shall be deemed not to exist.

10.5 All grievances shall be processed in accordance with the following

procedure:

Step 1 - The grievant (i.e., employee, or group of employees) and/or union representative shall present their grievance to their immediate supervisor in writing within five (5) working days of the occurrence of the action giving rise to the grievance. Discussions will be informal for the purpose of settling differences in the simplest and most effective manner. The immediate supervisor should discuss and make an effort to resolve all legitimate grievances with fairness and justice for both the grievant and the City. The immediate supervisor shall communicate a decision to the grievant in writing within ten (10) working days from the date the grievance was presented to them.

Step 2 - If the grievance is not settled at the first step, the grievant and/or union representative within seven (7) working days of receiving a reply from the supervisor to the grievance shall present the grievance in written form (in compliance with Section 10.4) to the next higher supervisor in the chain of command with a copy to the Human Resources Director. The supervisor or their designees, shall investigate the alleged grievance and shall within ten (10) working days of receipt of the written grievance conduct a meeting with the Human Resources Director, the grievant and the Union Steward if the grievant requests Union representation. This supervisor or their designee shall notify the grievant of his decision no later than seven (7) working days following the meeting.

Step 3 - If the grievance is not settled at the second step, the grievant and/or union representative within five (5) working days from the date of that supervisor's decision shall present the written grievance to the Fire Chief or designee and shall immediately submit a copy to the Human Resources Director. The Fire Chief or designee shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with City representatives, the grievant and the Union Steward if the grievant requests Union representation. The Fire Chief or designee shall notify the grievant in writing of their decision not later than fifteen (15) working days subsequent to the date the grievance was received by the Fire Chief.

Step 4 - Arbitration - If a grievance, as defined in this Article, has not been satisfactorily resolved within the Grievance Procedure, the Union, and not the employee, may request arbitration in writing to the Office of the Human Resources Director no later than ten (10) working days after the response is received in Step 3 of the Grievance Procedure.

- 10.6 Whenever the Union requests arbitration in accordance with the provisions of Section 10.5, the parties shall within seven (7) working days following appeal to arbitration attempt to agree upon an impartial individual to act as arbitrator. If an impartial individual cannot be mutually agreed upon within five (5) working days following appeal to arbitration the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators, each of whom shall be a member of the National Academy of Arbitrators. Arbitrators shall be selected from such panel by alternately striking names from this list (the Union shall make the first strike) until the last name on the list is reached
- 10.7 The limitations on the powers of the Arbitrator are as follows:
- (a) The Arbitrator shall not have the power to add, to subtract from, or alter the terms of this Agreement.
 - (b) The Arbitrator shall have no authority to consider or rule upon any matter which is not a grievance as defined in this Agreement, nor shall this Agreement be construed by the Arbitrator to supersede applicable laws in existence at the time of the signing of this Agreement. The arbitration hearing shall be conducted in accordance with the rules of procedure promulgated by the F.M.C.S.
- 10.8 Each party shall bear the expense of its own witnesses and of its own representatives for the purpose of the arbitration hearing. The impartial Arbitrator's fees and related expenses for retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript, unless both parties mutually agree to share said cost. The Arbitrator's award shall be final and binding on both parties.
- 10.9 It is the mutual desire of the City and the Union that grievances shall be adjusted as quickly as possible and to that end the time limits set forth in this Article are to be strictly enforced. The time limits may only be extended by mutual written agreement. The term "work days" as used in this Article includes Monday through Friday of each work week regardless of the grievant's work schedule. Saturdays, Sundays, and holidays as set forth in this Agreement shall not be considered "work days" even if work is assigned on these days. For the purpose of calculating time limits, the day on which a grievance, or a reply by management to a grievance, is received, shall not be counted. Failure of management to observe the time limits for any step in the Grievance Procedure without a mutually agreed written extension of time shall entitle the grievant (or the Union in the case of Step 4) to the relief sought in the grievance. Failure of the

grievant (or the Union in the case of Step 4) to observe the time limits for any steps in this Article without a mutually agreed written extension of time shall terminate the grievance. If either party requests an extension of time of fourteen (14) working days or less at any step of the grievance procedure, the request must be agreed to by the other party. Requests for extensions which exceed fourteen (14) working days may be granted or denied at a party's discretion. Any request for an extension of time must be made in writing and communicated to the other party prior to the expiration of the original period which the party is seeking to extend.

10.10

A bargaining unit employee shall have the option of ~~the~~ utilizing the Civil Service appeal procedure or the grievance and arbitration procedure set forth in this Article, but such employee cannot use both the Civil Service appeal procedure and the procedure of this Article. The City Manager is the final authority for grievances filed under the Civil Service Rules and Regulations. Grievances alleged as violations of the Labor Agreement, which are filed under the Civil Service Rules and Regulations cannot also be filed as grievances under the provisions of this Article. At the time that an employee initiates a written grievance, he/she shall state in the body of the grievance whether the grievance is filed under the Labor Agreement or the City's Civil Service Rules. If the employee fails to make this statement, the employee shall be deemed to have filed the grievance under the Labor Agreement. At no time following the filing of a written grievance may the employee change his/her selection of which procedure and standards the grievance shall be processed under.

ARTICLE 11

HOLIDAYS

11.1 **A.** ***It is recognized that the City will close its offices for seven (7) official holidays.*** The following ***seven (7) days*** are ***paid*** holidays under this Agreement:

Thanksgiving Day
Friday after Thanksgiving
Christmas Day
New Year's Day
~~Martin Luther King's Day~~
Memorial Day (Observed Day)
Fourth of July
Labor Day
Good Friday
Floating Holiday
Employee Birthday.

~~For both the Floating Holiday and the Employee Birthday, eight (8) hours of annual leave will be added to the employees annual leave accrual for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. The annual leave hours for the Floating Holiday shall be added on the first payday after January 1. The annual leave hours for the Employee Birthday shall be added on the first payday after October 1.~~

11.1 B. ***In addition to the paid holidays above, employees shall be granted additional leave as follows:***

Floating Holiday: Eight (8) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the first of January for the employee to use as he or she wishes. These hours are to be scheduled in the same fashion as annual leave.

Employee Birthday: Eight (8) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the first of October for the employee to use as he or she wishes for his or her birthday. These hours are to be scheduled in the same fashion as annual

leave.

In the event the City does not close for Martin Luther King's Birthday, eight (8) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the 1st of January for the employee to use as he or she wishes. These hours are to be scheduled in the same fashion as annual leave.

In the event the City does not close for Good Friday, eight (8) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the 1st of January for the employee to use as he or she wishes. These hours are to be scheduled in the same fashion as annual leave.

In order to qualify for the four (4) annual leave accruals for the Floating Holiday, Birthday Holiday, Martin Luther King Birthday, and Good Friday, an employee must have been employed for the entire 12 consecutive previous months. After 12 consecutive months of service, employees shall be eligible to receive the additional hours added to their annual leave accruals. After new employees complete their first consecutive 12 months of service, they will receive the additional hours added to their annual leave accruals. Annual leave accruals will only be earned for Martin Luther King's Birthday and Good Friday in the event the City remains open for these holidays.

- 11.2 **Shift** Employees who work the actual holiday **referenced in 11.1 A.** will be the employees who are compensated with holiday pay rather than the employees who work on the day the holiday is observed by the City.
- 11.3 If a holiday **referenced in 11.1 A.** falls on a shift employee's off duty day, they shall receive twelve (12) hours holiday pay at their regular straight time rate of pay.
- 11.4 If a shift employee is required to start his/her shift of work on one of the holidays specified in 11.1 **A.**, he/she shall receive payment at one and one half (1 ½) times his/her regular rate of pay for up to twelve (12) hours worked on that shift, in addition to twelve (12) hours of holiday pay at his/her regular rate of pay.
- 11.5 Employees who work a forty-hour (40) work week will be paid for

such holidays specified above in 11.1 A. in accordance with the provisions of this Section:

- A. Should a paid holiday fall on Sunday, the Monday immediately following the holiday shall be the day observed as such holiday and should such holiday fall on a Saturday the preceding Friday shall be the day observed as such holiday.
- B. An employee who performs no work on the holiday, and who is eligible, shall receive an additional day's compensation, paid at his regular rate of pay.

An employee who performs work on a holiday shall receive payment at one and one half (1 ½) times his regular rate of pay for all hours worked, in addition to holiday pay at their regular rate of pay. Under no circumstance will total compensation exceed two and one half (2 ½) times one day's pay at the regular rate.

11.6 **In lieu of receiving one and a half times pay for working on a holiday, an employee that is scheduled to work the holiday referenced in 11.1 A. may elect to receive eighteen (18) hours of compensatory time. The maximum number of hours of compensatory time which will be allowed to accrue will be ninety six (96) hours. Prior to October 1st and April 1st an employee will notify the Fire Chief of their desire to receive compensatory time in lieu of holiday pay.**

ARTICLE 12

ANNUAL LEAVE

12.1 Annual Leave is provided for the purpose of allowing employees time off from their work for vacation or for necessary time to attend to personal business.

12.2 In computing annual leave time, holidays, or regular days off immediately preceding the commencement of, falling within, or following the termination of an employee's annual leave, shall be excluded from the computation of the employee's annual leave time.

12.3 Selection of vacations shall be on a seniority basis. Employee's vacation requests must be submitted in writing and received in the Chief's office not later than 5:00 p.m. by February 1st of each year. The individual employee is responsible to insure the request is received in the Chief's office on the proper date and time. The City will permit a minimum of two (2) persons on any shift to take off on annual leave at the same time. During "peak times," the City will permit a minimum of three (3) employees on any shift to take off on annual leave at the same time. "Peak times" are defined as the dates specified by the Volusia County School Calendar for the year in question for Spring Break, Summer Vacation, Thanksgiving Break and Winter Break. Vacations selected by employees on or before February 1st of each year which fall into any of the "peak times" may not be cancelled.

Notification by the City of vacation schedules shall be made in writing by March 1st of each year. Nothing in this Agreement shall restrict the City's right to reschedule vacations in the event of a disaster or emergency. The City will make every effort to accommodate scheduled requests for annual leave or a reschedule request in a situation where cancellation of annual leave is permitted, whether the request is made before or after February 1, providing such request is submitted in writing to the Chief, or in the Chief's absence, the Chief's designee, and providing staffing requirements are met.

12.5 Any request for annual leave other than vacation selection must be submitted in writing to the Chief or the Chief's designee as soon as the employee knows that he/she wishes to use annual leave. A request to take annual leave which is made on the same day as the employee wishes to take the leave may be made by telephone or in person to the employee's Shift Commander. If the request is made verbally and approved, it shall be documented in writing as soon as practicable

thereafter.

12.6 Emergency Annual Leave.

On no more than three (3) occasions per fiscal year (October 1 through September 30), an employee may utilize annual leave with little or no advance notice (“emergency annual leave”) to deal with personal or family emergency situations. In order to be granted annual leave for these purposes, an employee must request the leave verbally or in writing as far in advance of taking the leave as possible. If the employee is unable to make a written leave request prior to taking emergency annual leave, he/she must submit such a request as soon as is practicable thereafter. The employee’s request for emergency annual leave must include information specifically describing the situation for which the leave is required. After emergency annual leave has been granted, the City shall have the right to require verification from the employee of the emergency circumstances which necessitated the taking of annual leave, if evidence verifying the circumstances is available. If an employee is found to have provided false information concerning his/her need to take emergency annual leave, he/she may be subject to corrective action and shall be responsible for any costs incurred by the City to provide staffing coverage for the falsified emergency leave situation.

The City shall grant an employee’s request for emergency annual leave **regardless of** whether or not granting the leave request would require the City to pay overtime to meet minimum staffing levels. If an employee has already taken emergency annual leave on three occasions during a fiscal year and makes a request for additional emergency annual leave, the Fire Chief or the Chief’s designee may grant or deny the request at his/her discretion.

12.7 Cancellation of Requested Annual Leave.

If an employee wishes to cancel approved annual leave other than annual leave during “peak times” which was selected on or before February 1st, the employee may do so provided that he/she provides the Chief or the Chief’s designee with notice at least one (1) hour prior to the start of the approved annual leave.

12.8 Accrual of Annual Leave

- A. General Term of Accrual - Annual leave shall be earned and accrued from the most recent day of employment under the conditions hereinafter stated, but no annual leave shall be granted until an employee has completed six (6) months of continuous

service. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no annual leave credit for such week of service. Provided however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours.

- B. Accrual for Full-Time Employees - Each full-time employee working a forty (40) hour week shall accrue annual leave as follows:

<u>Length of Continuous Service</u>	<u>Hours Earned Weekly</u>	<u>Maximum Annual Accrual</u>
less than 5 years	1.923	100
5 to 8 years	2.231	116
8 to 11 years	2.539	132
11 to 16 years	2.846	148
16 to 20 years	3.154	164
more than 20 years	3.482	180

- C. Accrual for Full-Time Employees Working Extended Shifts - 168 Hours Every 21 Day Cycle. Each full-time employee working extended shifts shall earn annual leave as follows:

<u>Length of Continuous Service</u>	<u>Hours Earned Each Week</u>	<u>Maximum Annual Accrual</u>
less than 7 years	2.846	148
7 to 9 years	3.308	172
9 to 16 years	4.000	208
16 to 20 years	4.231	220
More than 20 years	4.692	244

- 12.9 Initial Probationary Period - Employees on probationary status shall be credited with annual leave for each week of employment but shall not be permitted to use annual leave until they have completed six (6) months of their initial probationary period. Should an employee fail to successfully complete the probationary period or should an employee be discharged during the initial probationary period he shall forfeit all accrued annual leave.

- 12.10 Maximum Accrual - Annual leave normally is to be taken in the anniversary year in which it is earned. Unused annual leave may be accumulated to a maximum of three hundred and twenty (320) hours for bargaining unit employees working a forty (40) hour work week, and three

hundred and eighty six (386) hours for bargaining unit employees working extended shifts as set forth above.

12.11 Shift personnel will be permitted to use annual leave in accordance with Department policy in units of not less than two (2) hour increments subject to the approval of their supervisor. Non-shift employees will be permitted to use annual leave in thirty (30) minute increments subject to the approval of their supervisor. In case of conflict, annual leave shall be granted on the basis of seniority. For shift Firefighters, the maximum amount of accumulated annual leave which may be taken at one time, shall be ten (10) shifts of twenty-four (24) hours each, which, with the forty-eight (48) hours off duty time per shift, will permit a maximum of thirty-two (32) days away from duty.

12.12 An employee shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section 12.10 when the employee ***retires or*** is fired, laid-off, resigns or is dismissed for any other reason. Pay, **or at the employee's option, deferral into an ICMA-RC 457 Plan account**, for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. In the case of death, compensation shall be paid to the surviving spouse or the employee's estate.

12.13 Employees taking annual leave shall have their accounts charged for the actual number of scheduled hours absent because of leave.

12.14 Employees who have accrued more than three hundred and twenty (320) hours for bargaining employees working a forty (40) hour week, or more than three hundred and eighty six (386) hours for bargaining unit employees working extended shifts shall receive payment, **or at the employee's option, deferral into an ICMA-RC 457 Plan account**, for this unused leave.

Leave indicated on the paystub received on the first pay period in October which is payment and accrual for the last full pay period in September, shall be paid **or deferred into the employee's ICMA-RC 457 Plan account** at the rate in effect on September 30, by ~~November 15th~~ **the third full week in October.**

~~12.15 Sections 12.3, 12.5 and 12.7 of this Article constitute revisions of Sections 12.3, 12.5, 12.6 and 12.8 of the 2003-2006 Labor Agreement. The parties' intent is to work under Sections 12.3, 12.5 and 12.7 of this Article as written above on a trial basis from October 1, 2006 through December 31, 2007. The Fire Chief, the Human Resources Director, and representatives of the Union shall meet on at least one occasion during~~

~~each of the months of March, 2007 and September, 2007, to discuss whether the trial Sections are working satisfactorily. If they are not, the City's and the Union's representatives may elect to modify the sections by mutual agreement set forth in writing. At any time between September 30, 2007 and October 31, 2007, either the City or the Union may give notice to the other party that it seeks to end the operation of the trial sections effective December 31, 2007. If such notice is given, the parties shall meet and negotiate in good faith to attempt to reach agreement on new annual leave provisions to replace current Sections 12.3, 12.5 and 12.7. Any agreement on replacement provisions shall be put in writing and executed by both parties. If no new agreement is reached by 12:00 a.m. on January 1, 2008, Sections 12.3, 12.5 and 12.7 of this Labor Agreement shall immediately cease to be effective at that time and shall be replaced by the language in Sections 12.3, 12.5, 12.6 and 12.8 of the 2003-2006 Labor Agreement. If neither party gives notice to the other prior to October 31, 2007, of an intent to end the operation of the trial sections 12.3, 12.5 and 12.7, those sections shall become a permanent part of this Labor Agreement and remain in effect for its full term.~~

ARTICLE 13

HOURS OF WORK AND OVERTIME

13.1 The purpose of this Article is to define hours of work but nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per week, or for any other period of time, except as may be specifically provided therein.

13.2 The basic work period for bargaining unit employees (with the exception of the Fire Prevention Specialists) will consist of a twenty one (21) day cycle. The tour of duty will normally be 24 hours on and 48 hours off. Hours worked in an amount less than or equal to one hundred fifty nine (159) in a twenty one (21) day work period which are assigned by the City shall be compensated at the regular hourly rate of pay. Hours worked in excess of one hundred fifty nine (159) in a twenty one (21) day work period which are assigned by the City shall be compensated at the rate of time and one half (1 ½) the employee's regular rate of pay. ~~Bereavement leave and~~ Jury duty shall count as hours worked for overtime purposes. Sick leave, annual leave, bereavement leave and holiday hours shall not count as hours worked for overtime purposes

13.3 Should a shift employee voluntarily switch shifts with another shift employee for the employee's convenience, no overtime compensation will be payable and the hours the employee worked as a substitute shall be excluded by the City in the calculation of the hours for which the employee is entitled to overtime compensation. All such shift trading must be in accordance with Fire and Rescue Department policy concerning shift exchanges.

13.4 Nothing in this Article shall require payment for overtime hours not worked. In calculating the amount of overtime compensation due an employee only the hours actually worked, ~~bereavement leave~~ and jury duty shall be counted. Such extra compensation shall be creditable toward overtime payable under the Act. Premium payments shall not be duplicated for the same hours worked under any of the terms of this Agreement.

An employee who has left his normal place of work and who is "called-back" for overtime work shall receive a minimum payment of two (2) hours at time and one-half (1 ½) the employee's regular rate of pay or the actual hours worked at time and one-half (1 ½), whichever is greater. Provided that this Section shall not include scheduled overtime and shall not apply if hours worked as a result of a call back extend into the start of the

employee's regular work period. Scheduled overtime shall include overtime necessitated by bargaining unit employees requesting annual leave, sick leave or education leave and this shall not be considered "call-back".

13.6 Any employee who works an outside detail for work performed on behalf of and paid for by outside employers/businesses who contract with the City for such purposes shall be paid at time and one half (1 ½) his/her regular rate of pay for all hours worked during the detail.

13.7 Upon proof of attending court, **a deposition or administrative hearing** pursuant to subpoena or other court order involving a job-related case, not as a plaintiff **or claimant** in litigation against the City **nor as a defendant in litigation by the City**, an off-duty employee will receive pay equal to one and one-half (1 ½) the employee's regular straight time hourly rate of pay for the hours he attends court. Provided, that such employee shall receive a minimum of three (3) hours pay at the rate of one and one-half (1 ½) times the employee's regular straight time hourly rate for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record, and/or verify attendance and duration of off-duty court appearance. In the event any employee claims time not actually spent in off-duty court appearance, he may be discharged or disciplined. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished in which case such travel fee will be signed over.

13.8 No employee shall authorize overtime for himself but shall be entitled to work overtime as assigned or authorized by his supervisor. It is understood that the City has the right to schedule overtime work as needed, and in a manner most advantageous to the City.

13.9 Overtime hours shall be distributed as nearly equal as possible among employees as long as such sharing will not delay or increase the cost of the City's operations.

13.10 All employees shall be required to report to work on time, shall not leave the job early, shall be prompt in **reporting** to their assigned duties, and shall faithfully perform their duties.

13.11 Employees covered by this Agreement shall be given twenty-four (24) hours notice of any change in their regular hours of work or work shift, unless an unscheduled absence by another employee or any emergency necessitates a quicker change.

- 13.12 There will be no duplication of premium payments and no claims that provide for “overtime and on overtime”.

ARTICLE 14

AUTHORIZED USE OF PRIVATE AUTOMOBILE

- 14.1 Any employee authorized to use his private automobile in the performance of his official City duties will be compensated at the approved City rate ~~with a minimum of twenty-one cents (\$0.21) per mile~~ **corresponding to the most current “standard mileage rate” as set by the I.R.S. for business miles driven.** Such mileage shall be computed based on the distance between the employee’s regular duty station and the place of assignment or the employee’s residence and the place of assignment, whichever is shorter.
- 14.2 A written claim for compensation under this Article must be submitted to the Fire Chief by the employee during the week that the private automobile was used. Failure to follow this procedure will result in the claims being denied.

ARTICLE 15

TEMPORARY ASSIGNMENT TO A HIGHER CLASSIFICATION

- 15.1 The City may select any employee from a lower classification to temporarily fill a higher classification position, provided that the employee in the lower classification is on the eligibility list for promotion to the higher classification or has been deemed qualified through a valid process. In the event that no such employees on the eligibility list are available to temporarily fill the higher classification position, the City may select any other employee from a lower classification to temporarily fill the position.
- 15.2 An employee who is temporarily assigned to a position of higher rank for a period of two (2) hours or more shall be entitled to five percent (5%) specialty pay for the period of time the employee is so assigned. This specialty pay will be computed in the pay period in which it was earned and paid to the employee in his/her regular paycheck for that period.
- 15.3 If the employee selected for a temporary position is not selected to the permanent position, this employee shall be returned to his previous classification and pay rate.

ARTICLE 16

SICK LEAVE

16.1 Sick leave benefits shall not be considered as a right to be used at an employee's discretion. Sick leave is an allowance granted by the City to provide employees with reasonable time off during periods of personal or family illness or injury without loss of pay. All employees desiring to utilize sick leave are required to notify their supervisor as early as possible, and at least one (1) hour in advance of their scheduled reporting time each day of their intended absence due to illness. Extenuating circumstances to the above shall be given due consideration. Such notice shall be given each day of the absence and the employee shall notify the supervisor as soon as possible of the employee's intention to return to work. Abuse of sick leave privileges shall be considered cause for disciplinary action or dismissal. When abuse is suspected the City may require a physician's certificate to authenticate an absence or to determine qualifications to resume work.

16.2 General Terms of Accrual - Sick leave shall be earned and accrued from the most recent day of continuous uninterrupted employment under the conditions hereinafter stated.

- A. Accrual for Full-Time Employees - Each full-time employee working a forty (40) hour work week shall earn 1.8461 hours of sick leave per week, to a maximum of 96 hours per year. Firefighters on shift shall accrue sick leave at the rate of 2.77 hours of sick leave per week, to a maximum of 144 hours per year.
- B. Accumulation and Pay-Off of Sick Leave - Subject to the provisions of this Agreement employees may accumulate sick leave from year to year for use in future years as needed. Employees may exchange sick leave for pay, **or, at the employee's option, deferral into the employee's ICMA-RC 457 Plan account,** as provided herein. The maximum unused sick leave that may be exchanged for pay **or for deferral** in any one year is one hundred ninety-two (192) hours, provided however, that shift employees must maintain a minimum balance of seventy-two (72) hours **of sick leave** after the amount of sick leave requested to be sold is subtracted from their accruals. Other personnel must maintain a minimum balance of forty (40) hours of sick leave **after the amount of sick leave requested to be sold is subtracted from their accruals.**

As of October 1, 2003, the maximum amount of sick leave that employees will be able to carry forward into following fiscal years will be one thousand (1,000) hours. Only employees who have already accrued in excess of one thousand (1,000) **hours of sick leave** as of October 1, 2003, will be able to carry forward each fiscal year a sick leave balance equal to their total sick leave accrual as of October 1, 2003. Commencing in 2004 and each year thereafter, all accrued sick leave hours as of September 30 which are in excess of the accrual cap amounts for each particular employee shall be paid off by the City, **or, at the employee's option, deferred into the employee's ICMA-RC 457 Plan account,** at the employee's regular hourly rate for each hour of sick leave.

- C. For employees who have a minimum of ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay **or for deferral,** or employees who were hired prior to or on October 1, 1994, the following procedures shall apply to sick leave exchange:

All employees must maintain a minimum balance of forty (40) hours of sick leave (or seventy-two (72) hours of sick leave for shift employees). Employees may exchange a maximum of one hundred ninety-two (192) hours of unused sick leave for pay, **or, at the employee's option, deferral into the employee's ICMA-RC 457 Plan account.** The employee shall receive one hour of pay at his/her regular hourly rate as of September 30 of the year that the exchange is being made for each hour of unused sick leave being cashed in **or deferred into the employee's ICMA-RC 457 Plan account.**

- D. For employees who have less than ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay **or for deferral,** the following procedures shall apply to sick leave exchange:

All employees must maintain a minimum balance of forty (40) hours of sick leave (or seventy-two (72) hours of sick leave for shift employees). Employees may exchange a maximum of one hundred ninety-two (192) hours of unused sick leave for pay **or, at the employee's option, for deferral into the employee's ICMA-RC 457 Plan account.** Employees who have accumulated more than forty (40) hours of sick leave but less than one hundred (100) hours, may exchange that leave for pay **or deferral into their ICMA-RC 457 Plan account** at a rate of three (3) hours sick leave

for one (1) hour of pay.

Employees who accumulate more than one hundred (100) hours of sick leave may exchange that leave for pay or for deferral into their ICMA-RC 457 Plan account at a rate of two (2) hours sick leave for one (1) hour of pay. At all times a minimum of forty (40) hours of leave must be maintained in order for the employee to exchange sick leave for pay or for deferral.

- 16.3 Subject to the provisions of this Agreement, an employee may cash in or defer, at the regular rate of pay effective on September 30, his accumulated sick leave hours by obtaining the appropriate form and submitting it upon completion to the Human Resources Department no later than September 1 of the fiscal year. Failure to submit this form will result in an employee's accrued sick leave being "banked" for future use or pay-off as provided herein. Any sick leave taken after the filing of such form shall first be deducted from accrued sick leave "in the bank" and, secondly, from those days for which payment is sought but not yet paid.
- 16.4 All payments or deferrals into an ICMA-RC 457 Plan account for unused sick leave under this Article shall be by check issued by the City on or about the ~~second Friday of December~~ third full week in October next following.
- 16.5 Participants receiving sick leave shall be paid and their account charged for the actual number of scheduled hours absent because of sickness.
- 16.6 Any absence for a fraction or part of a day which is chargeable to sick leave shall be charged in increments of not less than one-half (1/2) hour.
- 16.7 Retirement, Resignation With Proper Notice or Death – An employee who retires under the provisions of the City's pension plan or who resigns with at least ten (10) working days notice (or in the event of his death, her or his heirs) shall be entitled to a lump sum payment, or a lump sum deferral into the employees' ICMA-RC 457 Plan account up to the maximum provided by law, for all unused sick leave accrued, ~~of~~ at their regular rate of pay.
- 16.8 An employee whose employment with the City is terminated (to include the employee being fired or dismissed from the City) for any reason other than retirement, death, layoff or resignation with proper ~~two (2) week notice~~ ten (10) working days notice, shall have no right to accrued sick leave. Under such circumstances the accrued sick leave is

forfeited and the employee shall have no claim to payment or deferral into the employee's ICMA-RC457 Plan account for accrued sick leave.

16.9

SICK LEAVE BANK

a. The Sick Leave Bank will come into existence when at least five hundred (500) hours of sick leave have been contributed to the Bank. The Bank will remain in existence until terminated by agreement among the members of the Sick Leave Bank Committee. In the event the Sick Leave Bank is terminated, all Banked sick leave will be distributed to Bank members on a pro rata basis. Only current Bank members who are still City employees employed with the City as certified firefighters and/or who are still members of the Firefighters Union will be eligible to receive this pro rata distribution.

b. The Bank will be administered overseen by a Sick Leave Bank Committee consisting of three (3) Union Departmental member volunteers appointed by the Union President Leadership Committee, who shall be participating members of the bank. Each member of the Sick Leave Bank Committee shall be a participating member of the Bank. The Committee members shall serve for a period of one (1) year three (3) years, except that the initial term for one member shall be three (3) years one (1) year and a second member shall serve an initial term of two (2) years. The Sick Leave Bank shall be administered by the City's Director of Human Resources.

c. Following the initial enrollment, additional applications will be accepted only during open enrollment which will occur annually during the month of August, or in the first full month following a new employee's one year anniversary of hire. Applications for membership shall be submitted to the City's Director of Human Resources. All applications to participate in the Bank by new or previous members are subject to the approval or disapproval of the Sick Leave Bank Committee.

d. If at any time the hours "Banked" drop below three hundred (300) hours, Bank members may be assessed up to an additional sixteen (16) hours. Any Bank member who has insufficient accrued sick leave at the time an assessment is made under this paragraph will be required to make-up his or her assessment as soon as the hours are accrued. Any member who has insufficient accrued sick leave on more than one occasion when an assessment is made under this paragraph will be investigated by the Committee to determine whether that employee's membership in the Bank should be cancelled. The decision for such cancellation shall be by majority

vote of the Committee.

e. To be eligible for membership in the Sick Leave Bank, an employee must be employed with the City for at least one (1) calendar year and have accumulated at least forty (40) hours of accrued, unused sick leave at the time of enrollment. New employees shall be eligible to join during the first full month following their one (1) year anniversary of hire. All initial contributions to the Bank shall be in the amount of at least sixteen (16) hours.

f. Once sick leave time is contributed to the Bank it is no longer the property of the member or employee, and the member, employee or former employee may not withdraw his contribution for any reason.

g. In extreme hardship cases as determined by the Sick Leave Bank Committee, the Committee may grant additional hours when either sick leave or annual leave is voluntarily given by Bank members or other employees for a specific Bank member.

In extreme hardship cases as determined by the Sick Leave Bank Committee involving a non-Bank employee, the Committee may, within its discretion, open a separate account for the non-Bank employee and permit hours of either sick leave or annual leave to be voluntarily deposited into this separate account by Bank members or other employees. Under no circumstances, however, will "Banked" time deposited in the main Sick Leave Bank account be used for the benefit of non-Bank members.

h. In order to be eligible to use "Banked" time, a member must first deplete all other accumulated, unused annual leave and sick leave, and been off payroll for five (5) working days for forty (40) hour a week employees, or two and one half (2 ½) shifts for shift employees.

i. "Banked" time may only be used for the member's personal illness, accident, injury or mental disability not related to alcohol or drug abuse. Membership in the Bank does not guarantee hours may be withdrawn from the pool Bank. Application for withdrawal of hours shall be submitted in writing to the Committee, and shall be accompanied by medical verification. The Committee will approve or disapprove the request by majority vote.

j. Bank members may be allowed to withdraw up to four (4) times the number of hours they have "Banked" prior to the beginning of their illness, accident, injury or disability, up to a maximum of one hundred and sixty (160) hours. Once the maximum number of hours

is withdrawn, that member's participation in the Bank shall be discontinued. The discontinued member may subsequently submit a request for re-enrollment in the Bank following one (1) full calendar year and the accumulation of at least forty (40) hours of accrued, unused sick leave. **Because this is a pilot program, as the program develops changes may be made to the maximum hours a member may withdraw, as determined by a majority vote of the Sick Leave Bank Committee**

k. In the event of an allegation of abuse or misrepresentation by a Bank member, the Committee shall investigate the allegation and, if determined by majority vote that the allegation is true, the member shall be required to deposit sick leave hours equal to the number of hours taken, and his or her membership will be discontinued.

l. All decisions of the Sick Leave Bank Committee shall be final **and are not subject to grievance and arbitration procedures.**

ARTICLE 17

UNION REPRESENTATIVES AND ACTIVITIES

- 17.1 The Union shall be represented by its President or his designee.
- 17.2 The Union shall notify the City Human Resources Director in writing of the name of the President or the designee, at least ten (10) working days prior to the effective date of them taking office. It shall be the responsibility of the Union to immediately notify the City's Human Resources Director and the Fire Chief in writing of any change in the designation of President or his designee.
- 17.3 The Union President or representative will be allowed to process and investigate grievances during working hours provided the City is first notified of the investigation, and provided further that such investigation would not unduly hamper the operation where the employee or Union President is employed.
- 17.4 The bargaining unit will be permitted to have two (2) members attend a maximum of two (2) local, state or national seminar functions annually without loss of pay, subject to budgetary constraints. No other compensation shall be allowed for expenses. The bargaining unit will be allowed to participate in the bi-annual Redmond Safety Symposium at its own expense.
- 17.5 The President and one (1) member of the Union negotiating committee (employees of the City) shall be permitted to attend, without loss of pay, the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor.
- 17.6 At least two (2) members of the designated negotiating team shall be allowed to negotiate a successor agreement to this Agreement during work hours without loss of pay.
- 17.7 The Department Chaplain appointed by the Chief shall be allowed a minimum of twenty-four (24) hours per year to attend to Department personnel needs, including seminars for Fire Department Chaplains, family deaths, area firefighter personnel deaths, injuries and illnesses.

17.8

The City and the Union agree to maintain a Leadership Committee which will meet at least monthly. The Committee shall consist of the Fire Chief and the Union President, with their respective designees. In the event personnel issues are to be discussed, then the City's Director of Human Resources shall be given at least twenty-four (24) hours notice of the place, time and date of the meeting in order to also attend.

ARTICLE 18

INSURANCE

- 18.1 The City will enable the employees to insure themselves under a group life insurance plan with the amount available being one time base annual salary rounded to the next highest thousand. The City will pay 100% of the premium.
- 18.2 The City agrees to maintain a hospitalization program for the employees, with the City paying the lowest "employee only" rate among any health insurance plans offered. Dependent coverage will be at the employee's expense.
- ~~18.3 The City will have the option commencing on January 1, 2004, to offer any interested employees a "no frills" health insurance plan which will cost less than the equivalent costs of the type of health insurance plans which the City has offered to employees during the 2000 to 2003 Labor Agreement. The premium savings for employee coverage only between the "no frills" plan and the lowest "employee only" rate among the other health insurance plans offered shall be split between the City and the employee on a 50% 50% basis. The employee's share of the savings shall be contributed to a Section 125 medical savings account for the employee and (if applicable) his/her dependents.~~

ARTICLE 19

UNIFORMS AND EQUIPMENT

19.1 The City will provide to all ~~new~~ employees the following equipment and clothing:

~~21 Dress Shirts (5 for Fire Prevention Specialists)~~

~~2 Polo-style shirts~~

5 Pants

5 T-Shirts

2 Gym Shorts

1 Pair of Sweatpants

2 Sweatshirts

1 Ball Cap

1 Pair of Boots

1 Badge

1 Set of Collar Brass

1 Name Tag

1 Winter Jacket, with liner

1 Helmet

1 Turnout Jacket

1 Turnout Pants

1 Pair Turnout short boots

1 Belt

1 Flashlight

1 Pair of Gloves

1 Nomex Hood

Brush Fire Gear (1 pair pants, 1 jacket, 1 helmet, 1 pair goggles, 1 respirator, 1 mask, 1 belt, 1 pair of gloves).

The City agrees to furnish all bargaining unit employees, at City expense, those replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct. No item will be replaced without the old one being turned in. The City will not pay for the replacement of civilian clothing damaged while on duty unless approved by the Chief and the City Manager.

19.3 The ~~Fire Chief, Human Resources Director and up to two (2) union representatives~~ **Leadership Committee** will have the discretion to agree upon the addition or removal of City provided uniform items from the list in Section 19.1, provided that any additional costs from such changes be within budgetary limitations.

~~19.4 The Union Management committee described in Section 19.3 shall meet and bargain concerning uniform items which the City may provide to employees for protection from rain/bad weather and the cold.~~

19.54 When the employee leaves the employ of the City he shall return all equipment and clothing issued by the City.

19.65 The City will continue to provide for the cleaning of uniforms. Civilian dress will not be cleaned at the City's expense.

ARTICLE 20

BEREAVEMENT LEAVE

- 20.1 All employees may be granted time off with pay to arrange and/or attend funeral services in the event of death(s) in the family. Such time off shall **ordinarily** not exceed four (4) calendar days (i.e., ~~two twenty-four hour shifts~~ **48 hours** for extended shift employees or four (4) work days for employees working a forty hour work week) **per event, for a maximum 96 hours per fiscal year for extended shift employees or eight (8) work days per fiscal year for employees working a forty hour work week**, and shall not be charged as annual leave or sick leave. Requests for time off shall be submitted in writing to the employee's supervisor when possible. **In extraordinary circumstances, where the employee has exhausted the maximum bereavement leave provided for in this part, the Fire Chief may, in his discretion, grant an employee additional leave time. The decision of the Fire Chief to grant or not grant the employee additional leave time beyond the maximum hours provided for in this part shall not be subject to grievance and arbitration proceedings.**
- ~~20.2~~ The employee's family is defined as the employee's **spouse, children or step-children**, mother, father, mother in law, father in law, brother, sister, grandparents, (including spouse's grandparents and great grandparents), brother in law, sister in law, nephew, niece, step parent, or grandchildren.
- ~~20.3~~ In the event of the death of immediate family, defined as spouse, children, or step children, the employee will be granted an additional shift for extended shift employees and two (2 more calendar days for employees working a forty (40) hour week.
- 20.42 Management may require the employee to verify the employee's relationship to the deceased and to provide proof of death.
- 20.3** **In the event of the need for additional time for a death, an employee may use accrued sick or vacation leave.**

ARTICLE 21

WAGES

- ~~21.1 a. Effective October 1, 2006, the attached pay matrix shall be adopted by the City. Members of the bargaining unit will be placed in the appropriate pay step and rate based on the number of years of service with the Port Orange Fire & Rescue Department.~~
- ~~b. Pay rates will be adjusted annually effective October 1, 2007 based on the CPI index published by the Bureau of Labor Statistics, Southeastern Regional Office, Atlanta Georgia for April of each of the above years. The index will be the percent change for the South for all items listed in the block for the South, all urban consumers. The minimum adjustment will be two (2) percent and the maximum adjustment will be four (4). This annual CPI-based adjustment to pay rates shall only occur during the term of this 2006-2008 collective bargaining agreement and will not continue after its expiration date unless provisions mandating these adjustments are incorporated into a new collective bargaining agreement or otherwise mutually agreed to in writing by the City and the Union.~~
- ~~c. The parties agree to form a committee to conduct a wage survey covering bargaining unit positions. The committee shall consist of three (3) members picked by the City and three (3) members picked by the Union. The committee shall initially meet no later than December 1, 2006, conduct a wage survey of employees in comparable jobs to bargaining unit positions, and shall produce a final document no later than May 15, 2007, making recommendations to City Council concerning bargaining unit pay rates to take effect on October 1, 2007, with the intent of keeping these pay rates in line with the results of the salary survey. If the City and the Union survey committee members cannot jointly agree on the pay rate recommendations to be made to City Council, then each party shall make a separate written recommendation to City Council concerning bargaining unit member salary adjustments for the next fiscal year. Any future pay adjustments approved by the City Council for October 1, 2007 shall be reduced to writing, executed by the parties, and incorporated into this Article of the Agreement.~~
- ~~d. Employees who have reached the maximum pay rate for their position will receive the CPI wage adjustment described in section b. above and any adjustment made through operation of section c. above only. However, the City shall make quarterly contributions of \$125.00 to Section 457 Plan accounts in each of these employee's names, commencing on or about December 31, 2003.~~

e. ~~Bargaining unit employees shall receive an annual step increase on their employment anniversary date with the City. An annual performance rating of “unsatisfactory” will disqualify an employee from receiving a step increase for that year. However, an employee so rated will be re-evaluated at the end of three (3) months and if rated “satisfactory” at that time, will receive the step increase effective the date the “satisfactory” performance is received. This increase will not be retroactive.~~

21.1 A. Effective October 1, 2008 upon ratification of this Agreement, all permanent, full-time employees who have not already received a salary adjustment on and/or after October 1, 2008 and who are not in their initial probationary period will receive a 2.5% salary adjustment. There will be no more salary adjustments on an employee’s anniversary date except for initial probationary employees.

All future wage increases beyond the term of this contract shall be subject to negotiation by the parties.

21.1 B. Employees who started are still serving their initial probationary period prior to October 1, 2008 on the date of ratification of this Agreement will receive a 1.5% salary adjustment after satisfactorily completing six (6) months of their initial probationary period and will receive a one-time 1.0% salary adjustment on their one (1) year anniversary date.

All future wage increases beyond the term of this contract shall be subject to negotiation by the parties.

21.2 1 C. New Employees hired on and after the date of ratification of this Agreement will be hired at the hiring rate and advance to the minimum rate in the pay for performance appraisal system will receive a 2.5% salary adjustment after satisfactorily completing six (6) twelve (12) months of their probationary period service.

All future wage increases beyond the term of this contract shall be subject to negotiation by the parties.

21.1 D. Bargaining unit employees shall receive a performance evaluation on or before their employment anniversary date with the City. An employee who receives an “unsatisfactory” performance rating will be re-evaluated at the end of three (3) months. Failure to receive a “satisfactory” performance rating after the re-evaluation period will result in disciplinary action, up to and including termination. Any employee with an “unsatisfactory” rating on their last performance

evaluation will not be eligible for a salary adjustment on the next October 1st, if one is granted by the City Council.

- 21.32 Employees newly hired may be started at a higher rate of pay than the minimum starting rate, upon evaluation by management.
- ~~21.4 The City standard pay scales with ranges will only be changed if a salary survey is conducted which indicates the pay ranges are out of line and should be adjusted.~~
- 21.53 The employee and City may mutually agree to provide time off as compensation for overtime. Such time off (“compensatory time”) shall be accrued at the same rate as overtime pay, i.e., one and one-half (1 ½) hours of compensatory time for each hour of overtime worked. The maximum number of hours of compensatory time which will be allowed to accrue is 96 hours of compensatory time.
- 21.64 For the purpose of taking compensatory time off, the employee shall request in writing to be allowed to utilize his accrued hours, and shall designate the day(s) he wants off. Said request should be made as far in advance as possible. Compensatory time will be used prior to any use of annual leave, and will be scheduled at the discretion of the Fire Chief, or his designee; provided that the employee will be permitted to use such time off within a reasonable period after making the request, if such does not unduly disrupt operations of the City.
- 21.75 Nothing in this Agreement shall be construed to prohibit the City from substituting cash, in whole or in part, for compensatory time off at any time; and overtime payment in cash shall not affect subsequent granting of compensatory time off in future workweeks or work periods.
- 21.86 Upon termination of employment, an employee shall be paid for compensatory time earned and accrued at the employee’s final regular hourly rate of pay.
- 21.7 **Based on the economy and revenues received from the State of Florida, the City and the Bargaining Unit will review options to provide adjustments mid-contract.**
- 21.8 **The following pay scale shall expire September 30, 2009:**

Pay Scale - October 1, 2008

Step	FF/Tech 1	Driver/Eng.	Tech II/Para.	Lieutenant
Hire	\$11.91	\$12.67	\$13.72	
1	\$12.22	\$12.98	\$14.05	
2	\$12.52	\$13.30	\$14.41	\$15.52
3	\$12.83	\$13.63	\$14.77	\$15.90
4	\$13.16	\$13.98	\$15.14	\$16.30
5	\$13.49	\$14.33	\$15.52	\$16.72
6	\$13.82	\$14.68	\$15.91	\$17.14
7	\$14.18	\$15.05	\$16.31	\$17.55
8	\$14.53	\$15.43	\$16.72	\$18.00
9	\$14.89	\$15.81	\$17.14	\$18.45
10	\$15.25	\$16.21	\$17.56	\$18.90
11	\$15.64	\$16.62	\$18.00	\$19.38
12	\$16.02	\$17.02	\$18.45	\$19.84
13	\$16.43	\$17.46	\$18.91	\$20.36
14	\$16.84	\$17.89	\$19.38	\$20.87
15	\$17.26	\$18.34	\$19.85	\$21.38
16	\$17.70	\$18.79	\$20.37	\$21.92
17	\$18.13	\$19.27	\$20.87	\$22.47
18	\$18.58	\$19.74	\$21.38	\$23.02
19	\$19.07	\$20.24	\$21.92	\$23.61
20	\$19.55	\$20.75	\$22.47	\$24.20

ARTICLE 22

RETIREMENT PLAN

22.1

The parties hereto recognize that the employees in the Bargaining Unit are participants in a Retirement Plan of the City as provided for by Chapter 175, Florida Statutes, and Section 54-76, etc. of the Code of Ordinances, City of Port Orange, Florida. Pensions and other retirement benefits for bargaining Unit employees which are not specifically enumerated in this labor Agreement are as set forth in the Code of Ordinances. The City agrees to maintain the benefits and member contributions set forth in the Fire and Rescue Pension Fund Ordinance, with the changes provided below. ~~The Fire and Rescue Pension Fund Ordinance of the City is set forth in the Port Orange City Code. Pensions and other retirement benefits for Bargaining Unit employees which are not specifically enumerated in this Labor Agreement are as set forth in that Ordinance. The City agrees to continue to participate in said plan.~~

22.2

The parties agree to amend the Fire and Rescue Pension Fund Ordinance, effective October 1, 2008, upon ratification of this Agreement and adoption of the amending Ordinance by the City Council, as follows:

- A. Change the normal retirement date from the current 20 years of credited service, regardless of age, to 25 years of credited service, regardless of age. The alternative normal retirement date of age 50 with the completion of 10 years of credited service shall remain unchanged.
- B. Change the definition of “average final compensation” from the current three best years of the last 10 years of credited service, to the five best years of the last 10 years of credited service.
- C. Provide that the maximum benefit at retirement (including the base benefit plus any supplemental benefits) shall be 90% of average final compensation. ~~Cost of living adjustments (COLA's), if any, awarded after retirement shall be added to the retirement benefit, thereby allowing those at the maximum benefit level to exceed the cap.~~

D. Cost of living adjustments (COLA's), shall be computed in accordance with the City of Port Orange's Code of Ordinances Section 54-82 (f).

E. Change the DROP plan to allow employees who previously became eligible to participate in the DROP in accordance with the pension ordinance in effect on September 30, 2008, but did not elect to participate in a timely manner, the ability to elect one of the following options:

1. Make a DROP election within 90 days following the effective date of the ordinance implementing the Plan changes contained herein; provided the change in the normal retirement date contained in Paragraph A, above, shall not apply to any eligible employee who elects to participate in the DROP pursuant to this paragraph. However, the provisions of Paragraphs B, C and E F shall apply to any eligible employee who elects to participate in the DROP pursuant to this paragraph, and the provisions of Paragraph F shall apply to any such employee from the date of ratification of this Agreement to the date the employee's DROP participation commences.

2. Alternatively, such employees may elect a "BAC-DROP" option within 90 days following the effective date of the ordinance implementing the Plan changes contained herein; provided the change in the normal retirement date contained in Paragraph A, above, shall not apply to any eligible employee who elects to participate in the BAC-DROP pursuant to this paragraph. Under the BAC-DROP, an employee elects to enter the DROP and have an immediate deposit into his/her DROP account of an amount equal to the benefit the employee would have received had he/she entered the DROP when first eligible to do so, based on the employee's years of credited service and average final compensation at that time, and calculated in accordance with the terms of the Plan at that time, however, with no interest or earnings calculated. If the BAC-DROP period is less than 60 months, shall receive an immediate deposit into his/her DROP account of an amount equal to the benefit the employee would have accrued in his/her DROP account if he/she had entered the DROP at the beginning of the BAC-DROP period, based on the employee's years of credited service and average final compensation at that time, and calculated in accordance

with the terms of the system at that time, however, with no interest or earnings calculated. If the employee was first eligible to enter the DROP more than 60 months prior to the date of the BAC-DROP election, the BAC-DROP period shall be the 60 months (or a shorter period of complete months selected by the employee) immediately preceding the BAC-DROP election date, and the employee shall be required to immediately separate from City employment and retire. For example, an employee with 28 years of credited service who elects to participate in the BAC-DROP could elect to receive an immediate deposit to his/her DROP account an amount equal to up to 60 months of monthly pension benefits, and then immediately separate from City employment and retire. If the employee was first eligible to enter the DROP less than 60 months prior to the date of the BAC-DROP election, the employee may continue to participate in the DROP for up to the remainder of the 60 month maximum BAC-DROP/DROP period. For example, an employee with 22 years of credited service who elects to participate in the BAC-DROP would receive an immediate deposit to his/her DROP account **an amount** equal to 24 months of monthly pension benefits, and could participate in the DROP for up to 36 months. The same monthly benefit will be deposited in the employee's DROP account each month until the end of the DROP period, and the DROP account balance will earn no interest ~~or other earnings~~ **but rather, will be credited or debited at a rate equal to the net rate of investment return realized by the retirement fund.** An employee who elects the BAC-DROP option will be required to separate from City employment and retire at the end of the BAC-DROP/DROP period, and in no event later than 60 months after the combined BAC-DROP/DROP period begins. An employee who elects the BAC-DROP option may select any form of distribution for the BAC-DROP payment that is provided in the Plan for distribution of a DROP account, and all other provisions of the DROP in effect at the time the employee was first eligible to participate in the DROP program shall apply.

Any employee who is eligible for the DROP and BAC-DROP election provided in this paragraph who does not elect to participate in the DROP or BAC-DROP within 90 days following the effective date of the ordinance implementing the Plan changes contained herein, shall forfeit all rights to participate in the DROP and BAC-DROP.

- F. Change the DROP plan to eliminate the fixed 6.5% interest rate option on DROP account balances. DROP accounts will be credited or debited at a rate equal to the net rate of investment return realized by the retirement fund (the current language of section 54-100(c)(2)b.2. would be retained).
- G. Increase the member contribution from the current 0.5% of salary to 6.2% of salary. The City's contribution will be 23% of salary.
- H. Change the definition of "credited service" to reflect that service as a volunteer firefighter shall be credited at one month of credited service for each complete year of volunteer service.

22.3 It is understood and agreed that other temporary plan changes may be required in order to implement and obtain State approval of the changes set forth in section 22.2, above. However, any such plan changes will be temporary, and will be superseded by the changes set forth in section 22.2, above. There will be no change in the accrued benefits of Plan members, or in the future accrual of benefits, as a result of such plan changes, except as provided in section 22.2 above.

Should an issue arise with the State Division of Retirement regarding any provisions in this Article, both parties agree to work together to resolve the issues in order to gain approval of Plan changes.

ARTICLE 23

JURY DUTY AND APPEARANCE AS A WITNESS

- 23.1 Any employee in the Bargaining Unit who is summoned to perform jury service during his/her normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he/she is absent from work as a result of fulfilling his a jury duty obligation. The employee summoned as a juror shall attach a copy of his the summons to the Leave of Absence Request. An employee who is released from jury duty prior to four (4) hours from his/her normal end of the workday, shall be required to report to his/her work site immediately after his their release.
- 23.2 Upon proof of attending court, a deposition, or an administrative hearing during the employee's normal working hours pursuant to a subpoena or other court order involving a job-related case and not as a plaintiff or claimant in litigation against the City nor as a defendant in litigation by the City, the employee shall receive his or her regular rate of pay for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record, and/or verify attendance and duration of an on-duty deposition, or court or administrative hearing appearance. In the event any employee claims time not actually spent in an on-duty deposition or court/hearing appearance, he or she may be discharged or disciplined. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished in which case such travel fee will also be signed over. The employee shall provide a copy of the subpoena to his or her supervisor within twenty-four (24) hours of its service or receipt.
- 23.23 An employee subpoenaed as a witness for a court or administrative proceeding or a deposition, other than a job-related case and other than a case not involving personal litigation by the employee as a plaintiff, claimant or defendant, shall be granted leave ~~with~~ without pay to appear and testify pursuant to the subpoena. If the employee is released from the subpoena prior to the expiration of twelve (12) hours for shift Firefighters and four (4) hours for 40 hour employees from his/her normal starting time for that work day, the employee shall be required to report to his/her work site immediately after his release from such subpoena. An employee may take sick or vacation leave when subject to a subpoena under this provision. The employee shall provide a copy of the subpoena to his or her supervisor within twenty-four (24) hours of its service or receipt.

23.34

An employee may take vacation pay, but not sick leave, when participating in ~~Any~~ court *or administrative* proceeding of a personal nature *in which the employee is a claimant, plaintiff or defendant* ~~will not be subject to this Article.~~

ARTICLE 24

ALCOHOL AND DRUG TESTING

24.1 *The City of Port Orange is a drug-free workplace and as such, it shall institute and maintain a drug-free workplace program, in compliance with Sec. 440.102, Florida Statutes and applicable Florida Administrative Code requirements, The following provisions are intended as a summary and not a comprehensive recitation of the City's Drug-Free Workplace Program, as amended from time to time.*

24.12 Both the City and Union recognize that drug and alcohol abuse is a growing problem among our nation's work force. The City and the Union also recognize the tremendous cost, both in terms of efficiency and in human suffering caused by needless workplace accidents. Acknowledging the necessity for action, the following Alcohol and Drug Testing Program is hereby initiated.

24. 23
- A. All bargaining unit employees shall be subject to drug and alcohol testing as part of their annual physical examination.
 - B. In the event the Fire Chief, or in his absence his designee, has a reasonable suspicion to believe that an employee is under the influence of drugs or alcohol on duty, the Fire Chief, or in his absence his designee, may require that the employee submit to breathalyzer test, blood tests, urinalysis, and/or other appropriate testing. Should the employee test positive to a drug test, the City will utilize a confirmatory process before instituting further action. Such confirmatory process will utilize the gas chromatography - mass ~~spectrophotometry~~ spectrometry test.
 - C. In the event the Fire Chief, or in his absence his designee, requests that an employee submit to breath, blood, urine and/or other tests and the employee chooses not to submit to such test or tests, the ~~reasonable suspicion to believe the employee was under the influence shall be grounds for discharge.~~ employee's refusal to submit shall be deemed to be an act of gross insubordination and grounds for discharge.
 - D. If the employee submits to the tests and the results indicate alcohol or drug use (other than as indicated in Section G), the employee shall be suspended without pay for thirty (30) days. ~~It will be recommended that the employee utilize the EAP services. After thirty (30) days have passed, a suspended employee desiring~~

reinstatement shall, upon written request be given the opportunity to submit to further blood or urine drug/alcohol tests, at the employee's expense. If such tests indicate the absence of alcohol or substance abuse, the employee is reinstated. In the event forty (40) days have passed and the City has not received the written request signed by the employee to take the alcohol or substance abuse test, or the employee has failed to take such tests at a time and location designated by the City, the employee shall be discharged. An employee shall also be discharged if tested under this section twice within a two (2) year period with both test results indicating alcohol or substance abuse. Any holidays that occur during the suspension period shall not count as a day in meeting the suspension requirement. An employee who tests positive shall not accrue any annual or sick leave during the suspension. The employee shall forfeit the hours added to annual leave hours for holidays, birthday and floating holiday. An employee, covered by this agreement and who tests positive for drugs and alcohol, shall be required to pay all employee and dependent health, dental, and life insurance premiums during the suspension period. The employee shall not be eligible to accrue or use sick or annual leave during the suspension without pay period. The employee shall not be eligible for bereavement leave or any other type of paid leave during the suspension period with pay that may be included as part of this agreement. After thirty (30) days have passed, a suspended employee desiring reinstatement shall, upon written request be given the opportunity to submit to further blood or urine drug/alcohol tests, at the employee's expense. If such tests indicate the absence of alcohol or substance abuse, the employee is reinstated. In the event forty (40) days have passed and the City has not received the written request signed by the employee to take the alcohol or substance abuse test, or the employee has failed to take such tests at a time and location designated by the City, the employee shall be discharged. Prior to returning to work, an employee shall be required to take and pass a drug and alcohol test. The cost of the drug and alcohol retest shall be at the employee's expense. Any employee who test positive for either drugs or alcohol shall be subject to 12 random drug tests during the following 12 month period at the employee's expense. Failure to pass any drug and alcohol test during this 12 month period of time shall result in immediate termination and forfeiture of any sick leave hours that may have accrued to the employee. Any employee who tests positive shall enroll in mandatory counseling program as a condition of returning to work. The

employee shall provide weekly treatment statements to the City by a physician, professional counselor, counseling service, EAP or any other provider of drug and alcohol counseling and rehabilitation services.

Second Offense: Automatic Termination.

- E. An employee may be granted a one time leave of absence without pay not to exceed sixty (60) days to undergo treatment for alcohol or substance abuse pursuant to an approved treatment program. No employee benefits shall accrue during this period except that the employee may continue health, dental and life insurance coverage by paying the employee premium and dependent premium if applicable. The request must be voluntarily made in writing prior to the institution of disciplinary measures for alcohol or substance abuse.
- F. The Fire Chief, or in his absence his designee, has the right to search lockers, handbags, lunchboxes, other containers, or other personal effects of employees at any time provided the Fire Chief, or in his absence his designee, has reasonable suspicion to believe that an employee is under the influence of drugs or alcohol. If deemed necessary by the Fire Chief, or in his absence his designee, the employees themselves may be asked to submit to a search. At no time will any employee be searched by or in the presence of a member of the opposite sex. An employee's refusal to cooperate with or submit to a search may be treated as serious insubordination that warrants immediate discipline.
- G. All employees who must use a prescription drug that causes adverse side effects (drowsiness or impaired reflexes or reaction time) shall inform their supervisor in writing that they are taking such medication on the advice of a physician. It is the employee's responsibility to also inform their supervisor of the possible side effects of the drug on performance and expected duration of use.
- H. Except as stated in subsection D of this Article, the cost of drug and alcohol screening tests shall be paid by the City.
- I. The City retains its right to maintain discipline or invoke disciplinary measures in the case of conduct which may result from or be associated with alcohol or substance abuse.
- J. Decisions of an arbitrator under this Article shall be limited to a

determination of whether or not the City had reasonable suspicion, and whether or not the employee was under the influence of alcohol or drugs, and not the disciplinary measures imposed by the City.

24.34 All members of the bargaining unit will participate in random drug and alcohol testing through the same procedures as utilized under Federal Requirements for individuals required to possess a Commercial Drivers License. Each Firefighters name shall be entered into the computer which will then select fifty (50) percent of the Firefighters to be tested on an annual basis for illegal drugs and twenty-five (25) percent for alcohol. Testing will be done a minimum of once a quarter.

24.5 As used in this Article, a positive alcohol reading or a positive alcohol test shall mean a blood or breath alcohol reading of .02 or above.

ARTICLE 25

PHYSICAL EXAMINATION AND WORKERS' COMPENSATION

- 25.1 Any Bargaining Unit employee who is temporarily disabled as a result of an injury sustained in the course of his employment with the City shall be entitled to the following compensation.
- (a) During such temporary, total disability, the employee shall receive differential payments from the City (differential payments being the sum difference between the amount of workers' Compensation received and the employee's salary earned from the City at the time of the accident) for a period not to exceed sixty (60) days for any one injury.
 - (b) Unless an extension of the sixty (60) day period is granted pursuant to Subsection C, at the end of sixty (60) work days, the employee shall only be entitled to benefits provided by the Workers' Compensation law.
 - (c) If, as a direct result of the continuation of the disability involved, the employee is unable to return to work at the end of the sixty (60) day working period, the employee may petition the City requesting that he be carried in differential pay status beyond the sixty (60) working day period. Upon receipt of such a petition, the City shall have the sole discretion to decide whether pay status should be extended. The decision of the City shall not be subject to the grievance and arbitration provisions of this Agreement.
- 25.2 The City agrees that any employee injured on the job shall be paid for the employee's full schedule of hours for the day of the accident if his physician advises him that he could not or should not return to work that day. However, the City reserves the right to have the employee examined by a physician designated by the City, at no cost to the employee.
- 25.3 Based upon having probable cause to believe that any employee may have a physical and/or mental disability which impairs the employee's effectiveness as an employee, limits the employee's ability to perform his/her assigned duties, or makes the employee's continuation in his/her job a danger to the employee, the public, or any other employees, the City may direct the employee to submit to a physical and/or mental examination conducted by a physician, psychiatrist or psychologist designated by the City. The sole purpose of such examination under this

Article shall be to determine whether the employee has a physical and/or mental disability which impairs his effectiveness as an employee, limits his ability to perform his assigned duties, or makes his continuation in his job a danger to himself, the public, or other employees. In the event the City and the designated physician determine that a non-job-related disability does exist, the following action shall be taken:

If the designated physician determines that the disability can be corrected, the employee shall be allowed a specified time to have it corrected. During this period of time and after consulting with the Fire Chief, the City Manager in his discretion, may permit the employee to continue with his normal duties, or temporarily remove the employee from the City service. Should the employee be temporarily removed from the City service during the period of time specified for the correction of his disability, the employee may utilize his annual leave, sick leave, or leave without pay for the correctional period. However, if the employee fails to take the necessary steps to have the disability corrected within the specified period of time, he shall be subject to dismissal from City service.

ARTICLE 26

RULES AND REGULATIONS

26.1 The City shall have the right to establish, maintain and enforce, or rescind, amend or change, reasonable rules and regulations, and departmental standard operational procedures guidelines.

26.2 Failure to take corrective action against an employee for violation of these rules, regulations and/or departmental standard operational procedures guidelines shall not affect the right of the City to discipline the same or other employees for the same or other violations.

26.3 Any employee violating a rule or regulation or a departmental standard operational procedure guideline may be subject to corrective action, including dismissal for just cause.

Whenever an action occurs which may or may not lead to the City initiating corrective action, the City will conduct an informal, or if necessary, a formal investigation within a reasonable amount of time after the incident has been reported to management. The City shall allow the employee to state in writing his/her account of what occurred and an explanation of his/her conduct, prior to the Department issuing a verbal warning or initiating a request for higher levels of corrective action. If the decision is made to discipline the employee, the employee will be so notified within four (4) work shifts after the date upon which the City Manager has authorized the corrective action, provided the employee is available for notification.

26.5 No corrective action, except termination, shall become effective until such time that the employee has exhausted the appeal process or until such time for an appeal has expired.

ARTICLE 27

~~TIME OFF FOR VOTING~~

~~27.1 On any general election day, an employee who is registered to vote and whose hours of work do not allow sufficient time for voting shall be allowed necessary time off with pay for this purpose. Where the polls are open two (2) hours before and two (2) hours after the regular scheduled work period, it shall be considered sufficient time for voting.~~

ARTICLE 28

MILITARY LEAVE

28.1 Any employee who is a member of the National Guard or an organized military reserve unit of the United States will be allowed a maximum of seventeen (17) working days leave of absence during any twelve (12) month period when called to active duty or for training with the armed forces. This twelve (12) month period is defined as a twelve month period from January 1 to December 31. With respect to any bargaining unit employee whose working day consists of a twelve (12) hour shift or less, each such shift shall equal one (1) working day leave of absence. With respect to any bargaining unit employee whose working day consists of over twelve (12) hours, each such shift shall equal two (2) working days leave of absence. The employee is entitled to his regular base pay and military pay while on military leave. During such period of leave with pay, the employee's benefits shall continue in the same manner as if he were on active duty with the City.

28.2 Employees requesting this military leave are responsible for notifying their supervisors in writing as soon as possible of the dates for such training period(s) and to provide an official set of orders.

28.3 ***Any permanent employee who leaves the service of the City to join the military forces of the United States or is called to active duty for service or training, shall be placed on military leave without pay in accordance with the provisions of Federal and State of Florida laws and regulations.***

ARTICLE 29

EDUCATIONAL LEAVE

29.1 Any employee covered hereunder may be given educational leave for the purpose of taking courses or attending conferences and/or seminars directly related to the employee's work as determined in writing by the Fire Chief and the City Manager. Requests for such educational leave must be approved in writing in advance by the Fire Chief and the City Manager. The decision to grant (or not to grant) such educational leave and the determination as to whether such leave will be compensated shall rest with the City Manager but is delegated to the Fire Chief or his designee and shall not be subject to the grievance and arbitration procedures. of this Agreement.

29.2 An employee granted educational leave with full pay shall be entitled to receive all City benefits in the same manner as if he were on active duty during the period of the leave. Entitlement to benefits for employees on partially compensated or uncompensated educational leave shall be determined by the City Manager.

29.3 The eligibility for leave under this Article shall be subject to budgetary and staffing constraints.

ARTICLE 30

SPECIALTY AND EDUCATION INCENTIVE PAY

30.1 This will establish a Specialty Pay Program within the Fire and Rescue Department whereby members of special teams and members with special assignments are to receive a Specialty Pay for their assignments to these positions. Specialty Pay will only be received while the individual is assigned to the special duty:

Haz-Mat Team Members	\$15 20 per week
EMS Coordinator	\$15per week
EMS Assistant	\$15 per week
Technical Team Rescue Member	\$15 per week
Technical Rescue Coordinator	\$20 per week
ERT Member	\$20 per week
NREMT/PM*	\$10 per week
<u>Car Seat Tech</u>	<u>\$15 per week</u>

***NREMT/PM will be phased out on and after October 1, 2009, giving bargaining unit members the opportunity in the interim to attain other certifications to replace this Specialty Pay.**

30.2 In accordance with State requirements, a Firefighter or Paramedic will be paid according to the following schedule:

A two (2) year Fire Service related degree	\$50 per month
A four (4) year Fire Service related degree	\$110 per month

In addition, an employee of the Fire and Rescue Department will be compensated for courses completed in the Fire Academy Resident Program at the National Fire Academy at a rate of \$15 per month for each course completed, not to exceed \$60 per month.

30.3 A Firefighter or Paramedic who completes the following courses and Department testing shall be designated by the Fire Chief as a relief driver/pump operator will be entitled to receive \$15.00 per week incentive pay. All relief drivers must be qualified to drive all apparatus:

- Fire Service Hydraulics
- Fire Apparatus Operations

30.4 ~~A Firefighter/Driver Engineer or Paramedic~~ **An employee** who completes the requirements for, and becomes certified as a Municipal Fire

Inspector, will be entitled to receive \$20.00 per week education incentive pay.

30.5 ~~Lieutenants~~ **Any employee** completing certification for the following Instructor ratings will be compensated at a rate of ten dollars (\$10.00) per week for the first certification and fifteen dollars (\$15.00) per week for each additional certification, **with the exception that, only Lieutenants will be eligible for the additional pay for the certifications under No. 3. below.** ~~These incentive payments are available for the position of Lieutenant only.~~

1. Fire Instructor I
2. Municipal Fire Instructor or Fire Instructor II
3. Fire Officer Instructor or Fire Instructor III

30.6 Lieutenants who are also certified paramedics will receive \$40.00 per week Specialty Pay as long as Paramedic certification is maintained. Driver Engineers who are also certified paramedics will receive \$20.00 per week Specialty pay as long as Paramedic certification is maintained, in addition to continuing to be paid at the "Paramedic" pay scale rate.

30.7 Employees who teach CPR classes in the evening hours while on duty, shall be paid a stipend of \$20.00 per class taught, provided the CPR class is of three (3) hours or more.

ARTICLE 31

TUITION REIMBURSEMENT

31.1 **Subject to budgetary constraints**, ~~the~~ the City will reimburse all employees who have completed ~~six (6)~~ **twelve (12)** months of service with the City for any costs incurred for tuition upon successful completion (i.e., receipt of a "C" or better grade **in the freshman and sophomore years of a degree program**) of courses related to the fire service area and for all courses necessary to complete degrees in fire service areas, or those necessary to obtain a promotional position, within the Fire Department, or for recertification, provided courses are taken at Daytona Beach Community **State** College (DBCC **DSC**). Courses taken at other institutions must be approved prior to enrollment and will be reimbursed at the DBCC **DSC** rate or, in case of a Bachelor's Degree, it will be reimbursed at the UCF rate, **except that, in the event courses are taken at DSC towards a Bachelor's Degree, reimbursement will be at the DSC rate. In the case of a Master's Degree, reimbursement will be at the UCF rate.**

For those that are in the junior and senior years of a degree program the employee must maintain a grade point average of 2.75 or better in order to receive reimbursement.

For those pursuing a Master's degree a grade point average of 3.0 must be maintained in order to receive reimbursement.

31.2 The employee must present evidence of completion of the course and the grade achieved to validate payment from the City.

31.3 In the event the employee is eligible for tuition aid from other sources, such as, but not limited to, Veteran's benefits, the payments due under this Article will be reduced by the amount of benefits paid by other sources.

31.4 For classes paid for by the City, other than special education agreements, the employee will incur a one (1) year obligation to remain employed by the City following the date of successful completion of the last approved class. If the employee leaves City service prior to the expiration of this service obligation, the employee will be expected to reimburse the City for the cost of the course should the employee leave the City prior to the obligated service expiring. Each employee must complete the proper forms prior to receiving tuition reimbursement from the City. Specifically, the obligated service form must be completed with

each request for reimbursement.

31.5 Employees will be limited to reimbursement for ~~ten (10)~~ **eight (8)** courses per fiscal year (October 1 through September 30), unless otherwise approved by the Fire Chief and the Human Resources Director. **It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds. Notwithstanding the aforesaid, the Fire Chief may within his discretion, allocate from the various Fire Department's operational funds to provide tuition reimbursement for Fire Department employees.**

31.6 The Fire Chief shall have the discretion to assist employees who are completing Associate Degree, Bachelors Degree, or Masters Degree programs through detailing out employees for classes or providing extra reimbursement benefits (for example, reimbursements for book costs), provided that these benefits are within budgetary limitations.

ARTICLE 32

FIREFIGHTER'S BILL OF RIGHTS

- 32.1 The Parties agree to abide by the Firefighter's Bill of Rights, Florida Statutes Section 112.80, et seq., as amended.

ARTICLE 33

EMPLOYEE RIGHTS

- 33.1 The parties agree that there shall be no discrimination, interference, restraint, or coercion against any employee for his exercise of any rights guaranteed by Florida law. The City will not discipline or discharge any non-probationary employee without just cause.

ARTICLE 34

APPENDICES AND AMENDMENTS

- 34.1 All appendices and amendments of this Agreement shall be numbered (or lettered), dated and signed by the responsible parties and shall be subject to all the provisions of this Agreement.

ARTICLE 35

SEPARABILITY

35.1

In the event any Article, Section or portion of this Agreement should be held invalid and unenforceable by any court of competent jurisdiction, such holding shall apply only to the Article, Section or portion thereof specified in the court's decision; and all other Articles or Sections or portions not so invalidated shall remain in full force and effect. The parties will mutually agree in writing to renegotiate the affected Article, Section or portion specified in the court's decision.

ARTICLE 36

ENTIRE AGREEMENT

- 36.1 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties are set forth in this Agreement.
- 36.2 Therefore, the City and the Union, for the duration of this Agreement, each waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to, or covered in this Agreement.
- 36.3 However, no language in this Agreement shall preclude the parties from mutually agreeing in writing to re-open any of the provisions covered by this contract.
- 36.4 The City agrees that it will negotiate with the Union the impact of any decision that affects any monetary benefits.

ARTICLE 37

DURATION OF AGREEMENT

- 37.1 This Agreement shall commence and become effective on October 1, 2006 ~~8~~ and shall continue in full force and effect until midnight of the 30th day of September 2008~~9~~ and thereafter from year to year unless notice is given in writing by either party to the other via certified mail, return receipt requested by April 1, 2008~~9~~, of intent to modify, terminate, or change this Agreement.
- 37.2 No item or provision of this Agreement shall be a proper subject for negotiation during the term of this Agreement unless it is mutually agreed by the parties in writing to renegotiate such items in negotiations.
- 37.3 As used in this Agreement, the term "he" or "she" shall be interpreted to be gender neutral, and shall be understood to encompass both genders.**

ARTICLE 38

HEALTH AND SAFETY

38.1 The purpose of this Article is to promote better physical fitness throughout the Fire and Rescue Department.

38.2 Management and Labor will design a mutually agreeable, **validated** physical fitness program ~~Modified Combat Challenge Test to be contained within the Department's policies and procedures manual~~ which **Annual Physical Ability Assessment Program, designed to ensure a firefighter is capable of meeting the physically demanding challenges of their his/her job.** This shall ~~become~~ mandatory for all employees **personnel.** **This Program will be included within the departmental standard operational guidelines.** Changes to the Physical Fitness Program ~~Modified Combat Challenge Test~~ **this Program** must be approved by the Fire Chief **or his/her designee.**

38.3 **At the employee's option,** stress tests shall be provided for all employees according to the following schedule. ∴

<u>AGE</u>	<u>FREQUENCY</u>
Under 40 years	once every three years
40 - 50 years	once every two years
over 50 years	once each year

The parties agree that all Departmental employees shall undergo an annual physical exam to be paid for by the City. These exams will be scheduled while the employee is on duty.

In the event that **it is medically determined by a physician that** an employee **should** receives a positive result from a City-required stress test result and is required by the City to undergo further testing **undertake further test** procedures **as a result of the City-paid annual exam** in order to return to work, the employee shall not be charged sick or annual leave for any time lost as a direct result of the City-required **this need for further** testing. **However,** ~~if~~ this result shall not apply to tests that the employee might voluntarily take which are not required by the City **medically determined as a result of the annual, City-paid exam.**

Employees who are required **instructed** by the City **a physician** to undertake further testing under this Section **as a result of the annual,**

City-paid exam shall also be required to report **the results of** each test to the City's Risk Manager and complete any documentation required by the City. Failure of an employee to comply with this requirement shall cause him/her to be charged with sick leave to cover any missed work time which results from the City-required **need for further** testing. **The employee will be returned to active duty upon providing a physician's statement to the City's Risk Manager to the effect that the employee is medically fit to return to full duty.**

38.4 **It is acknowledged and agreed by the parties hereto that the Port Orange Fire and Rescue Department is a tobacco-free workplace, and that it is a condition of employment that each member of this bargaining unit refrain from the use of tobacco during the period of his or her employment with the City. All newly-hired firefighters will be required to sign an affidavit, attesting that they have been tobacco-free for at least one (1) year in accordance with Section 633.34 (6), Florida Statutes.**