PORT ORANGE CITY COUNCIL

SPECIAL MEETING

Council Chambers

Tuesday, December 22, 2015 @ 5:00 PM

SPECIAL MEETING AGENDA

Pursuant to Section 3.06 of the Charter of the City of Port Orange, the Mayor has called a **Special Meeting** of the City Council to be held for the following purposes:

OPENING

1. Pledge of Allegiance
2. Silent Invocation
3. Roll Call

DISCUSSION ITEMS

4. Resolution No. 15-84 - Budget Appropriation
5. Approval of Port Orange Professional Firefighters Association Contract through September 30, 2017 Collective Bargaining Agreement

ADJOURNMENT

CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE **12/22/2015**

Consent item: No

SUBJECT: Resolution No. 15-84 - Budget Appropriation

DEPARTMENT: Finance

GOAL:

OBJECTIVE:

RECOMMENDED MOTION: Move to approve Resolution No. 2015-84.

SUMMARY: To budget for the Port Orange Professional Firefighters Association (IAFF) Collective Bargaining Agreement (CBA).

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Reso. No. 15-84	Reso. No. 15-84.pdf

Fenwick, Robin — Created/Initiated - 12/16/2015
Riehm, Tracey — Approved - 12/18/2015
Roberts, Margaret — Approved - 12/18/2015
Johansson, M. Jake — Final Approval - 12/18/2015

<u>RESOLUTION NO. 15–84</u>

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROPRIATING OPERATING FUNDS FOR THE FIRE DEPARTMENT PERSONNEL EXPENDITURES; SETTING FORTH REVENUES AND EXPENDITURES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to appropriate the funds related to the Port Orange Professional Firefighters Association (IAFF) Collective Bargaining Agreement (CBA), and to set forth, appropriate and change appropriations of certain revenues and expense.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

<u>Section 1.</u> The funds for the City operating items are hereby appropriated as set forth in Composite Exhibit A, attached hereto, which reflects revenues and corresponding expenditures for the designated projects.

<u>Section 2.</u> The Budget item adopted in the preceding section shall govern the expenditures relating to such operations for the City during the current fiscal year effective October 1, 2015 through September 30, 2016.

<u>Section 3.</u> Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be effected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

Section 4. This resolution shall become effective immediately upon adoption.

____
MAYOR ALLEN GREEN

ATTEST:

____
Theresa Gutierrez, Deputy City Clerk

Adopted on the day of

Reviewed and Approved: ______________________
City Attorney

COMPOSITE EXHIBIT A **Resolution No. 15 - 84**

FY 2016 **General Fund 001**
PREPARED: **12/15/15**
FINANCE: **Lisa A. Pallante**

	APPROVED BUDGET
REVENUES:	
Appropriated Equity	209,000
TOTAL REVENUES:	209,000
EXPENDITURES:	
Fire Department	209,000
TOTAL EXPENDITURES:	209,000

To budget for the new Port Orange Professional Firefighters Association (IAFF) Collective Bargaining Agreement (CBA).

CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE **12/22/2015**

Consent item: No

SUBJECT: Approval of Port Orange Professional Firefighters Association Contract through September 30, 2017 Collective Bargaining Agreement

DEPARTMENT: Administrative Services

GOAL: 6 - Organizational Excellence

OBJECTIVE: 1 - Implement compensation study

RECOMMENDED MOTION: Move to approve the negotiated IAFF Collective Bargaining Agreement expiring on September 30, 2017.

SUMMARY: The City and International Association of Fire Fighters (IAFF) Local 3118 have negotiated a Collective Bargaining Agreement (CBA) ending on September 30, 2017.

There are numerous changes to the contract including wages, benefits, tuition reimbursement and general language clean-up among others. Both the marked-up and clean copies of the new CBA are attached.

On December 18, 2015 the City received notification that IAFF members voted in favor of this agreement. In order to ratify this agreement, the City Council must also vote in favor of the proposed changes.

The proposed changes to wages are retroactive and are within current budgeted resources based on the previously adopted budget Resolution No. 15-84.

Project No.:	Funding Account No.:

ATTACHMENTS:

1.	CBA with IAFF - clean & signed	IAFF Final Proposal-Clean & signed.pdf
2.	CBA with IAFF - Marked up proposal	IAFF Final Proposal - Markup.pdf

Fenwick, Robin	Created/Initiated - 12/14/2015
Rosen, Alan	Approved - 12/15/2015
DePina, Cindy	Approved - 12/18/2015
Riehm, Tracey	Approved - 12/18/2015
Roberts, Margaret	Approved - 12/18/2015
Johansson, M. Jake	Final Approval - 12/18/2015

AGREEMENT
between
CITY OF PORT ORANGE
and
PORT ORANGE PROFESSIONAL FIREFIGHTERS ASSOCIATION
IAFF

Local 3118
PERC Certification #777

TBD through September 30, 2017

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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. 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. Upon certification of the new eligibility list, the budgeted vacancy shall be filled within fourteen (14) days.

5.2 The City shall provide employees with a list of the required study materials that will be utilized on the promotional exam ninety (90) days in advance of the promotional exam date. Additionally, the City shall furnish each fire station with a hard copy of all study materials and texts or the equivalent information in electronic format for the promotional examination process.

5.3 ELIGIBILITY FOR DRIVER ENGINEER PROMOTIONAL PROCESS

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 on the date on which phase one (1) of the test is administered.

After the expiration of the eligibility list established on April 16, 2015 candidates shall be required to hold State of Florida certification as a Fire Service Hydraulics and Fire Apparatus and Pump Operator.

The City shall reimburse each employee $45.00 upon passing the State exam for Fire Service Hydraulics and Fire Apparatus/Pump Operator.

Ranking on the promotional list for Driver/Engineer will be established using the following scoring system and points as outlined in Article 5 section 5.5 under "Additional Points":

PHASE I:

Driver Engineer Written Exam 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Driver Engineer texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) points in order to continue to Phase II of the Driver Engineer promotional process.

PHASE II:

Pump Practical Exercise 50 points

Driving Practical Exercise 50 points

PHASE II: includes two separate practical exercises to include the basic functions of a Driver Engineer as well as the candidate's knowledge of the apparatus and its components. The driving practical exercise will include an over the road and cone course as well as a pumping evolution which will incorporate scenarios which may include items such as the candidate's ability to utilize water and foam operations, incoming water supply, large and small handlines and master streams. Once the City announces the promotional application process, the City shall identify the specific apparatus designated to be used for Phase II. In the event the apparatus becomes unavailable, the City shall identify an alternative apparatus.

5.4 ELIGIBILITY FOR LIEUTENANT'S PROMOTIONAL PROCESS:

Eligibility is five (5) years of continuous service as a Port Orange career fire fighter or driver/engineer; or four (4) years of continuous service as a Port Orange career fire fighter or driver/engineer with an Associate Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field; or three (3) years of continuous service as a Port Orange career fire fighter or driver/engineer with a Bachelor Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field. After the expiration of the eligibility list established on May 27, 2014 candidates shall be required to be State of Florida certified at the Officer I level. The City shall reimburse each employee $45.00 upon passing the State Exam.

Ranking on the promotional list for Lieutenant will be established using the following scoring system and points as outlined in Article 5 section 5.5 under "Additional Points":

PHASE I:

Lieutenant Written Examination: 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Lieutenant texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) points to continue to Phase II of the Lieutenant promotional process.

PHASE II:

Assessment Center 100 points

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

In developing the Assessment Center exercises, the Development Team will solicit input from the Department's current Lieutenants.

5.5 ADDITIONAL POINTS – ALL PROMOTIONS

Additional points for formal education and longevity will be awarded after all 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/EMS Related Degree	3 Points
Four (4) Year Non Fire/EMS Related Degree	2 Points
Two (2) Year Fire/EMS Related Degree	2 Points
Two (2) Year Non Fire/EMS Related Degree	1 Point

Certifications:

Fire Officer II –	2 Points
Municipal Fire Inspector–	1 Point

Employees who have one or more Fire Service Instructor certifications shall receive one (1) point. Only the highest level may be counted.

MILITARY SERVICE:

Military service 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.

5.6 After testing is complete, a listing will be made of all qualified applicants. The Fire 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, seniority and education credit (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 effects or loss of position on the list.

5.7 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. 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.

ARTICLE 6

SENIORITY

6.1 For the purpose of this Agreement, seniority is defined as the length of continuous, uninterrupted service in the Fire Department. 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.

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 seniority as recognized in 6.1 shall be the determining factor:

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.

6.5 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.

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. 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 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 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.

9.3 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

9.4 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 in an electronic PDF format, submitted through the City's emailing system, 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) The electronic 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. Each step of the grievance must contain a new signature from the grievant;

(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 ten (10) 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 ten (10) 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 ten (10) working days following the meeting.

Step 3 - If the grievance is not settled at the second step, the grievant and/or union representative within ten (10) working days from the date of that supervisor's decision shall present the written grievance to the Department Head or designee and shall immediately submit a copy to the Human Resources Director. The Department Head 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 Department Head 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 Department Head.

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 ten (10) 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 ten (10) 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.

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
Memorial Day (Observed Day)
Fourth of July
Labor Day

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.

Martin Luther King Birthday: It is acknowledged that the City will be open for business on this date. 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.

Good Friday: It is acknowledged that the City will be open for business on this date. 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.

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 of one and one half (1 ½) regular hours at his/her regular rate of pay for each hour worked 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. Under no circumstance will total compensation exceed two and one half (2 ½) times one day's pay at the regular rate.

11.5 Employees who work a forty-hour (40) work week, either by regular schedule or during a modified schedule due to Worker's Compensation assignment will be paid for such holidays specified 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.

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 Fire Administration 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 Fire Administration office on the proper date and time. The City will permit a maximum of two (2) persons on any shift to take off on annual leave at the same time.

12.4 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 Department Head, or in the Department Head's absence, the Department Head'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 at least twelve (12) hours in advance of the date requested. If the request is made verbally and approved, it shall be documented in writing as soon as practicable thereafter. After the employee has reported for duty, the Chief or his designee may grant annual leave if staffing is available and overtime is not incurred.

12.6 <u>Emergency Annual Leave.</u>

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 Department Head or 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 which was selected on or before February 1st, the employee may do so provided that he/she provides the Department Head or the Department Head's designee with notice at least twelve (12) hours prior to the start of the approved annual leave.

Should an employee have an emergency situation that causes the cancellation of scheduled annual leave, the Department Head or the Department Head's designee may approve the cancellation of annual leave and authorize the employee to return to work.

12.8 The following sections (12.8 A-F) apply to employees before December 4, 2012:

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 Current Full-Time Employees Hired Prior to December 4, 2012 working a forty (40) hour week: Each employee working a 40 hour work week shall accrue annual at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

Length of Continuous Service	Maximum Annual Accrual
less than 5 years	100
5 to 8 years	116
8 to 11 years	132
11 to 16 years	148
16 to 20 years	164
more than 20 years	180

C. Accrual for Current Full-Time Employees Hired Prior to December 4, 2012 Working Extended Shifts 168 Hours Every 21 Day Cycle. Each full-time employee working extended shifts shall earn annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

Length of Continuous Service	Maximum Annual Accrual
less than 7 years	148
7 to 9 years	172
9 to16 years	208
16 to 20 years	220
More than 20 years	244

D. Maximum Accrual for Current Employees Hired Prior to December 4, 2012 - Annual leave normally is to be taken in the anniversary year in which it is accrued. 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.

E. Employees hired prior to December 4, 2012 will be permitted to use annual leave in accordance with Department policy in units of not less than four (4)-hour 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.

F. Employees hired prior to December 4, 2012 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 or other City adopted 457 Plan, for this unused leave.

Leave indicated on the second to last paystub received in September shall be paid or deferred into the employee's ICMA-RC 457 Plan account or other City adopted 457 Plan at the rate in effect on September 15, by the last pay period in September.

12.9 The following sections (12.9 A-E) apply to employees hired on or after December 4, 2012:

A. Accrual for full time employees working a forty (40) hour week hired on or after December 4, 2012 shall accrue no more than ninety six (96) hours of Annual Leave each year.

B. Accrual for full time employees working extended shifts(168 Hours Every 21 Day Cycle) hired on or after December 4, 2012 shall earn no more than one hundred forty eight (148) hours of Annual Leave each year.

C. Employees hired on or after December 4, 2012 on shall accrue annual leave from the most recent date 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. Should a new probationary employee, as defined in Article 7.1, fail to successfully complete the probationary period or should such employee be discharged the employee shall forfeit all accrued annual leave.

In the event of extenuating and/or emergency circumstances, the Fire Chief may allow a probationary employee to use annual leave prior to completing six (6) months of continuous service.

D. Unused annual leave may be accumulated to a maximum of two hundred forty (240) hours. Leave in excess of two hundred forty (240) hours effective the second to last pay check received in September of each successive year shall be forfeited.

E. Employees will be permitted to use annual leave in accordance with Department policy in units of not less than four (4)-hour 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 of maximum of thirty-two (32) days away from duty.

12.10 An employee who is terminated for cause (not for inline duty disability) or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated leave. An employee who resigns with a two (2) week notice, is laid off, or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section 12.8 (d) and 12.9 (d). Pay, or at the employee's option, deferral into an ICMA-RC 457 Plan account or other City adopted 457 Plan, 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.

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

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. Sick leave, annual leave, bereavement leave, jury duty 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 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.

13.5 An employee shall be eligible to receive call-back pay when they are required to report to work with less than twelve (12) hours notification.

Call-back pay shall be a minimum payment of three (3) 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.

The call-back period shall end at the commencement of the employee's regularly scheduled shift. These hours will be included in the payroll check that corresponds with the week in which the call-back hours were actually worked. Employees will be eligible for payments qualified under this section as appropriate even if they have not worked the minimum required hours in the FSLA cycle.

Call-back pay does not include holdovers, which are when an individual has not left their work place and agrees or is mandated to holdover until relief arrives. Call back also does not include scheduled overtime in which an employee has left their normal place of work and receives more than twelve (12) hours of notification regardless of whether the overtime is voluntary or mandated.

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 unless otherwise approved by the Fire Chief or his designee, 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 on overtime".

13.13 Forty-eight (48) hours will be the maximum number of consecutive hours that may be worked at one time before requiring a minimum of twelve (12) hours off before returning to duty. The forty-eight (48) hours will include all forms of work such as normal tours of duty, overtime, shift exchanges, early relief, and special details requiring emergency services. The Chief or his designee may override this provision in extraordinary circumstance.

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 current IRS standard mileage rate. 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 Department Head by the employee during the week that the private automobile was used. Failure to follow this procedure will result in the claims being denied.

14.3 Those using personal vehicles are required to have minimum automobile insurance coverage for liability in the amount of $100,000 (required by law) for each person, $300,000 for each accident, and property damage of $50,000. The City will not assume responsibility for any damages to employee's vehicle. The mileage reimbursement payment includes a factor for both liability and collision insurance coverage. Proof of insurance is to be provided to the City's Risk Manager on an annual basis.

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%) ride up pay for the period of time the employee is so assigned. This ride up 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 In the event an employee is temporarily selected to fill a vacant promotional position on an interim basis exceeding ten (10) shifts, the employee shall receive a 5% salary adjustment above their current base pay, but in no event shall the salary adjustment be lower than the hiring rate for the new position.

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 and to attend medical appointments without loss of pay. This includes time off to recover from off-duty illness or injury that prevents an employee from being able to adequately perform their required job duties and functions. 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 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 accrue of 96 hours of sick leave at an equally prorated amount per pay period per year. Firefighters on shift shall accrue of 144 hours of sick leave at an equally prorated amount per pay period per year. In the event an employee has worked less than a full year, the total number of accrued hours of sick leave will be reduced proportionally.

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 their option, deferral into an ICMA-RC 457 Plan account up to the maximum amount provided by law, as provided herein. The maximum unused sick leave that may be exchanged for pay or 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 after the amount of sick leave requested to be sold is subtracted from their accrual. Other personnel must maintain a minimum balance of at least forty (40) hours of accumulated sick leave after the amount of sick leave requested to be sold is subtracted from their accrual.

16.3 Accumulation of Sick Leave and Sick Leave Sell Back/Deferral

The maximum amount of sick leave that employees will be able to carry forward into the following year will be seven hundred fifty (750) hours. Only employees who have already accrued in excess of seven hundred fifty (750) hours of sick leave as of December 4, 2012, will be able to carry forward each fiscal year a sick leave balance equal to their total sick leave accruals as of December 4, 2012 but in no case more than 1000 hours. Employees hired after December 4, 2012 will be limited to carry forward each fiscal year a sick leave balance equal to five hundred (500) hours. Accrued sick leave hours as reflected on the second to last pay check received each September which are in excess of the accrual cap amounts for each particular employee shall be paid off by the City at the employee's regular hourly rate in effect on September 15th for each hour of sick leave.

At the employee's option, the employee may defer this payment into an ICMA-RC 457 Plan account up to the maximum amount provided by law.

A. Sick Leave Sell Back/Deferral

i. 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 deferral, the following procedures shall apply to sick leave exchanges for pay:

All members 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 deferral into the employee's ICMA-RC 457 Plan account each year. Each employee shall receive one hour of pay or deferral at his/her regular hourly rate as of September 15 of the year that the exchange is being made for each hour of unused sick leave being cashed in or deferred.

ii. 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, the following procedures shall apply to sick leave exchange:

All members must maintain a minimum balance of forty (40) (or seventy-two (72) hours of sick leave for shift employees).hours of sick leave. Employees may exchange a maximum of one hundred ninety-two hours of unused sick leave for pay or deferral into the employee's ICMA-RC 457 Plan account each year. Employees who have accumulated more than the minimum hours of sick leave but less than one hundred (100) hours which they wish to exchange may exchange that leave for pay or deferral at the rate of three (3) hours of sick leave for one (1) hour of pay or deferral.

Employees who accumulate more than one hundred (100) hours of sick leave which they wish to exchange may exchange that leave for pay or deferral at a rate of two (2) hours of sick leave for one (1) hour of pay or deferral. At all times a minimum of forty (40) hours (or seventy-two (72) hours of sick leave for shift employees). of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

16.4 Subject to the provisions of this Agreement, an employee may cash in, or at his/her option, defer into an ICMA-RC 457 Plan account, at his/her regular rate of pay effective on September 15, his/her accumulated sick leave hours by obtaining the appropriate form and submitting it upon completion to the Human Resources division no later than September 1st of such fiscal year, subject to the restrictions indicated in Section 16.2.B. Failure to submit this form will result in an employee's accrued sick leave bank being "banked" for future use or pay-off as provided here-in. Any sick leave taken after the filing of such form shall first be deducted from the accrued sick leave "in the bank", and, secondly, from those days for which payment is sought but not yet paid.

All payments or deferrals for unused sick leave made under this Article shall be made on or about the last pay period in September.

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 Resignation, Retirement, or Death – An employee who resigns with two (2) weeks prior notice and has a minimum of ten (10) years of service with the

City or retires under the provisions of the City's pension plan (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, at their regular rate of pay.

16.8 An employee who is fired (other than for in line duty disability), dismissed, or who quits and/or separates from the City for any reason other than detailed in 16.7 shall forfeit 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 Donation Process - Both parties agree to work towards establishing a Sick Leave donation process to allow employees to contribute sick leave hours to other employees.

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 Union President or the President's designee will be permitted to attend local and state seminar functions of the Association without a loss of pay for a maximum for forty-eight (48) hours per calendar year each without such leave being charged against leave time. No other compensation shall be allowed for expenses. No compounding of compensation shall be allowed for functions occurring on leave or holidays. This time will not be counted as hours worked for the purpose of calculating overtime.

17.5 The Union 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 Two (2) members of the designated Association negotiating team (employees of the City) shall be permitted to attend all negotiating sessions for a successor agreement to this Agreement without loss of pay.

17.7 The Department Chaplain appointed by the Fire 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 Department Head and the Union President, with their respective designees. In the event personnel issues are to be discussed, then the City's Director of Administrative Services 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 health insurance program for the employees, with the City paying the lowest "employee only" rate among any health insurance plans with a co-pay offered. Dependent coverage will be at the employee's expense.

ARTICLE 19

UNIFORMS AND EQUIPMENT

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

2 Dress Shirts
- One long sleeve and one short sleeve with appropriate patches

1 Tie
1 Tie clip
2 Polo Style Shirts
5 Work Style Pants
5 T-Shirts
2 Gym Shorts - appropriately sized
2 Long Sleeved T-shirts
1 Beanie Cap
1 Pair of Sweatpants
2 Sweatshirts
1 Ball Cap
1 Pair of Boots – low or high top style
1 Badge
1 Set of Collar Brass
1 Name Tag
1 Winter Jacket, with liner – with appropriate patches
1 Helmet with face shield
1 Turnout Jacket
1 Turnout Pants
1 Suspenders
1 Pair Turnout boots
1 Belt
1 Flashlight
1 Pair of Structural Firefighting 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).
1 Gear Bag
1 SCBA Mask
1 Reflective Safety Vest

19.2 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 Department Head, Human Resources Director and up to two (2) union representatives 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.

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

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

19.7 Fire service employees will be permitted to wear a pin approved by the Fire Chief no larger than collar brass, that includes the union emblem on their Class A uniform. Placement of the pin shall be in a manner which does not obstruct any other department insignia.

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 forty eighth (48) hours for extended shift employees or four (4) work days for employees working a forty hour work week per event, for a maximum ninety-six (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 Department Head may, in his discretion, grant an employee additional leave time.

In the event of the death of an immediate family member, defined as parent, spouse, child, step-child, or sibling the employee shall be allowed to use seventy-two (72) hours for extended shift employees of consecutive time off. The maximum of ninety-six (96) hours of paid bereavement leave in a fiscal year remains.

20.2 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 During the term of this contract, employees shall receive no increase in pay other than what is provided for in this agreement. All future wage increases beyond the term of this collective bargaining agreement, if any, shall be subject to negotiation by the Union and the City. Wage increases set forth in this Article shall be effective on the designated dates set forth in this Article below.

21.2 Effective 10/01/2014 to 09/30/2015 the following pay ranges will be implemented within the Fire and Rescue Department:

Firefighter:	\$11.25 - \$18.15
Driver Engineer:	\$12.28 - \$19.03
Lieutenant:	\$14.91 - \$22.19

Those employees recognized by the City as performing Paramedic related functions shall be eligible to receive Specialty Pay as set forth under the parameters defined in Article 30, Specialty Pay.

The pay ranges effective 10/01/2015 to 09/30/2016 for the positions within the Fire and Rescue Department shall be as follows:

Firefighter:	\$11.73 - \$18.15
Driver Engineer:	\$12.66 - \$19.03
Lieutenant:	\$15.23 - \$22.19

Those employees recognized by the City as performing Paramedic related functions shall be eligible to receive Specialty Pay as set forth under the parameters defined in Article 30, Specialty Pay.

21.3 The Union and the City agree that the step plan has been eliminated and replaced with pay ranges.

21.4 **Fiscal Year 2015:** Effective 10/01/2014, employees currently designated within the Tech II/Paramedic classification will be reclassified to the Firefighter classification, with the Firefighter pay range as provided in 21.2. Effective 10/01/2014, employees who were designated as the Tech II/Paramedic position shall receive a \$0.16 per hour increase to their base pay. After the increases described in this paragraph have been applied, any current employee below the minimum ranges effective 10/01/2014 as provided for in Section 21.2 shall be brought up to the minimum of the appropriate pay range.

Effective 10/01/2014, with the exception of the employees described in the above paragraph, covered members will receive a $0.50 per hour increase to their base pay. After the increases described in this paragraph have been applied, any current employees below the minimum ranges effective 10/01/2014 as provided for in Section 21.2 shall be brought up to the minimum of the appropriate pay range.

Fiscal Year 2016: Effective 10/01/2015, all employees who have been employed for at least one year as of 10/01/2015, except those at the maximum of their pay range shall receive a two and one half percent (2.5%) increase to their base pay. After the increases described in this paragraph have been applied, any current employees below the minimum ranges effective 10/01/2015 as provided for in Section 21.2 shall be brought up to the minimum of the appropriate pay range.

The City agrees to administer a one-time retroactive paycheck to each active covered member for any wages described herein that were not implemented by the effective dates described above in this Section.

Fiscal Year 2017: The Union and the City agree to re-open Article 21, Wages to negotiate wage increases for the year of October 1, 2016 to September 30, 2017.

21.5 Promoted employees shall receive a 5% salary adjustment above their current Pay rate, but in no event shall the salary adjustment be lower than the hiring rate for the new position.

21.6 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.

21.7 Employees newly hired may be started at a higher rate of pay than the minimum starting rate, upon evaluation by management. For a term expiring September 30, 2017 only, a limitation shall be placed on the starting rate for newly hired. During this period, newly hired employees with five (5) or more years of working experience in fire or EMS may only be started at a higher rate of pay not to exceed a 2.5% increase higher than the minimum starting rate, upon evaluation by management. At the expiration of this term, this provision shall no longer apply unless the parties mutually agree in writing otherwise.

21.8 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.

21.9 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.

21.10 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 shall not affect subsequent granting of compensatory time off in future workweeks or work periods.

21.11 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. However, such lump sum payment shall not be included in the employee's base salary for the purpose of computing pension benefits.

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 (hereby referred to as the “Retirement Plan). Pensions and other retirement benefits for bargaining Unit employees which are not specifically enumerated in this labor Agreement are as set forth in the Retirement Plan. The City agrees to maintain the benefits and member contributions set forth in the Retirement Plan, with the changes provided below. An employee in this Bargaining Unit who entered the DROP program prior to the effective date of this contract shall not be subject to the terms of this Article but shall continue to be governed by the remaining terms of this contract. An employee in this bargaining Unit who enters the DROP program on and after the effective date of this contract shall be subject to all of the terms of this contract including this Article.
The Bargaining Unit agrees that through September 30, 2018, the Bargaining Unit will not request the City to increase the benefit multiplier for any existing or future members of the Retirement Plan.

The parties agree to amend the Retirement Plan following the adoption of the Ordinance implementing this Article, with changes to benefits effective January 1, 2016 as follows:

22.2 All members shall be allowed to participate in the DROP program. The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the system for that quarter. Net investment return is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions and transaction costs.

Allow DROP election and participation any time after becoming eligible for normal retirement.

22.3 The minimum in-line of duty disability benefit shall be increased from 42% to 51% of Average Final Compensation.

22.4 After the Retirement Plan achieves a funded ratio of 100% or greater as reflected in the current Disclosure Information prepared in accordance with Governmental Accounting Standards Board requirements, the City will make a contribution, of the higher of either the normal cost of the plan or a minimum thirteen percent (13%) towards a stabilization fund for use during economic downturns to smooth the volatility of required pension payments. This contribution shall be paid to the pension fund and shall not be used by the City or the members to acquire or fund new or additional benefits.

22.5 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.

22.6 In compliance with Florida Statute 175.351(6), the City agrees that a defined contribution plan ("DC Plan") shall be created as a component of the Retirement Plan, but will not be activated unless and until a portion of Chapter 175 premium tax revenues have been assigned to fund the DC Plan. The provisions of the DC Plan, when and if activated, shall be negotiated by the parties at the time funding is assigned to the DC Plan. With regard to the use of Chapter 175 premium tax revenues, the Retirement Plan will continue to operate under the "Naples Letter" interpretation until September 30, 2018, as allowed by Florida Statute 175.351(7).

22.7 The current pension ordinance except as modified by this contract is attached to this collective bargaining agreement as Appendix A.

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 normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he is absent from work as a result of fulfilling his jury duty obligation. The employee summoned as a juror shall attach a copy of his summons to the Leave of Absence Request. An employee who is released from jury duty prior to four (4) hours from his normal end of the workday, shall be required to report to his work site immediately after his release.

23.2 An employee subpoenaed as a witness for a court proceeding, not involving personal litigation, shall be granted leave with 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 normal starting time for that work day, he shall be required to report to his work site immediately after his release from such subpoena.

23.3 Any court proceeding of a personal nature will not be subject to this Article.

ARTICLE 24

ALCOHOL AND DRUG TESTING

24.1 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. 2 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 Department Head, 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 Department Head, 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 test.

C. In the event the Department Head, 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.

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. 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.

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 Department Head, 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 Department Head, 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 Department Head 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.

24.3 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.

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 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.

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 Department Head, 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 standard operational procedures.

26.2 Failure to take corrective action against an employee for violation of these rules, regulations and/or standard operational procedures 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 standard operational procedure may be subject to corrective action, including dismissal for just cause.

Whenever an action occurs which may or m ay not lead to the City initiating corrective action, the City will conduct an informal, or if necessary, a formal investigation 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.

26.4 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

POLICIES OF THE FIRE DEPARTMENT

27.1 Employees shall comply with all applicable Fire Department policies and amendments thereto, which are currently in effect unless in conflict with an express or specific provision of this Agreement or MOU's. In such case the negotiated provisions of this Collective Bargaining Agreement will control. Amendments shall be made in accordance with the procedures outlined in this Agreement.

27.2 Except in exigent circumstances as defined by law, the City will provide the Union with a copy of all proposed additions and modifications of rules, regulations and standard operating procedures at least seven (7) calendar days before implementing the new rule or regulation.

27.3 After adoption, all employees must have a right to have the amendment explained to them by the Chief or his designee if requested.

ARTICLE 28

MILITARY LEAVE

28.1 Bargaining unit members will be allowed military leave in accordance with conditions set forth in the Uniformed Services Employment and Reemployment Act (USERRA), and Sections 115.07, 115.09, 115.14 and 250.48, Florida Statutes and in accordance with the City's Military Leave Policy. This Policy, as amended from time to time, is set forth in the City's Civil Service Rules and Regulations, Chapter 3, Attendance and Leave, 3.07, Military Leave.

28.2 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.

28.3 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.

28.4 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 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 Department Head and the City Manager. Requests for such educational leave must be approved in writing in advance by the Department Head 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 Department Head.

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.

ARTICLE 30

SPECIALTY AND EDUCATION INCENTIVE PAY

30.1 This will establish a Specialty Payment Program within the Fire and Rescue Department whereby members of special teams and members with special assignments are to receive a Specialty Payment for their assignments to these positions. Specialty Payments will only be received for periods in which an individual is actually assigned to and working in the special duty:

EMS Coordinator	$15.00 per week
EMS Assistant	$15.00 per week
EMS Quality Assurance (Reporting)	$15.00 per week
HAZMAT Team Member	$15.00 per week
Training Committee Member	$15.00 per week
EMS Instructor	$15.00 per week

- For EMS Instructor, one of the following categories qualifies: BLS, ACLS, ITLS/PHTLS, PEPP or PALS.

The determination of the number of authorized members assigned to and working in the special duty shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation. The total number of special duty assignments as listed above will be limited to two (2) assignments per employee.

30.2 In accordance with State requirements, an employee covered under this Collective Bargaining Unit 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

Payments detailed in this section will be paid on a prorated basis each pay period.

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

Fire Service Hydraulics
Fire Apparatus Operations

30.4 A Firefighter or Driver Engineer who is State of Florida Certified as Fire Officer I shall receive specialty pay in the amount of $15.00 per week. Promotion to Lieutenant will result in elimination of this incentive pay.

Upon promotion, the $15.00 a week will be converted into an hourly amount based on the standard base pay for a week and incorporated into the employee's current base rate of pay prior to determining the employee's promotional rate of either the 5% or minimum starting rate for their promotional assignment. If the starting rate for the promotional assignment is the higher, they will go to the starting promotional rate, not the starting promotional rate plus the additional $15.00 a week.

30.5 An employee who completes the requirements for, and becomes certified as a Fire Safety Inspector, will be entitled to receive a $20.00 weekly education incentive payment.

30.6 Any employee completing and maintaining certification for State of Florida Fire Instructor shall receive a payment of:

1. Fire Instructor I: $10.00 per week
2. Fire Instructor II: $25.00 per week
3. Fire Instructor III: $40.00 per week

Employees will receive payment for the highest instructor level held and maintained.

30.7 Effective 10/01/2014, covered employees who are certified paramedics who have been cleared by the department and medical director and eligible for paramedic specialty pay will receive $55.00 per week of specialty pay, as long as the paramedic certification is maintained. The determination of the number of authorized members receiving paramedic specialty pay shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation.

Effective 10/01/2015, covered employees who are certified paramedics who have been cleared by the department and medical director and eligible for paramedic specialty pay will receive $85.00 per week of specialty pay, as long as the paramedic certification is maintained. The determination of the number of authorized members receiving paramedic specialty pay shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation. This rate for paramedic specialty pay will continue through 09/30/2016.

30.8 All payments under this Article shall not be included in the employee's annual salary for the purpose of calculating pension benefits. Employees will not be eligible for payments for periods in which an individual was not assigned to special duty, or where a required certification lapses.

30.9 The Union and the City agree to re-open Article 30, Specialty Pay to negotiate any changes for the year of October 1, 2016 to September 30, 2017.

30.10 The City agrees to administer a one-time retroactive paycheck to each active covered member for any specialty pay described herein that were not implemented by the effective dates described above in this Section.

ARTICLE 31

TUITION REIMBURSEMENT

31.1 Subject to budget constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees) up to two (2) approved classes per semester. The employee will be reimbursed at the Daytona State College (DSC) rate.

31.2 The City will reimburse the employee for tuition (excluding fees) for graduate course work at the rate of one half (1/2) the cost of tuition for graduate course work at the University of Central Florida (UCF) rate, regardless of where the courses are taken. Courses will be paid on a reimbursement basis with proof of payment and grade.

31.3 The City will require each employee to remain in the service of the City for one (1) year after completion or termination of the most recent class paid for by the City or the employee will be required to reimburse the City for the costs of tuition unless the employee is terminated by the City. This obligation will begin on the day after the school semester is completed.

31.4 The employee shall reimburse the City for all costs and expenses paid by the City if the course is not passed with a grade of “C” or better or a passing grade on a pass/fail system or if grades are not received within three (3) months after the completion of the course.

31.5 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.

31.6 All employees must pre-register with the Human Resources Department regardless of where the courses are taken, if the employee intends to apply for tuition reimbursement. The City maintains the option to refuse to pay for courses that are not directly related to a degree program or courses that have excessively high costs.

31.7 The City of Port Orange will also provide reimbursement for internet and correspondence courses to the employee at the same reimbursement rates as stated in section 31.1 and 31.2 above. Employees who wish to complete internet-based courses, which are job related, but do not relate to a college degree, will be monitored by Department Directors who will approve and pay for the courses. Employees shall not be allowed to work on internet-based college courses during normal work hours (8:00 A.M.-5:00 P.M.). At a Lieutenant's discretion, an employee may be permitted to work on college courses while on shift outside of these work hours.

31.8 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.

31.9 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as defined in the line item 001-1000-519.40-10. The funds assigned to this line item are for use City Wide and approval of funds will be based on a first come, first serve basis upon applying for reimbursement prior to the course beginning. All documentation must be complete when turned into the Human Resources department in order to be considered for tuition reimbursement. Notwithstanding the aforesaid, the Department Head may within his discretion, allocate from the various Fire Department's operational funds to provide tuition reimbursement for employees.

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.

33.2 When an investigatory interview occurs, the following rules apply:

Rule 1: The employee must make a clear request for Union representation before or during the interview. The employee can't be punished for making this request.

Rule 2: After the employee makes the request, the supervisor has three (3) options. S/he may either:

a) Grant the request and delay the interview until the Union representative arrives and has had a chance to consult privately with the employee: or
b) Deny the request and end the interview immediately; or
c) Give the employee a choice of:
    1. Having the interview without representation; or
    2. Ending the interview

Rule 3: If the supervisor denies the request and continues to ask questions, the employee has the right to refuse to answer. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

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

DISCIPLINARY ACTION

37.1 In the event an employee is discharged, suspended or demoted for just cause, the City agrees that he shall be provided with written notification of the action. This notification shall be hand delivered to the employee by a supervisor at the rank of Battalion or higher rank or sent by certified mail, return receipt requested, to the address in the City of Human Resource Department records. The City agrees that no employee shall be disciplined except for just cause.

37.2 Except in extraordinary circumstances, before the employee is discharged or suspended without pay for disciplinary reasons the notification described in Section 37.1 will be provided to the employee in advance of the action so as to give the affected employee an opportunity to present his position. Disciplinary action requiring a signature shall be signed by the employee, not in admission of the offense, but in acknowledgement that a copy of the reprimand has been delivered to the employee.

37.3 In the event an employee becomes the subject of a formal Departmental or City investigation arising from a complaint or allegation, the Department or the City, whichever is appropriate, shall notify the employee of the disposition of the complaint upon the conclusion of the formal investigation.

37.4 Disciplinary action, except termination, shall not become effective until such time that an employee has exhausted all appeals or until such time that the time period for an appeal has expired.

37.5 Disciplinary action shall follow the guidelines for progressive disciplinary action set forth in the City's civil service procedures for all City employees, except that oral reprimands will only be considered active for a period of one year. Discipline shall be accomplished in a constructive, progressive manner, so as to rehabilitate and correct an offender, if at all possible.

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 Annual Physical Ability Assessment Program, designed to ensure a firefighter is capable of meeting the physically demanding challenges of his/her job. This shall become mandatory for all personnel. This Program will be included within the departmental standard operational guidelines. Changes to this Program must be approved by the Department Head or his/her designee.

38.3 Medically determined stress tests shall be provided for all employees according to the following schedule:

AGE	FREQUENCY
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 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 this need for further testing. However, this shall not apply to tests that the employee might voluntarily take which are not medically determined as a result of the annual, City-paid exam.

Employees who are instructed by a physician to undertake further testing 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 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.

ARTICLE 39

DURATION OF AGREEMENT

39.1 This Agreement shall commence and become effective upon ratification by both parties shall continue in full force and effect until midnight of the 30th day of September 2017 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, 2017, of intent to modify, terminate, or change this Agreement.

39.2 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.

For the City: ______________ | For the Union: ______________

Approved this | Approved this

____ day of ___________, 2015. | ____ day of __________, 2015.

PORT ORANGE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 3118, IAFF, AFL-CIO, PFF, FLA.:

12-18-15
____
Carol Calache, President, Local 3118

CITY OF PORT ORANGE, FLORIDA:

____
Allen Green, Mayor

____
M. H. Johansson, City Manager

Attest

____

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

ARTICLE IV. - FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

FOOTNOTE(S):

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Editor's note—Ord. No. 2007-29, § 1, adopted Sept. 18, 2007, amended and restated the former Art. IV, §§ 54-76—54-91, 54-93—54-102, and enacted a new Art. IV as set out herein. The former Art. IV pertained to similar subject matter. For complete derivation see the Code Comparative Table at the end of this volume.

Sec. 54-76. - Title.

The City of Port Orange Firefighters' Pension Fund is hereby restated as a local law pension ordinance entitled "City of Port Orange Fire and Rescue Pension Fund."

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-77. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings indicated to them in this section, except where the context clearly indicates a different meaning:

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest or at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, and any payment representing interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulated contributions.

Actuarial equivalent means a benefit or amount of equal value, based upon the RP 2000 Mortality Table and an interest rate of eight and one-half percent per annum. This definition may only be amended by the city pursuant to the recommendation of the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

Average final compensation, for members who are employed and not participating in the DROP on January 1, 2013, means one-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination or death, or the career average as a full-time firefighter, whichever is greater. Provided, in no event shall the average final compensation of a member who is employed and not participating in the DROP on January 1, 2013, be less than one-twelfth of the average salary of the three best years of the last ten years of credited service prior to January 1, 2013. A year shall be 12 consecutive months. In the case of a member who has credited service as a full-time firefighter and as a volunteer firefighter, average final compensation shall be determined in accordance with this subsection, except that a separate calculation shall be made for service as a full-time firefighter and for service as a volunteer firefighter.

Beneficiary means the person or persons entitled to receive benefits under this article at the death of a member who has or have been designated in writing by the member and filed with the board. If no such designation is in effect, or if no person so designated is living, at the time of death of the member, the beneficiary shall be the estate of the member.

Board means the board of trustees, which shall administer and manage the system provided for in this article and serve as trustees of the fund.

City means the City of Port Orange, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Credited service.

(1) "Credited service" means the total number of years and fractional parts of years of service as a full-time firefighter with member contributions when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter. Service as a volunteer firefighter shall be credited at one month of credited service for each complete year of volunteer service. If a member accumulates service as both a full-time firefighter and as a volunteer firefighter, credited service shall be calculated separately for full-time and volunteer service, with the sum of all years and fractional parts of years of service used only for vesting and benefit eligibility purposes. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire and rescue department pending the possibility of being reemployed as a firefighter without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire and rescue department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter with the fire and rescue department within five years, his accumulated contributions, if $1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than $1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system shall be forfeited and terminated. Upon any reemployment, a firefighter shall not receive credit for the years and fractional parts of years of services for which he has withdrawn his accumulated contributions from the fund unless he repays into the fund the contributions he has withdrawn, together with interest as determined by the board, within 90 days after his reemployment.

(2) The years or fractional parts of years that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a firefighter with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

a. The member is entitled to reemployment under the provisions of USERRA.

b. The member returns to his employment as a firefighter with the city within one year from the earlier of the date of his military discharge or release from active service, unless otherwise required by USERRA.

c. The maximum credit for military service pursuant to this paragraph shall be five years.

d. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA qualified military service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Effective date means March 17, 1995, the date on which the ordinance from which this article is derived became effective.

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

Firefighter means an actively employed full-time person employed by the city, including his initial probationary employment period, who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life and to protect property. The term "firefighter" shall also include a volunteer firefighter whose name is carried on the active membership rolls of the fire and rescue department and whose duty it is to extinguish fires, to protect life and to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

Fund means the trust fund established in this article as part of the system.

Member means an actively employed firefighter who fulfills the prescribed membership requirements. Benefit improvements to the system which have been adopted in the past and which may be made in the future by amendments to this article shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any amendment to this article adopting such benefit improvements, unless such amendment specifically provides to the contrary.

Plan year means the 12-month period beginning October 1 and ending September 30 of the following year.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of benefits under the system or entry in the deferred retirement option plan.

Salary means the member's fixed compensation (base pay) for services rendered to the city as a firefighter, plus all tax-deferred, tax-sheltered and tax-exempt items of income derived from elective employee payroll deductions or salary reductions. Base pay excludes overtime, education pay, specialty and incentive pay, lump sum payments of annual leave, sick leave, and compensation leave, and all other nonregular compensation. Compensation in excess of the limitations set forth in section 401(a)(17) of the Code. As of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed $200,000.00, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an eligible employee shall not be less than the amount which was allowed to be taken into account in effect on July 1, 1993. Eligible employee means an individual who was a member before the first plan year beginning after December 31, 1995.

Spouse means the lawful wife or husband of a member or a retiree at the time benefits become payable.

System means the city fire and rescue pension fund as contained in this article, and all amendments thereto.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 1, 9-25-2012; Ord. No. 2012-36, § 1, 12-20-2012; Ord. No. 2014-3, § 1, 3-18-2014; Ord. No. 2015-7, § 1, 6-2-2015)

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

Editor's note— Ord. No. 2012-36, § 8, adopted Dec. 20, 2012, provides that the benefit changes contained in § 54-77 herein shall not apply to members who attained age 50 with ten or more years of credited service, or 20 years of credited service regardless of age, prior to the effective date of this ordinance.

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 54-78. - Membership conditions of eligibility.

(a) Conditions of eligibility. All firefighters employed by the city as of the effective date [of this article] shall be members of this system and all future firefighters shall become members of this system upon their employment with the city.

(b) Designation of beneficiary. Each firefighter shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-79. - Board of trustees.

(a) Authority; membership; term of office. The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city council, and two of whom shall be members of the system, who shall be elected by a majority of the firefighters who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for in this subsection, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board of trustees as the fifth trustee. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as provided in this subsection and shall serve a two-year term, unless he sooner vacates the office. Each resident trustee shall serve as trustee for a period of two years, unless he sooner vacates the office or is sooner replaced by the city council, at whose pleasure he shall serve. Each member trustee shall serve as trustee for a period of two years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself in office. DROP participants can be elected as but not vote for elected trustees. The board shall establish and administer the nomination and election procedure for such election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained in this article, the power to bring and defend lawsuits of every kind, nature and description.

(b) Officers; minutes; compensation of members. The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(c) Voting. Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall abstain from voting as the result of a conflict of interest, and shall comply with the provisions of F.S. § 112.3143.

(d) Employment of advisers; payment of expenses. The board shall engage such actuarial, accounting, legal and other services as it deems necessary to administer the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. If the board chooses to use the city's actuary, legal counsel, or professional, technical or other advisors, it shall do so under terms and conditions acceptable to the board.

(e) Duties. The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:

(1) To construe the provisions of the system and determine all questions arising thereunder.

(2) To determine all questions relating to eligibility and membership.

(3) To determine and certify the amount of all retirement allowances or other benefits under this article.

(4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.

(5) To distribute to members, at regular intervals, information concerning the system.

(6) To receive and process all applications for benefits.

(7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.

(8) To have performed actuarial studies and valuations, at least as often as required by law, and to make recommendations regarding any and all provisions of the system.

(9) To perform such other duties as are specified in this article.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-80. - Finances and fund management.

(a) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system, including the assets of the prior firefighters' pension fund.

(b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.

(c) All funds of the fire and rescue pension fund may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the fire and rescue pension fund. In lieu thereof, the board shall deposit the funds of the fire and rescue pension fund in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth in this article, the board may retain the services of a custodian bank, an investment advisor registered under the Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

(d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

(1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;

(2) Receipts and disbursements;

(3) Benefit payments;

(4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;

(5) All interest, dividends and gains (or losses) whatsoever; and

(6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(e) An audit shall be performed annually by a certified public accountant, who may, in the board's discretion, be the accountant retained by the city for the city audit. The city will pay the cost for the audit of the system if the board selects the certified public accountant retained by the city. If the board retains its own certified public accountant to perform auditing services, all expenses incurred in connection with the audit shall be paid by the fund. The audit shall be for the most recent fiscal year of the system showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

(f) The board shall have the following investment powers and authority:

(1) The board shall be vested with full legal title to the fund, subject, however, in any event, to the authority and power of the city council to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system except as otherwise provided in this article. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

(2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

a. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this system, and to pay the initial and subsequent premium thereon.

b. Time or savings accounts of a nation bank, a state bank insured by the Bank Insurance Fund, a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation, or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

c. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.

d. Bonds issued by the State of Israel.

e. Stocks, comingled funds, mutual funds, and bonds or other evidences of indebtedness, provided that:

1. Except as provided in subsection (f)(2)e.2, all individually held securities and all securities in a comingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, and the corporation must be listed on a recognized national stock exchange and, in the case of bonds only, shall hold a rating in one of the three highest classifications of a major rating service.

2. Up to 25 percent of the assets of the fund at market value maybe invested in foreign securities.

3. The board shall not invest more than five percent of its assets in the common stock, capital stock or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company, nor shall the aggregate of its investments in common stock, capital stock and convertible securities at market exceed 70 percent of the assets of the fund.

f. Real estate. The board may invest in real estate directly or through an investment vehicle approved by the board.

(3) At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in F.S. § 175.071, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.

(4) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.

(5) Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as provided in this section, or for any loss or diminishment of the fund, except due to his or its own negligence, willful misconduct or lack of good faith.

(6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain such securities unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(7) The board is empowered, but is not required, to vote upon any stocks, bonds or securities of any corporation, association or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

(8) The board shall not be required to make any inventory or appraisal or report to any court, or to secure any order of court for the exercise of any power contained in this article.

(9) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms in this article or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city or any other entity of specific information, certification, direction or instruction, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

(10) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.

(11) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for in this article.

(12) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(13) Any of the powers and functions provided for in this section reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent, and provided, further, that legal title to the fund shall always remain in the board.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2014-7, § 1, 3-18-2014)

Sec. 54-81. - Contributions.

(a) Member contributions.

(1) Amount. Each member of the system shall be required to make regular contributions to the fund in the amount of one-half of one percent of his salary through December 31, 2012, except as otherwise provided in this subsection (1). Effective January 1, 2013, each member of the system hired before December 4, 2012, shall be required to make regular contributions to the fund in the amount of seven and one-half percent of salary. Each member of the system hired on or after December 4, 2012, shall be required to make regular contributions to the fund in the amount of eight percent of salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period, but in any event, not more than five days following the pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

(2) Method. Such contributions shall be made by payroll deduction.

(b) State contributions. Any monies received or receivable by reason of laws of the state, for the express purpose of funding and paying for retirement benefits for firefighters of the city, shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city. In conjunction with the city's adoption of an ordinance implementing this system pursuant to F.S. § 175.351, the board of trustees, with the approval of a majority of city firefighters, and the city have acknowledged and agreed that the insurance premium tax revenues received pursuant to F.S. § 175.101 shall be deposited into and become an integral part of this fund, and not used for any other purpose.

(c) City contributions. So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the difference, in each year, between the total aggregate member contributions for the year, plus state contributions which are legally available to offset city funding for such year, and the total cost for the year, as shown by the most recent actuarial valuation of the system. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in Part VII, F.S. ch. 112.

(d) Other contributions. Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2012-36, § 2, 12-20-2012; Ord. No. 2014-3, § 2, 3-18-2014)

Sec. 54-82. - Retirement benefit amounts and eligibility.

(a) Normal retirement date. A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of age 55 and the completion of ten years of credited service or upon the completion of 25 years of credited service and attainment of age 52. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date. Notwithstanding any other provision of this subsection (a), a member who is employed and not participating in the DROP on September 25, 2012, may retire upon attainment of age 50 and the completion of ten years of credited service or upon the completion of 20 years of credited service regardless of age, and upon such retirement shall be eligible to receive the benefit accrued as of September 25, 2012; and such member shall be eligible to receive the benefit based on credited service after the effective date of this section upon attainment of age 55 and the completion of ten years of credited service or upon the completion of 25 years of credited service and attainment of age 52. Notwithstanding any other provision of this subsection (a), a member with ten or more years of credited service on January 1, 2013, may retire upon attainment of age 48 and completion of 25 years of credited service, and upon such retirement shall be eligible for the normal retirement benefit provided in subsection (b) below.

(b) Normal retirement benefit. A member retiring under this section on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during the member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal three percent of average final compensation for each year of credited service. For a member with credited service as both a full-time firefighter and as a volunteer firefighter, the monthly retirement benefit shall be calculated separately for full-time service and volunteer service, based on the applicable accrual rate provided in this subsection and added together to determine the total benefit.

(c) Early retirement date. A member may retire on his early retirement date, which shall be the first day of any month coincident with or next following the attainment of age 50 and the completion of ten years of credited service. Early retirement under the system is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(d) Early retirement benefit. A member retiring under this section on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

  (1) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date, except that credited service and average final compensation shall be determined as of his early retirement date; or

  (2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (1) of this subsection, which is actuarially reduced from the amount to which he would have been entitled had he retired on the date which would have been his normal retirement date had he continued employment as a firefighter and with the same number of years of credited service as of the time his benefits commence and based on his average final compensation at that date.

(e) Supplemental retirement benefit. An additional monthly supplemental benefit shall be paid to all eligible normal and early service retirees and their beneficiaries or joint annuitants as provided in this subsection (e). The amount of the monthly supplemental benefit for members retiring on or after October 1, 2003, but prior to September 25, 2012, with at least 20 years of credited service shall be $20.00 for each full year of credited service, plus a prorated amount for each additional completed month, for a total amount not to exceed $600.00. For those members retiring on or after September 25, 2012, only those with at least 25 years of credited service shall be eligible for a supplemental retirement benefit. The supplemental retirement benefit for those eligible members retiring on or after September 25, 2012, shall be $20.00 for each full year of credited service, plus a prorated amount for each additional completed month, for a total amount not to exceed $500.00. Retirees under the predecessor fire fighter pension fund shall not be eligible to receive the supplemental retirement benefits under this subsection (e). Notwithstanding any other provision of this subsection (e), members who are employed and not participating in the DROP on January 1, 2013, who first attain eligibility for normal retirement at age 55 with ten or more years of credited service shall be eligible for a supplemental benefit as follows:

(1) Upon retirement following completion of more than 20 but less than 22 full years of credited service—$10.00/month per year of credited service.

(2) Upon retirement following completion of 22 or more but less than 25 full years of credited service—$15.00/month per year of credited service.

(3) Upon retirement following completion of 25 or more full years of credited service—$20.00/month per year of credited service, up to a maximum of $500.00/month.

(f) Cost-of-living adjustment.

(1) For those members who retire prior to January 1, 2013:

a. Beginning on the first January 1 following one full year of retirement, and on each subsequent January 1 thereafter, the monthly benefit of each retiree with less than 20 years of credited service, including disability retirees and terminated vested persons, or any beneficiaries or joint annuitants of such retirees who are receiving a retirement benefit, shall be increased by one percent; except that retirees with more than 19 years of credited service who retired prior to October 1, 2003, shall be annually granted a cost-of-living (COLA) increase equal to three percent of their then current annuity amount commencing upon the 61st month following commencement of DROP participation or receipt of pension benefits. Retirees participating in the DROP shall be eligible for the one percent increase beginning on the first January 1 following one full year of receipt of benefits after terminating participation in the DROP. Effective October 1, 2003, but prior to the effective date of all current and future retirees who have attained 20 years of creditable service shall be annually granted a cost-of-living (COLA) increase equal to three percent of their then current annuity amount commencing upon the 61st month following commencement of DROP participation or receipt of pension benefits.

b. For those members retiring on or after January 1, 2013, the COLA for that portion of the member's benefit based on credited service after January 1, 2013, will be subject to all of the following provisions:

1. Only those members retiring after attaining age 52 with 25 or more years of credited service shall be eligible for a COLA; except members who are employed and not participating in the DROP on January 1, 2013, and first attain eligibility for normal retirement at age 55 with ten or more years of credited service shall be eligible for a COLA upon completion of 20 years of credited service; and members who are employed and not participating in the DROP on January 1, 2013, and first attain eligibility for normal retirement at age 48 with 25 or more years of credited service shall be eligible for a COLA upon completion of 25 years of credited service.

2. The first COLA shall be applied, if at all, on the first day of January following the member's attainment of age 59 and one-half and eight full years of retirement, and annually thereafter;

3. Cost-of-living adjustments will be limited to the lesser of:

   i. The most recent cost-of-living adjustment calculated by the Social Security Administration for payments to Social Security recipients; or

   ii. Three percent of the current benefit; except that, if Social Security recipients receive no increase in benefits in any given year, then no COLA will be applied in that same year; and

4. The COLA will be applied only in those years in which the plan meets or exceeds the actuarial assumptions reflected in the plan's most recent actuarial valuation report, such that there is no actuarial loss for the most recent plan year. In addition, the funded ratio reflected in the "Disclosure Information Per Statement No. 25 of the Governmental Standards Board - Schedule of Funding Progress" in the most recent actuarial valuation report must be 80 percent or more.

(2) The cost-of-living increase provided in this subsection (f) shall not apply to the supplemental retirement benefit provided in subsection (e) above.

(3) Notwithstanding any other provision of this subsection (f), members who are employed and not participating in the DROP on January 1, 2013, shall be eligible for the COLA in effect prior to September 25, 2012, as applied to that portion of their benefit based on credited service prior to January 1, 2013.

(g) Required distribution date. The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 2, 9-25-2012; Ord. No. 2012-36, § 3, 12-20-2012; Ord. No. 2014-3, § 3, 3-18-2014)

Editor's note— Ord. No. 2012-36, § 8, adopted Dec. 20, 2012, provides that the benefit changes contained in § 54-82 herein shall not apply to members who attained age 50 with ten or more years of credited service, or 20 years of credited service regardless of age, prior to the effective date of this ordinance.

Sec. 54-83. - Preretirement death.

(a) Prior to vesting or eligibility for retirement. The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.

(b) Deceased members vested or eligible for retirement with spouse as beneficiary. This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies while actively employed and who, at the date of his death, was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for

early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

(2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal or early retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.

(3) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 54-86(g).

(4) A spouse beneficiary may, in lieu of any benefit provided for in subsection (1) or (2) of this subsection, elect to receive a refund of the deceased member's accumulated contributions.

(5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70½.

(6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2), but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.

(c) Deceased members vested or eligible for retirement with non-spouse beneficiary. This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.

(2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.

(3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to section 54-86, subsection (g).

(4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.

(5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.

(6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-84. - Disability benefits.

(a) In-line of duty disability.

(1) Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duties as a firefighter, shall, upon establishing such disability to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average final compensation for each year of credited service, but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member. The benefit for a member with credited service as both a full-time firefighter and as a volunteer firefighter shall be calculated in the same manner as the normal retirement benefit as provided in section 54-82(b). Terminated persons, either vested or nonvested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for disability benefits within 30 days after termination.

(2) Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in the line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition, and provided, further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance. F.S. § 112.181, as amended, is hereby adopted and incorporated by reference and is applicable to conditions described therein that are diagnosed on or after January 1, 1996.

(b) Not in-line of duty disability. Any member with ten years or more of credited service who shall have become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was not directly caused by the performance of his duties as a firefighter, shall, upon establishing such disability to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average final compensation for each year of credited service. The benefit for a member with credited service as both a full-time firefighter and as a volunteer firefighter shall be calculated in the same manner as the normal retirement benefit as provided in section 54-82(b). Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for disability benefits within 30 days after termination.

(c) Conditions disqualifying disability benefits. Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

(1) Excessive or habitual use of any drugs, intoxicants or narcotics.

(2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.

(3) Injury or disease sustained while serving in any branch of the armed forces.

(4) Injury or disease sustained after his employment as a firefighter with the city shall have terminated.

(d) Physical examination requirement.

(1) A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who

shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for such purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

(2) Any retiree receiving disability benefits under provisions of this article may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic reexaminations by a qualified physician or surgeon, who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the city that the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. If the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his pension.

(3) The cost of the physical examination or reexamination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs, as determined by the board, incident to the physical examination, including but not limited to transportation, meals and hotel accommodations, shall be borne by the fund.

(4) If the retiree recovers from disability and reenters the service of the city as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the system.

(5) The board shall have the power and authority to make the final decisions regarding all disability claims.

(e) Disability payments. The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. Disability retirement benefits shall be payable for 120 months or the member's lifetime, whichever is longer, or until the member recovers from disability, in which case the last payment shall be the payment due next preceding the date of such recovery. Notwithstanding any provision of this subsection, a disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as provided in subsections 54-86(a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

(f) Workers' compensation. When a member is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440, for the same disability, and the total monthly benefits received from both exceed 100 percent of the member's average monthly wage, the disability pension benefit shall be reduced so that the total monthly amount received by the member does not exceed 100 percent of such wage. This subsection shall apply to the extent it does not violate the minimum requirements of F.S. ch. 175. In the case of a lump sum workers' compensation settlement, the disability retirement income payable from the plan shall be adjusted as follows:

(1) The amount of the lump sum settlement shall be divided by the participant's remaining life expectancy (in months) as determined using standard actuarial tables approved by the plan actuary.

(2) If the number obtained as provided in subsection (1) of this subsection, when added to the participant's monthly disability retirement income from the plan, exceeds the participant's average monthly wage on the date of disability, the amount of the excess shall be deducted from the participant's monthly disability retirement income from the plan, for the duration of the participant's remaining life expectancy as determined in subsection (1) of this subsection.

(3) If the number obtained as provided in subsection (1) of this subsection, when added to the participant's monthly disability retirement income from the plan, does not exceed the participant's average monthly wage on the date of disability, there shall be no reduction of the participant's disability retirement income from the plan.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-85. - Vesting.

If a member terminates his employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

(1) If the member has less than ten years of credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund for up to five years following termination.

(2) If the member has ten or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation, and the benefit accrual rate as of the date of termination, provided, however, that vested terminated persons shall not receive the monthly supplemental benefit. The retirement benefit shall be payable to him commencing at the member's otherwise normal or early retirement date, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his normal or early retirement date, his designated beneficiary shall be entitled to a pre-retirement death benefit as provided in subsection 54-83(b) for a deceased member, vested or eligible for retirement.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-86. - Optional forms of benefits.

(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in this article, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(1) A retirement income of a monthly amount payable to the retiree for his lifetime only.

(2) A retirement income of a modified monthly amount payable to the retiree during the lifetime of the retiree and, following the death of the retiree, 100 percent, 75 percent, 662/3 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the Retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q&A-2 of § 1.401(a)(9)-6)

(3) If a member retires prior to the time at which Social Security benefits are payable, he may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the Social Security law in effect at the time of the member's retirement.

(b) The member, upon electing any option provided in subsection (a), shall designate the joint pensioner (subsection (a)(2)) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of the member's death. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, such member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume the joint pensioner has deceased for purposes of calculating the new payment.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries or joint pensioners to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially determined to take into account the age of the former joint pensioner the new joint pensioner and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. If no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his retirement shall be paid as provided in section 54-87.

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

  (1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 54-83.

  (2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.

  (3) If both the retiree and the beneficiary (or beneficiaries) designated by the member or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a) of this section, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 54-87.

  (4) If a member continues beyond his normal retirement date pursuant to the provisions of section 54-82(a), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.

  (5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(f) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.

(g) Notwithstanding anything in this section to the contrary, the board in its discretion may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed $1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-87. - Beneficiaries.

(a) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(b) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

(c) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review but shall be final, binding and conclusive on all interested persons.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-88. - Claims procedures.

The board shall establish administrative claims procedures to be utilized in processing written requests ("claims") on matters which affect the substantial rights of any person ("claimant"), including any member, retiree, beneficiary, or other person affected by a decision of the board.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-89. - Reports to division of retirement.

No later than March 15 of each year, the board shall file an annual report with the division of retirement containing the documents and information required by F.S. § 175.261.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-90. - Roster of retirees.

The secretary of the board shall keep a record of all persons receiving benefits under the provisions of this article, in which it shall be noted the time when the benefits commence and when the benefits shall cease to be paid. Additionally, the secretary shall keep a record of all members in such a manner as to show the name, address, date of employment, and date of termination of employment.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-91. - Maximum pension.

(a) Basic limitation. Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of code section 415 for a qualified retirement plan.

Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in code section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) ($160,000.00), subject to the applicable adjustments in code section 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.

For purposes of code section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to code section 415(n)) and to rollover contributions (as defined in code section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(b) Adjustments to basic limitation for form of benefit. If the benefit under the plan is other than the annual benefit described in subsection (a), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using fractions prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the code section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(1) For a benefit paid in a form to which section 417(e)(3) of the code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

a. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code).

(2) For a benefit paid in a form to which section 417(e)(3) of the code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code); or

c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code), divided by 1.05.

(3) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections (b)(1) and (2) above.

(c) Benefits not taken into account. For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) Any other benefit not required under section 415(b)(2) of the code and regulations thereunder to be taken into account for purposes of the limitation of code section 415(b)(1); and

(3) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

(d) COLA effect. Effective on and after January 1, 2003, for purposes of applying the limits under code section 415(b) (the "limit"), the following will apply:

(1) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year of benefit payments without regard to any automatic cost of living adjustments;

(2) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the code section 415(b)(1)(A) dollar limit under code section 415(d), and the regulations thereunder; but

(3) In no event shall a member's benefit payable under the system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to code section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under code section 415(b), a member's applicable limit will be applied taking into consideration cost of living increases as required by section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(e) Other adjustments in limitations.

(1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of code section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a $160,000.00 annual benefit beginning at age 62.

(2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire or police department of the city, the adjustments provided for in subsection (e)(1) shall not apply.

(3) The reductions provided for in subsection (e)(1) shall not be applicable to disability benefits pursuant to section 54-84, or pre-retirement death benefits paid pursuant to section 54-83.

(4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This

adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(f) Less than ten years of participation. The maximum retirement benefits payable under this section to any member who has completed less than ten years of participation shall be the amount determined under subsection (a) multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to section 54-84, or pre-retirement death benefits paid pursuant to section 54-83.

(g) Participation in other defined benefit plans. The limit of this section with respect to any member who at any time has been a member in any other defined benefit plan as defined in code section 414(j) maintained by the city shall apply as if the total benefits payable under all city defined benefit plans in which the member has been a member were payable from one plan.

(h) Ten thousand dollar limit; less than ten years of service. Notwithstanding anything in this section, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed $10,000.00 for the applicable limitation year or for any prior limitation year, and the city has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten years of credited service with the city, the limit under this subsection shall be a reduced limit equal to $10,000.00 multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten.

(i) Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(j) Service credit purchase limits.

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in sections 54-101 and 54-102, then the requirements of this section will be treated as met only if:

a. The requirements of code section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of code section 415(b); or

b. The requirements of code section 415(c) are met, determined by treating all such contributions as annual additions for purposes of code section 415(c).

For purposes of applying subsection (j)(1)a., the system will not fail to meet the reduced limit under code section 415(b)(2)(C) solely by reason of this subparagraph, and for purposes of applying subsection (j)(1)b. the system will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subsection.

(2) For purposes of this subsection, the term "permissive service credit" means service credit:

a. Recognized by the system for purposes of calculating a member's benefit under the plan;

b. Which such member has not received under the plan; and

c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding subsection (j)(2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(k) Contribution limits.

(1) For purposes of applying the code section 415(c) limits which are incorporated by reference and for purposes of this subsection (k), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulations section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of code section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under code sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in code section 3401(a)(2).

a. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under code sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of code section 132(f)(4).

b. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

c. Back pay, within the meaning of Treasury Regulations section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under the definition of salary in section 54-77.

(2) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in code section 415 by using the following methods:

a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under code section 415(c) or 415(n).

b. If payment pursuant to subsection (k)(2)a. of this section will not avoid a contribution in excess of the limits imposed by code section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(3) If the annual additions for any member for a limitation year exceed the limitation under section 415(c) of the code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection (k) shall not exceed the annual limit under section 401(a)(17) of the code.

(l) Additional limitation on pension benefits. Notwithstanding anything in this section to the contrary:

(1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, and retires prior to January 1, 2013, shall not exceed 100 percent of his average final compensation. However, nothing contained in this subsection shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

(2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from different employer's system or plan. This restriction does not apply to social security benefits or federal benefits under 10 U.S.C. 1223.

(3) The normal retirement benefit or pension payable to a member who retires on or after January 1, 2013, including supplemental retirement benefits but excluding cost-of-living adjustments, shall not exceed 90 percent of average final compensation; provided however, if a member's accrued normal retirement benefit on the effective date of this section, including any supplemental retirement benefit, exceeds 90 percent of average final compensation on that date, the normal retirement benefit or pension payable to such member upon retirement, including supplemental retirement benefits but excluding cost-of-living adjustments, shall not exceed the member's accrued benefit, expressed as a percentage of average final compensation, as of the effective date of this section. Cost of living adjustments shall be calculated in accordance with section 54-82(f). In no event shall a member receive less than two percent of average final compensation for each year of credited service.

(4) The normal retirement benefit or pension payable to a member who retires on or after January 1, 2013, including supplemental retirement benefits and cost-of-living adjustments, shall not exceed $95,000.00 annually; provided, however, if a member's accrued benefit on January 1, 2013, including any supplemental retirement benefit and cost of living adjustment, exceeds $95,000.00 on that date, the normal retirement benefit or pension payable to such member upon retirement, including supplemental retirement benefits and cost-of-living adjustments, shall not exceed the member's accrued benefit, expressed in dollars as an annual amount, as of January 1, 2013. In no event shall a member receive less than two percent of average final compensation for each year of credited service.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 3, 9-25-2012; Ord. No. 2012-36, § 4, 12-20-2012; Ord. No. 2015-7, § 2, 6-2-2015)

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

Editor's note— Ord. No. 2012-36, § 8, adopted Dec. 20, 2012, provides that the benefit changes contained in § 54-91 herein shall not apply to members who attained age 50 with ten or more years of credited service, or 20 years of credited service regardless of age, prior to the effective date of this ordinance.

Sec. 54-92. - Reserved.

Sec. 54-93. - Minimum distribution of benefits.

(a) General rules.

(1) Effective date. Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) Precedence. The requirements of this section will take precedence over any inconsistent provisions of the plan.

(3) TEFRA section 242(b)(2) elections. Notwithstanding the other provisions of this section other than this subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

(b) Time and manner of distribution.

(1) Required beginning date. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(2) Death of member before distributions begin. If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:

a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70½, if later, as the surviving spouse elects.

b. If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the member. For purposes of this subsection (b)(2) and subsection (e), distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.) the date distributions are considered to begin is the date distributions actually commence.

(3) Death after distributions begin. If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(4) Form of distribution. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and Treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and Treasury regulations that apply to individual accounts.

(c) Determination of amount to be distributed each year.

(1) General requirements. If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.

b. The member's entire interest must be distributed pursuant to section 54-82, section 54-83, section 54-85, or section 54-86 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(2) Amount required to be distributed by required beginning date. The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 54-83) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

(3) Additional accruals after first distribution calendar year. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) General distribution rules.

(1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(l) or any successor regulation thereto. As a result, the total death or disability benefits

payable may not exceed 25 percent of the cost for all of the members' benefits received from the retirement system.

(e) Definitions.

(1) Designated beneficiary. The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 54-83.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-94. - Miscellaneous provisions.

(a) Interest of members in system. At no time prior to the satisfaction of all liabilities under the system with respect to members and retirees and their spouses or beneficiaries shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) No reduction of accrued benefits. No amendment or ordinance shall be adopted by the city council which shall have the effect of reducing the then-vested accrued benefits of members or a member's beneficiaries.

(c) Qualification of system. It is intended that the system will constitute a qualified public pension plan under applicable provisions of the Code for a qualified plan under Code Section 401(a) and a governmental plan under Code Section 414(d), presently in effect or hereafter amended. Any amendment of this article or modification of the system may be made retroactive, if necessary or appropriate to qualify or maintain the system as a plan meeting the requirements of applicable provisions of the Code, presently in effect or hereafter amended, or any other applicable provisions of the federal tax laws, presently in effect or hereafter amended or adopted, and regulations promulgated or issued thereunder.

(d) Use of forfeitures. Forfeitures arising from termination of service of members shall be used only to reduce future city contributions.

(e) Prohibited transactions. Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

(f) USERRA. Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.

(g) Vesting.

(1) Member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and

(2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

(h) Electronic forms. In those circumstances where a written election or consent is not required by the plan or the Internal Revenue Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treasury Regulations Section 1.401(a)-21.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-32, § 1, 12-11-2012)

Sec. 54-95. - Repeal or termination of system.

(a) This article establishing the system and fund, and subsequent ordinances pertaining to the system and fund, may be modified, terminated or amended, in whole or in part; provided, however, that, if this article or any subsequent ordinance shall be altered, amended or repealed in its application to any person benefiting under this article, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the member or beneficiary shall not be affected thereby.

(b) If this article shall be repealed, or if contributions to the system are discontinued, or if there is a transfer, merger or consolidation of governmental units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of such members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of governmental units, services or functions, there shall be full vesting (100 percent) of benefits accrued to the date of repeal and such benefits shall be nonforfeitable.

(c) The fund shall be distributed in accordance with the following procedures:

(1) The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection (3).

(3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the firefighter's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the firefighter.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the state.

(5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3). If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the city or the board of the fund affected has not complied with all the provisions in this section, the state department of management services will effect the termination of the fund in accordance with this section.

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)
(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-96. - Domestic relations orders; retiree directed payments; exemption from execution and nonassignability.

(a) Domestic relations orders.

(1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.

(2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

(b) Retiree directed payments. The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city and to make any payments for child support or alimony.

(c) Exemption from execution, nonassignability. Except as otherwise provided by law, the pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-97. - Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this article if the pension is found to be erroneous, fraudulent or illegal for any reason and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this article be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner as determined by the board.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-98. - Forfeiture of pension.

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:

(1) The committing, aiding or abetting of an embezzlement of public funds;

(2) The committing, aiding or abetting of any theft by a public officer or employee from employer;

(3) Bribery in connection with the employment of a public officer or employee;

(4) Any felony specified in F.S. ch. 838;

(5) The committing of an impeachable offense;

(6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public, or the public agency for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position; or

(7) The committing on or after October 1, 2008, of any felony defined in F.S. § 800.04, against a victim younger than 16 years of age, or any felony defined in F.S. ch. 794, against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(b) As used in this section:

(1) Conviction means an adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation, or a conviction by the senate of an impeachable offense.

(2) Court means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing, of which notice shall be given to the member whose benefits are being considered for forfeiture. The member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.

(c) Any member who has received benefits from the system in excess of his accumulated contributions after the member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-98.5. - Conviction and forfeiture; false, misleading or fraudulent statements.

(a) It is unlawful for person to willfully and knowingly make, or cause to be made, or to assist, conspire with or urge another to make, or cause to be made, any false, misleading or fraudulent oral or written statement, or to withhold or conceal material information to obtain any benefit from the system.

(b) Any person who violates this subsection (a) commits a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or § 775.083.

(c) In addition to any applicable criminal penalty, upon conviction for a violation of subsection (a) of this section, a member or beneficiary of the system, may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which such person would otherwise be entitled under the system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-99. - Direct transfers of eligible rollover distributions; elimination of mandatory distributions.

(a) Rollover distributions.

(1) General. This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) As used in this section:

a. Eligible rollover distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2001, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a), to an individual retirement annuity described in section 408(b) or to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit retirement plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

b. Eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the Code; a qualified trust described in section 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

c. Distributee includes an employee or former employee, the employee's or former employee's surviving spouse, and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a nonspouse beneficiary may roll over the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

d. Direct rollover means a payment by the plan to the eligible retirement plan specified by the distributee.

(b) Rollovers or transfers into the fund. On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

(1) Transfers and direct rollovers or member rollover contributions from other plans. The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any

agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.

(2) Member rollover contributions from IRAs. The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over.

(c) Elimination of mandatory distributions. Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of $1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2012-32, § 2, 12-11-2012)

Sec. 54-100. - Deferred retirement option plan.

(a) Definitions. As used in this section:

DROP means the fire and rescue deferred retirement option plan.

DROP account means the account established for each DROP participation under this section.

Self-directed DROP option means an investment option which may be adopted by the board to allow members to select among various options for investment of their DROP account.

(b) Participation.

(1) Eligibility to participate.

a. In lieu of terminating employment as a firefighter, any member who is eligible for normal retirement under the system may elect to defer receipt of his service retirement pension and to participate in the DROP, provided that the election to participate in the DROP is made within 12 months following the date on which the member first become eligible for normal retirement. Any member who fails to make the election within such 12-month period shall forfeit all rights to participate in the DROP.

b. Notwithstanding subsection 54-100(b)(1)a, above, any member with 25 or more years of credited service on September 25, 2012, who previously became eligible to participate in the DROP in accordance with subsection 54-100(b)(1)a, above, but did not elect to participate in a timely manner, may make a DROP election within 30 days following September 25, 2012. All provisions of the plan as amended by this section shall apply to any eligible employee who elects to participate in the DROP pursuant to this subsection b. Any member who is eligible to make a DROP election pursuant to this subsection b who fails to make such election within 30 days following September 25, 2012, shall forfeit all rights to participate in the DROP.

(2) Election to participate. A member's election to participate in the DROP must be made in writing at a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.

(3) Period of participation. A member who elects to participate in the DROP shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A member may participate only once.

(4) Termination.

a. A member's participation in the DROP shall cease at the earlier of:

1. Termination of his employment as a firefighter with the city; or

2. The expiration of the 60th month of participation in the DROP. Upon the occurrence of the termination event, the termination shall be effective on the first day of the following month.

b. Upon the member's termination of participation in the DROP, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings and losses, shall cease to be transferred from the system to the DROP account. Any amounts in the DROP account shall be paid to the participant in accordance with the provisions of subsection (d) of this section when he terminates his employment as a firefighter.

c. A member who terminates participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.

(5) Effect of DROP participation on the system.

a. A member's credited service and accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for pre-retirement death benefits or disability benefits except as provided for in section 54-103.

b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a firefighter, no amounts shall be paid to him from the system until he terminated his employment as a firefighter. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only on the termination of his employment as a firefighter.

(c) Funding.

(1) Establishment of DROP account. A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP and earnings/losses on those amounts, in accordance with subsection (c)(2).

(2) Transfers from system.

a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a firefighter and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a firefighter.

b. Except as otherwise provided in subsection (b)(4)b, the DROP account of a member who enters the DROP under this subsection (c)(2) prior to the effective date of the ordinance from which this section is derived shall be debited or credited after each fiscal year quarter with either:

1. Interest at an effective rate of six and one-half per annum, compounded monthly on the prior month's ending balance; or

2. Earnings or losses determined as follows: The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter.

For purposes of this subsection, net investment return is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his DROP account to be determined as provided above.

c. The DROP account of a member who enters the DROP under this subsection (c)(2) on or after September 25, 2012, shall be debited or credited after each fiscal year quarter with earnings or losses determined as follows:

1. The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the system for that quarter. For purposes of this subparagraph, net investment return is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions and transaction costs.

2. If the board approves a self-directed DROP option, for members who elect that option, the member's DROP account shall be credited or debited at a rate equal to the actual earnings and losses on the self-directed account, less administrative fees.

d. A member's DROP account shall only be credited or debited with earnings or losses and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus earnings/losses earned as of that date plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. Notwithstanding the provisions above, if a member fails to terminate employment in accordance with his irrevocable election to resign for any reason after participating in the DROP for permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited or debited with earnings/losses, nor will monthly benefits be transferred to the DROP account. All such nontransferred amounts shall be forfeited and continue to be forfeited while the member is employed as a firefighter, and no cost-of-living adjustments shall be applied to the member's credit during such period of continued employment. A member employed by the fire department after the permissible period of DROP participation will still not be eligible for pre-retirement death or disability benefits and will not accrue additional credited service except as provided for in section 54-103.

(d) Distribution of DROP accounts on termination of employment.

(1) Eligibility for benefits. A member shall receive the balance in his DROP account in accordance with the provisions of this subsection upon his termination of employment as a firefighter. Except as provided in subsection (4), no amounts shall be paid to a member from the DROP prior to termination of employment as a firefighter.

(2) Form of distribution.

a. Distribution of a member's DROP account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). Elections under this paragraph must be in writing and shall be made in such time or manner as the board shall determine.

b. Notwithstanding the preceding, if a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.

(3) Date of payment of distribution. Except as otherwise provided in this subsection, distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.

(4) Proof of death and right of beneficiary or other person. The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its. determination of the right of the beneficiary or other person to receive payment shall be conclusive.

(5) Distribution limitation. Notwithstanding any other provisions of this subsection, all distributions from the DROP shall conform to the "Minimum Distribution Of Benefits" provisions as provided for herein.

(6) Direct rollover of certain distributions. This paragraph applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 54-99.

(e) Administration of the DROP.

(1) Board administers the DROP. The general administration of the DROP, the responsibility for carrying out the provisions of the DROP, and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf, may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP, and may allocate among themselves or delegate to other persons all or any portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

(2) Accounts, records and reports. The board shall maintain, records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare, and distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns and data required to be distributed or filed for the DROP pursuant to the Code, and any other applicable laws.

(3) Establishment of rules for administration. Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP, (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP, and the date on which any individual ceased to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.

(4) Limitation of liability.

a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.

b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) General provisions.

(1) Amendment of DROP. The DROP may be amended by an ordinance enacted by the city council at any time, and retroactively, if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be approved which has the effect of decreasing the balance of the DROP account of any member.

(2) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or because he is a minor, the board shall direct that any benefit due him, shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for such benefit.

(3) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board all information that it shall require to establish his rights and benefits under the DROP.

(4) Prevention of escheat. If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, if such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

(5) Written elections, notifications.

a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making elections, notifications or designations by members under the DROP if it determines after due deliberation that such action is justified in and improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and any new administrative procedures, those new administrative procedures shall prevail.

b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree here under shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United

States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(6) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the board nor the city shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(7) Construction. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

(8) Forfeiture of retirement benefits. DROP participants shall be subject to applicable forfeiture provisions provided for under state or federal law. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(9) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2009-13, § 1, 7-21-09; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 4, 9-25-2012; Ord. No. 2012-36, § 5, 12-20-2012; Ord. No. 2014-3, § 4, 3-18-2014)

Sec. 54-101. - Military service prior to employment.

The years or fractional parts of years that a firefighter serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the city fire department shall be added to his years of credited service provided that:

(1) The member contributes to the fund an amount equal to eight percent of the member's current annual salary times the total number of years of credited service purchased, if the purchase is made by the member on or before the later of March 4, 2002 or six months from the date of his employment or reemployment with the fire department. If the purchase is made subsequent to the date described in the previous sentence, the member must contribute to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.

(3) Payment by the member of the required amount shall be made within six months of his request for credit, but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given.

(4) The maximum credit under this section shall be four years.

(5) Credited service purchased pursuant to this section shall count toward vesting but not for eligibility for not-in-line of duty disability benefits.

(Ord. No. 2007-29, § 1, 9-18-07)

APPENDIX A FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

Sec. 54-102. - Prior fire service.

Unless otherwise prohibited by law, and except as provided for in the definition of "credited service" in section 54-77, the years or fractional parts of years that a member previously served as a firefighter with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a full-time firefighter for any other municipal, county or special district fire department in the state shall be added to his years of credited service provided that:

(1) The member contributes to the fund the sum that he would have contributed based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.

(3) Payment by the member of the required amount shall be made within six months of his request for credit , but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given or the member may elect to make payment for the requested credited service over a period of time as provided for in subsection (5).

(4) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or special district fire department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in subsection 54-91(l)(2).

(5) In lieu of the lump sum payment provided for in subsection (3), a member may elect to make payments over a period of time in order to fully pay the amount provided for in subsection (1). The member shall be required to notify the board, in writing, of his election to make payments in the manner provided for in this paragraph. The payment plan provided for in this paragraph shall be subject to the following terms:

    a. The principal amount to be paid shall be determined as set forth in subsection (1).

    b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 24 months from the date of the first payment and shall be reamortized annually to reflect changes in the interest rate provided for in subsection c. below.

    c. Payments shall consist of principal, interest and a one percent per annum administrative fee, with interest adjusted annually to be equal to the fund's rate of investment return for the prior year, or eight percent per annum simple interest, whichever is less.

    d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.

    e. In the event that a member dies, retires (including entry into the deferred retirement option plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.

    f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the plan other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the plan, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him, less all interest paid and less the one percent administrative fee.

(6) The maximum credit under this section for service other than with the city shall be five years of credited service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum purchase of credit for prior service with the city and such credit shall count for all purposes, including vesting.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2015-7, § 3, 6-2-2015)

Sec. 54-103. - Reemployment after retirement.

(a) Any retiree under this system, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.

(b) After normal retirement. Any retiree who is retired under normal (or early) retirement pursuant to this system and who is reemployed as a firefighter and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed, discontinue receipt of benefits. Upon reemployment, the member shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service (and early retirement reduction factor, if applicable) as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service (and early retirement reduction factor, if applicable) as of the date of subsequent retirement. The amount of any death or disability benefit received during a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.

(c) Any retiree who is retired under normal retirement pursuant to this system who is reemployed by the city in a position other than as a firefighter, shall upon being reemployed, continue receipt of benefits for the period of any subsequent employment period. Former DROP participants shall begin receipt of benefits under these circumstances.

(d) After early retirement. Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system. If the reemployed person, by virtue of his reemployment, is eligible to participate in this system, that person shall accrue a second benefit as provided for in subsection (b) above and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not eligible to participate in this system, that person's pension benefit payments shall be suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this system.

(e) Reemployment of terminated vested persons. Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

(f) DROP participants. Members or retirees who were in the deferred retirement option plan shall have the options provided for in this section upon reemployment following DROP participation.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-104. - Benefits and contribution for members hired on or after December 4, 2012.

Notwithstanding any other provision of this system, members hired on or after December 4, 2012, shall be subject to the provisions of sections 54-76 through 54-103, except as otherwise provided below:

(1) The normal retirement date shall be 55 years of age with ten years of credited service. The alternative normal retirement date shall be 52 years of age with 25 years of credited service.

(2) The early retirement date shall be 50 years of age with ten years of credited service.

(3) The definition of "average final compensation" shall be the five best years of the last ten years of credited service.

(4) The definition of salary is base pay and excludes overtime, education pay, specialty and incentive pay, lump sum payments of annual and sick leave, and compensation leave, and all other non-regular compensation.

(5) Members hired on or after December 4, 2012, shall not receive a cost of living adjustment (COLA); shall not be eligible to participate in the deferred retirement option program (DROP); and shall not receive a supplemental benefit.

(6) The maximum benefit at retirement shall not exceed 80 percent of average final compensation. The maximum annual benefit shall not exceed $95,000.00. However, in no event shall a member receive a benefit that is less than two percent of average final compensation for each year of credited service.

(7) The member contribution shall be eight percent of salary.

(8) The benefit multiplier shall be two and one-half percent of average final compensation per year of credited service.

(Ord. No. 2012-36, § 6, 12-20-2012)

Sec. 54-105. - Stabilization fund.

After the retirement system achieves a funded ratio of 100 percent or greater as reflected in the Disclosure Information Per Statement No. 25 of the Governmental Accounting Standards Board - Schedule of Funding Progress, the city will make a contribution of the higher of either the normal cost of the plan or a minimum 13 percent towards a stabilization fund for use during economic downturns to smooth the volatility of required pension payments. This contribution shall be paid to the retirement fund and shall not be used by the city or the members to acquire or fund new or additional benefits.

(Ord. No. 2012-36, § 7, 12-20-2012)

Secs. 54-106—54-120. - Reserved.

AGREEMENT
between
CITY OF PORT ORANGE
and
PORT ORANGE PROFESSIONAL FIREFIGHTERS ASSOCIATION
IAFF

Local 3118
PERC Certification #777

~~(December 5, 2012 through September 30, 2014)~~
TBD through September 30, 2017

For the City: _______________ For the Union: _____________

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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. 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. Upon certification of the new eligibility list, the budgeted vacancy shall be filled within fourteen (14) days.

5.2 The City shall provide employees with a list of the required study materials that will be utilized on the promotional exam ninety (90) days in advance of the promotional exam date. Additionally, the City shall furnish each fire station with a hard copy of all study materials and texts or the equivalent information in electronic format for the promotional examination process.

~~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~~ ELIGIBILITY FOR DRIVER ENGINEER PROMOTIONAL PROCESS

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~~.~~ on the date on which phase one (1) of the test is administered.

After the expiration of the eligibility list established on April 16, 2015 candidates shall be required to hold State of Florida certification as a Fire Service Hydraulics and Fire Apparatus and Pump Operator.

The City shall reimburse each employee $45.00 upon passing the State exam for Fire Service Hydraulics and Fire Apparatus/Pump Operator.

Ranking on the promotional list for Driver/Engineer will be established using the following scoring system and points as outlined in Article 5 section 5.5 under “Additional Points”:

PHASE I:

Driver Engineer Written Exam	100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Driver Engineer texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) points in order to continue to Phase II of the Driver Engineer promotional process.

PHASE II:

Pump Practical Exercise	50 points
Driving Practical Exercise	50 points

PHASE II: includes two separate practical exercises to include the basic functions of a Driver Engineer as well as the candidate’s knowledge of the apparatus and its components. The driving practical exercise will include an over the road and cone course as well as a pumping evolution which will incorporate scenarios which may include items such as the candidate’s ability to utilize water and foam operations, incoming water supply, large and small handlines and master streams. Once the City announces the promotional application process, the City shall identify the specific apparatus designated to be used for Phase II. In the event the apparatus becomes unavailable, the City shall identify an alternative apparatus.

~~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 five (5) years of continuous service as a Port Orange career fire fighter~~,~~ or driver/engineer ~~or paramedic~~; ~~of~~ or four (4) years of continuous service as a Port Orange career fire fighter~~,~~ or driver/engineer ~~or paramedic~~ with an Associate Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field; or three (3) years of continuous service as a Port Orange career fire fighter~~,~~ or driver/engineer ~~or paramedic~~ with a Bachelor Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field. After the expiration of the eligibility list established on May 27, 2014 candidates shall be required to be State of Florida certified at the Officer I level. The City shall reimburse each employee $45.00 upon passing the State Exam.

Ranking on the promotional list for Lieutenant will be established using the following scoring system ~~PROMOTION TO LIEUTENANT~~ and points as outlined in Article 5 section 5.5 under "Additional Points":

PHASE I:

Lieutenant Written Examination: 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Lieutenant texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) points to continue to Phase II of the Lieutenant promotional process.

PHASE II:

Assessment Center 100 points

~~In order to be promoted to a Lieutenant position, 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, leadership skills.~~

~~A. ASSESSMENT CENTER~~

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

In developing ~~appropriate~~ the Assessment Center exercises, the Development Team will solicit input from the Department's current 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~~

5.5 ADDITIONAL POINTS – ALL PROMOTIONS

Additional points for formal education and longevity will be awarded after ~~the written test, assessment center and oral interview~~ all 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/EMS ~~Service~~ Related Degree	3 Points
Four (4) Year Non Fire/EMS ~~Service~~ Related Degree	2 Points
Two (2) Year Fire/EMS ~~Service~~ Related Degree	2 Points
Two (2) Year Non Fire/EMS ~~Service~~ Related Degree	1 Point

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

Fire Officer II – ~~3~~	2 Points
~~Fire Officer I~~ Municipal Fire Inspector– ~~2~~	1 Point~~s~~

~~Employees that have Municipal Fire Inspector certification shall receive one (1) point.~~ Employees ~~that~~ who have one or more Fire Service Instructor certifications shall receive one (1) point. Only the highest level may be counted.

MILITARY ~~VETERAN~~ SERVICE:

Military ~~veterans~~ service 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.

5.6 ~~5.7~~ After testing is complete, a listing will be made of all qualified applicants. The ~~Department Head~~ Fire 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, seniority and education credit (if applicable) will all be compiled to determine the final score. Candidates will be listed in the order of the final score achieved. The ~~Department Head~~ 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~~ effects 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 effects or loss of position on the list.~~

5.7 ~~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. 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.

ARTICLE 6

SENIORITY

6.1 For the purpose of this Agreement, seniority is defined as the length of continuous, uninterrupted service in the Fire Department. 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.

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~~ seniority as ~~listed below~~ recognized in 6.1 shall ~~be considered by the City; however, only where "b" and "c" are relatively equal shall Seniority~~ be the determining factor:

~~(a) Seniority 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.

6.5 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.

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. 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 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 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.

9.3 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

9.4 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 in an electronic PDF format, submitted through the City's emailing system, 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) The electronic signature ~~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. Each step of the grievance must contain a new signature from the grievant;

(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)~~ ten (10) 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)~~ ten (10) 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)~~ ten (10) 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)~~ ten (10) working days from the date of that supervisor's decision shall present the written grievance to the Department Head or designee and shall immediately submit a copy to the Human Resources Director. The Department Head–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 Department Head 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 Department Head.

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)~~ ten (10) 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)~~ ten (10) 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 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
Memorial Day (Observed Day)
Fourth of July
Labor Day

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.

Martin Luther King Birthday: It is acknowledged that the City will be open for business on this date. 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.

Good Friday: It is acknowledged that the City will be open for business on this date. 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.

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 of ~~at~~ one and one half (1 ½) regular hours at ~~times~~ his/her regular rate of pay for each hour worked 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. Under no circumstance will total compensation exceed two and one half (2 ½) times one day's pay at the regular rate.

11.5 Employees who work a forty-hour (40) work week, either by regular schedule or during a modified schedule due to Worker's Compensation assignment will be paid for such holidays specified 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 (1½) 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.~~

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 Fire Administration 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 Fire Administration office on the proper date and time. The City will permit a maximum of two (2) persons on any shift to take off on annual leave at the same time.

12.4 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 Department Head, or in the Department Head's absence, the Department Head'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 ~~Department Head~~ Chief or the ~~Department Head's~~ Chief's designee at least twelve (12) hours in advance of the date requested. If the request is made verbally and approved, it shall be documented in writing as soon as practicable thereafter~~. If the request is made verbally and approved by the on duty shift commander, it shall be documented in writing as soon as practicable thereafter.~~ After the employee has reported for duty, the Chief or his designee may grant annual leave if staffing is available and overtime is not incurred.

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 Department Head or 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 which was selected on or before February 1st, the employee may do so provided that he/she provides the Department Head or the Department Head's designee with notice at least twelve (12) hours prior to the start of the approved annual leave.

Should an employee have an emergency situation that causes the cancellation of scheduled annual leave, the Department Head or the Department Head's designee may approve the cancellation of annual leave and authorize the employee to return to work.

12.8 ~~Accrual of Annual Leave~~ The following sections (12.8 A-F) apply to employees before December 4, 2012:

A. General Term of Accrual - Annual leave shall be earned and accrued ~~by~~

~~eligible employees hired prior to the ratification or implementation of this Article~~ 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. ~~Employees hired after the ratification or implementation of this Article will not accrue Annual Leave until they have successfully completed their one year probationary period.~~

B. Accrual for Current Full-Time Employees Hired Prior to <u>December 4, 2012</u> ~~the Ratification or Implementation of this - Each full-time employee~~ working a forty (40) hour week<u>: Each employee working a 40 hour work week</u> shall accrue annual<u> at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:</u> ~~leave as follows:~~

Length of Continuous <u>Service</u>	~~Hours Earned Weekly~~	Maximum Annual <u>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 Current Full-Time Employees Hired Prior to <u>December 4, 2012</u> ~~the Ratification or Implementation of this Article~~ Working Extended Shifts 168 Hours Every 21 Day Cycle. Each full-time employee working extended shifts shall earn annual leave<u> at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:</u> ~~as follows:~~

Length of Continuous <u>Service</u>	~~Hours Earned Each Week~~	Maximum Annual <u>Accrual</u>
less than 7 years	~~2.846~~	148

7 to 9 years	~~3.308~~	172
9 to16 years	~~4.000~~	208
16 to 20 years	~~4.231~~	220
More than 20 years	~~4.692~~	244

D. Maximum Accrual for Current Employees Hired Prior to December 4, 2012 ~~the Ratification or Implementation of this Article~~ - Annual leave normally is to be taken in the anniversary year in which it is ~~earned~~ accrued. 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.

E. Employees hired prior to December 4, 2012 ~~the ratification or implementation of this Article~~ will be permitted to use annual leave in accordance with Department policy in units of not less than four (4)-hour 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.

F. Employees hired prior to December 4, 2012 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 or other City adopted 457 Plan, for this unused leave.

Leave indicated on the second to last paystub received in September shall be paid or deferred into the employee's ICMA-RC 457 Plan account or other City adopted 457 Plan at the rate in effect on September 15, by the last pay period in September.

12.9 The following sections (12.9 A-E) apply to employees hired on or after December 4, 2012:

A. Accrual for full time employees working a forty (40) hour week hired on or after December 4, 2012 shall accrue no more than ninety six (96) hours of Annual Leave each year.

B. Accrual for full time employees working extended shifts(168 Hours Every 21 Day Cycle) hired on or after December 4, 2012 shall earn no more than one hundred forty eight (148) hours of Annual Leave each year.

C. Employees hired on or after December 4, 2012 on shall accrue annual leave from the most recent date 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. Should a new probationary employee, as defined in Article 7.1, fail to successfully complete the probationary period or should such employee be discharged the employee shall forfeit all accrued annual leave.

In the event of extenuating and/or emergency circumstances, the Fire Chief may allow a probationary employee to use annual leave prior to completing six (6) months of continuous service.

D. Unused annual leave may be accumulated to a maximum of two hundred forty (240) hours. Leave in excess of two hundred forty (240) hours effective the second to last pay check received in September of each successive year shall be forfeited.

E. Employees will be permitted to use annual leave in accordance with Department policy in units of not less than four (4)-hour 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 of maximum of thirty-two (32) days away from duty.

~~12.9 Initial Probationary Period – Current Employees Hired Prior to the Ratification or Implementation of this Article 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 twelve months (12) 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 for Current Employees Hired Prior to the Ratification or Implementation of this Article - 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~~ ~~Employees hired prior to the ratification or implementation of this Article will be permitted to use annual leave in accordance with Department policy in units of not less than four (4)-hour 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.~~

12.10
~~12.12~~ An employee who is terminated for cause (not for inline duty disability) or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated leave. An employee who resigns with a two (2) week notice, is laid off, or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) ~~hired prior to the ratification or implementation of this Article~~ shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section ~~12.10~~ 12.8 (d) and 12.9 (d). ~~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 or other City adopted 457 Plan, 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.

12.11
~~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 hired prior to the ratification or implementation of this Article 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 or other City adopted 457 Plan, 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 or other City adopted 457 Plan at the rate in effect on September 30, by the third full week in October.~~

~~12.15 The following sections (12.15 A-G) apply to employees hired after the ratification or implementation of this Article:~~

~~A. Accrual for full time employees working a forty (40) hour week hired on or after the implementation of this Article shall earn no more than ninety six (96) hours of Annual Leave each year.~~

~~B. Accrual for full time employees working extended shifts fifty six (56) hours weekly hired on or after the implementation of this Article shall earn no more than one hundred forty eight (148) hours of Annual Leave each year.~~

~~C. Reserved~~

~~D. Employees hired on or after the implementation of this Article will not accrue Annual Leave until they have successfully completed and passed the twelve (12) month new-hire probationary period. Upon successful completion and passing of the new hire probationary period, these employees will have the appropriate balance of Annual Leave (as shown in sections A or B or C as above as appropriate) credited to their Annual Leave accruals. Should a new probationary employee, as defined in Article 7.1, fail to successfully complete the probationary period or should such employee be discharged the employee shall not be credited any annual leave.~~

~~E. Employees hired on or after the implementation of this Article are required to use at least one-half of their accrued leave each year.~~

~~F. Unused annual leave may be accumulated to a maximum of one hundred (148) hours. Leave in excess of one hundred (148) hours effective September 30 of each successive year shall be forfeited.~~

~~G. Employees will be permitted to use annual leave in units of not less than one full shift subject to approval of their supervisor. In case of conflict, annual leave shall be granted on the basis of seniority.~~

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. Sick leave, annual leave, bereavement leave, jury duty 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 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.

<u>13.5 An employee shall be eligible to receive call-back pay when they are required to report to work with less than twelve (12) hours notification.</u>

<u>Call-back pay shall be a minimum payment of three (3) 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.</u>

<u>The call-back period shall end at the commencement of the employee's regularly scheduled shift. These hours will be included in the payroll</u>

check that corresponds with the week in which the call-back hours were actually worked. Employees will be eligible for payments qualified under this section as appropriate even if they have not worked the minimum required hours in the FSLA cycle.

Call-back pay does not include holdovers, which are when an individual has not left their work place and agrees or is mandated to holdover until relief arrives. Call back also does not include scheduled overtime in which an employee has left their normal place of work and receives more than twelve (12) hours of notification regardless of whether the overtime is voluntary or mandated.

~~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 unless otherwise approved by the Fire Chief or his designee, 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 on overtime".

13.13 Forty-eight (48) hours will be the maximum number of consecutive hours that may be worked at one time before requiring a minimum of twelve (12) hours off before returning to duty. The forty-eight (48) hours will include all forms of work such as normal tours of duty, overtime, shift exchanges, early relief, and special details requiring emergency services. The Chief or his designee may override this provision in extraordinary circumstance.

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 current IRS standard mileage rate. 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 Department Head by the employee during the week that the private automobile was used. Failure to follow this procedure will result in the claims being denied.

14.3 Those using personal vehicles are required to have minimum automobile insurance coverage for liability in the amount of $100,000 (required by law) for each person, $300,000 for each accident, and property damage of $50,000. The City will not assume responsibility for any damages to employee's vehicle. The mileage reimbursement payment includes a factor for both liability and collision insurance coverage. Proof of insurance is to be provided to the City's Risk Manager on an annual basis.

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~~ ride up pay for the period of time the employee is so assigned. This ~~specialty~~ ride up 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 In the event an employee is temporarily selected to fill a vacant promotional position on an interim basis exceeding ten (10) shifts, the employee shall receive a 5% salary adjustment above their current base pay, but in no event shall the salary adjustment be lower than the hiring rate for the new position.

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 and to attend medical appointments without loss of pay. This includes time off to recover from off-duty illness or injury that prevents an employee from being able to adequately perform their required job duties and functions. 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 accrue ~~earn 1.8461 hours of sick leave per week, to a maximum~~ of 96 hours of sick leave at an equally prorated amount per pay period 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 of sick leave at an equally prorated amount per pay period per year. In the event an employee has worked less than a full year, the total number of accrued hours of sick leave will be reduced proportionally.

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 their option, deferral into an ICMA-RC 457 Plan account up to the maximum amount provided by law, as provided herein. The maximum unused sick leave that may be exchanged for pay or 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 after the amount of sick leave requested to be sold is subtracted from their accrual. Other personnel must maintain a minimum balance of at least forty (40) hours of accumulated sick leave after the amount of sick leave requested to be sold is subtracted from their accrual.

~~C. Bargaining unit members are not eligible for Sick Leave Pay Off.~~

~~A. As of the date of the ratification of this collective bargaining agreement, the maximum amount of sick leave that employees will be able to carry forward into following fiscal years will be seven hundred fifty (750) hours. Only employees who have already accrued in excess of seven hundred fifty (750) hours of sick leave as of the date of the ratification of this collective bargaining agreement, will be able to carry forward each fiscal year a sick leave balance equal to their total sick leave accrual as of the date of the ratification of this collective bargaining agreement but in no case more than one thousand (1000) hours. Employees hired after the ratification of this collective bargaining agreement will be limited to carry forward each fiscal year a sick leave balance equal to five hundred (500) hours. Accrued sick leave hours as of September 30 which are in excess of the accrual cap amounts for each particular employee shall be forfeited.~~

16.3 ~~Reserved.~~ Accumulation of Sick Leave and Sick Leave Sell Back/Deferral

The maximum amount of sick leave that employees will be able to carry forward into the following year will be seven hundred fifty (750) hours. Only employees who have already accrued in excess of seven hundred fifty (750) hours of sick leave as of December 4, 2012, will be able to carry forward each fiscal year a sick leave balance equal to their total sick leave accruals as of December 4, 2012 but in no case more than 1000 hours. Employees hired after December 4, 2012 will be limited to carry forward each fiscal year a sick leave balance equal to five hundred (500) hours. Accrued sick leave hours as reflected on the second to last pay check received each September which are in excess of the accrual cap amounts for each particular employee shall be paid off by the City at the employee's regular hourly rate in effect on September 15th for each hour of sick leave.

At the employee's option, the employee may defer this payment into an ICMA-RC 457 Plan account up to the maximum amount provided by law.

A. Sick Leave Sell Back/Deferral
   i. 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 deferral, the following procedures shall apply to sick leave exchanges for pay:

All members 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 deferral into the employee's ICMA-RC 457 Plan account each year. Each employee shall receive one hour of pay or deferral at his/her regular hourly rate as of September 15 of the year that the exchange is being made for each hour of unused sick leave being cashed in or deferred.

ii. 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, the following procedures shall apply to sick leave exchange:

All members must maintain a minimum balance of forty (40) (or seventy-two (72) hours of sick leave for shift employees).hours of sick leave. Employees may exchange a maximum of one hundred ninety-two hours of unused sick leave for pay or deferral into the employee's ICMA-RC 457 Plan account each year. Employees who have accumulated more than the minimum hours of sick leave but less than one hundred (100) hours which they wish to exchange may exchange that leave for pay or deferral at the rate of three (3) hours of sick leave for one (1) hour of pay or deferral.

Employees who accumulate more than one hundred (100) hours of sick leave which they wish to exchange may exchange that leave for pay or deferral at a rate of two (2) hours of sick leave for one (1) hour of pay or deferral. At all times a minimum of forty (40) hours (or seventy-two (72) hours of sick leave for shift employees). of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

16.4 ~~Reserved.~~ Subject to the provisions of this Agreement, an employee may cash in, or at his/her option, defer into an ICMA-RC 457 Plan account, at his/her regular rate of pay effective on September 15, his/her accumulated sick leave hours by obtaining the appropriate form and submitting it upon completion to the Human Resources division no later than September 1st of such fiscal year, subject to the restrictions indicated in Section 16.2.B. Failure to submit this form will result in an employee's accrued sick leave bank being "banked" for future use or pay-off as provided here-in. Any sick leave taken after the filing of such form shall first be deducted from the accrued sick leave "in the bank", and, secondly, from those days for which payment is sought but not yet paid.

All payments or deferrals for unused sick leave made under this Article shall be made on or about the last pay period in September.

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 Resignation, Retirement, or Death – An employee who resigns with two (2) weeks prior notice and has a minimum of ten (10) years of service with the City or ~~who~~ retires under the provisions of the City's pension plan (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, at their regular rate of pay.

16.8 An employee who is fired (other than for in line duty disability), dismissed, or who quits and/or separates from the City for any reason other than detailed in 16.7 ~~so employment with the city is terminated (to include the employee being fired or dismissed from the City) for any reason other than retirement, death, or layoff~~ shall forfeit ~~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 Donation Process~~Bank~~ - Both parties agree to work towards establishing ~~and implement~~ a Sick Leave ~~Bank~~ donation process to allow employees to contribute sick leave hours ~~for~~ to other employees.

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 ~~Department Head~~ 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 ~~Attendance at union seminars and other functions shall be at the employee's own expense – the City will no longer pay an employee to attend union activities.~~ The Union President or the President's designee will be permitted to attend local and state seminar functions of the Association without a loss of pay for a maximum for forty-eight (48) hours per calendar year each without such leave being charged against leave time. No other compensation shall be allowed for expenses. No compounding of compensation shall be allowed for functions occurring on leave or holidays. This time will not be counted as hours worked for the purpose of calculating overtime.

17.5 The Union 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~~ Two (2) members of the designated Association negotiating team (employees of the City) shall be permitted to attend all negotiating sessions for a successor agreement to this Agreement without loss of pay. ~~allowed to negotiate a successor agreement to this Agreement on their own time, at no expense to the City.~~

17.7 The Department Chaplain appointed by the Fire Chief ~~Department Head~~

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 Department Head and the Union President, with their respective designees. In the event personnel issues are to be discussed, then the City's Director of <u>Administrative Services</u> ~~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 health insurance program for the employees, with the City paying the lowest “employee only” rate among any health insurance plans with a co-pay offered. Dependent coverage will be at the employee’s expense.

ARTICLE 19

UNIFORMS AND EQUIPMENT

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

2 Dress Shirts
- One long sleeve and one short sleeve with appropriate patches

1 Tie
1 Tie clip
2 Polo Style Shirts
5 Work Style Pants
5 T-Shirts
2 Gym Shorts - appropriately sized
<u>2 Long Sleeved T-shirts</u>
<u>1 Beanie Cap</u>
1 Pair of Sweatpants
2 Sweatshirts
1 Ball Cap
1 Pair of Boots – low or high top style
1 Badge
1 Set of Collar Brass
1 Name Tag
1 Winter Jacket, with liner – with appropriate patches
1 Helmet with face shield
1 Turnout Jacket
1 Turnout Pants
1 Suspenders
1 Pair Turnout boots
1 Belt
1 Flashlight
1 Pair of Structural Firefighting 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).
1 Gear Bag
1 SCBA Mask
1 Reflective Safety Vest

19.2 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 Department Head, Human Resources Director and up to two (2) union representatives 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.

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

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

19.7 <u>Fire service employees will be permitted to wear a pin approved by the Fire Chief no larger than collar brass, that includes the union emblem on their Class A uniform. Placement of the pin shall be in a manner which does not obstruct any other department insignia.</u>

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.,~~ forty eighth (48) hours for extended shift employees or four (4) work days for employees working a forty hour work week) per event, for a maximum ninety-six (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 Department Head may, in his discretion, grant an employee additional leave time.

In the event of the death of an immediate family member, defined as parent, spouse, child, step-child, or sibling the employee shall be allowed to use seventy-two (72) hours for extended shift employees of consecutive time off. The maximum of ninety-six (96) hours of paid bereavement leave in a fiscal year remains.

20.2 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 During the term of this contract, employees shall receive no increase in pay other than what is provided for in this agreement. All future wage increases beyond the term of this collective bargaining agreement, if any, shall be subject to negotiation by the Union and the City. Wage increases set forth in this Article shall be effective on the designated dates set forth in this Article below.

~~As of the effective date of this agreement, the City shall implement all terms of Article 21, Wages as imposed effective March 4, 2010, except that members shall receive the same hourly rate of pay that was in effect on March 4, 2010, without the 6% wage decrease that was imposed. Hereafter, there will be no more salary adjustments and no more step increases on an employee's anniversary date.~~

21.2 ~~The Union and the City agree that those members that received step increases during the time period that this Article 21, Wages was being litigated would owe that money retroactively back to the City. The Union and the City agree that the City would not seek to recoup that money owed.~~

Effective 10/01/2014 to 09/30/2015 the following pay ranges will be implemented within the Fire and Rescue Department:

Firefighter:	$11.25 - $18.15
Driver Engineer:	$12.28 - $19.03
Lieutenant:	$14.91 - $22.19

Those employees recognized by the City as performing Paramedic related functions shall be eligible to receive Specialty Pay as set forth under the parameters defined in Article 30, Specialty Pay.

The pay ranges effective 10/01/2015 to 09/30/2016 for the positions within the Fire and Rescue Department shall be as follows:

Firefighter:	$11.73 - $18.15
Driver Engineer:	$12.66 - $19.03
Lieutenant:	$15.23 - $22.19

Those employees recognized by the City as performing Paramedic related functions shall be eligible to receive Specialty Pay as set forth under the parameters defined in Article 30, Specialty Pay.

21.3 The Union and the City agree that the step plan has been eliminated and replaced with pay ranges.

21.4 ~~Employees who are still serving their initial probationary period on the effective date of this Agreement will receive a 1.0% salary adjustment on their one (1) year anniversary date. Thereafter, there will be no more salary adjustments on an employee's anniversary date.~~

Fiscal Year 2015: Effective 10/01/2014, employees currently designated within the Tech II/Paramedic classification will be reclassified to the Firefighter classification, with the Firefighter pay range as provided in 21.2. Effective 10/01/2014, employees who were designated as the Tech II/Paramedic position shall receive a $0.16 per hour increase to their base pay. After the increases described in this paragraph have been applied, any current employee below the minimum ranges effective 10/01/2014 as provided for in Section 21.2 shall be brought up to the minimum of the appropriate pay range.

Effective 10/01/2014, with the exception of the employees described in the above paragraph, covered members will receive a $0.50 per hour increase to their base pay. After the increases described in this paragraph have been applied, any current employees below the minimum ranges effective 10/01/2014 as provided for in Section 21.2 shall be brought up to the minimum of the appropriate pay range.

Fiscal Year 2016: Effective 10/01/2015, all employees who have been employed for at least one year as of 10/01/2015, except those at the maximum of their pay range shall receive a two and one half percent (2.5%) increase to their base pay. After the increases described in this paragraph have been applied, any current employees below the minimum ranges effective 10/01/2015 as provided for in Section 21.2 shall be brought up to the minimum of the appropriate pay range.

The City agrees to administer a one-time retroactive paycheck to each active covered member for any wages described herein that were not implemented by the effective dates described above in this Section.

Fiscal Year 2017: The Union and the City agree to re-open Article 21, Wages to negotiate wage increases for the year of October 1, 2016 to September 30, 2017.

~~21.5~~ ~~New employees hired on and after the effective date of this Agreement shall be hired at the hiring rate as~~ indicated in 21.2. ~~follows:~~

~~FF/Tech 1: $10.77~~
~~Driver/Eng.: $11.91~~
~~Tech II/Para: $12.39~~
~~Lt.: $14.59~~

~~21.6~~ ~~The pay ranges for the positions within the Fire and Rescue Department shall be as follows:~~

~~FF/Tech 1: $10.77 - $17.93~~
~~Driver/Eng.: $11.91 - $19.03~~
~~Tech II/Para: $12.39 - $20.60~~
~~Lt.: $14.59 - $22.19~~

21.~~7~~5 Promoted employees shall receive a 5% salary adjustment above their current Pay rate, but in no event shall the salary adjustment be lower than the hiring rate for the new position.

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

21.~~9~~6 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.~~10~~7 Employees newly hired may be started at a higher rate of pay than the minimum starting rate, upon evaluation by management. For a term expiring September 30, 2017 only, a limitation shall be placed on the starting rate for newly hired. During this period, newly hired employees with five (5) or more years of working experience in fire or EMS may only be started at a higher rate of pay not to exceed a 2.5% increase higher than the minimum starting rate, upon evaluation by management. At the expiration of this term, this provision shall no longer apply unless the parties mutually agree in writing otherwise.

21.~~11~~8 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.~~12~~9 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 ~~Department Head~~, 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.

21.1~~3~~0 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 shall not affect subsequent granting of compensatory time off in future workweeks or work periods.

21.~~14~~11 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. However, such lump sum payment shall not be included in the employee's base salary for the purpose of computing pension benefits.

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 (hereby referred to as the "Retirement Plan). Pensions and other retirement benefits for bargaining Unit employees which are not specifically enumerated in this labor Agreement are as set forth in the Retirement Plan. The City agrees to maintain the benefits and member contributions set forth in the Retirement Plan, with the changes provided below. An employee in this Bargaining Unit who entered the DROP program prior to the effective date of this contract shall not be subject to the terms of this Article but shall continue to be governed by the remaining terms of this contract. An employee in this bargaining Unit who enters the DROP program on and after the effective date of this contract shall be subject to all of the terms of this contract including this Article.

The Bargaining Unit agrees that through September 30, 2018, the Bargaining Unit will not request the City to increase the benefit multiplier for any existing or future members of the Retirement Plan.

~~There will be no change in the accrued benefits of current Plan members. Benefits earned prior to the effective date of the plan changes, including the COLA as applied to those benefits, will remain as provided in the current Retirement Plan.~~

The parties agree to amend the Retirement Plan following the adoption of the Ordinance implementing this Article, with changes to benefits effective January 1, 2016 ~~the first of the month following the adoption of the Ordinance implementing this Article (the "effective date"), using a tiered approach~~ as follows:

22.2 All members shall be allowed to participate in the DROP program. The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the system for that quarter. Net investment return is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions and transaction costs.

Allow DROP election and participation any time after becoming eligible for normal retirement.

22.3 The minimum in-line of duty disability benefit shall be increased from 42% to 51% of Average Final Compensation.

~~Tier One – Current Employees (employed and not participating in the DROP on the effective date):~~

A. ~~The normal retirement date shall be fifty-five (55) years of age with ten (10) years of credited service. The alternative normal retirement date shall be fifty-two (52) years of age with twenty-five (25) years of credited service.~~

B. ~~Notwithstanding paragraph A. above, current bargaining unit members with ten (10) or more years of credited service on the effective date will qualify for an alternative normal retirement date of age forty-eight (48) with twenty-five (25) years of credited service. In order to qualify for supplemental and COLA benefits, such bargaining unit members must complete at least twenty-five (25) full years of credited service. (Names of eligible members will be included as an exhibit to the ordinance.)~~

C. ~~The early retirement date shall be age fifty (50) and ten (10) years of credited service.~~

D. ~~The definition of "average final compensation" shall be the five (5) best years of the last ten (10) years of credited service; provided, in no event will average final compensation be less than the average of the three (3) best years of compensation prior to the effective date.~~

E. ~~Upon the effective date, members shall be eligible for a supplemental benefit of $20.00 per year of credited service up to a maximum of $500.00 per month upon retirement after completion of at least twenty-five (25) full years of credited service; provided, any current member who is employed and not participating in the DROP on the effective date who first attains eligibility for normal retirement at age fifty-five (55) with ten (10) or more years of credited service shall be eligible for a supplemental benefit as follows:~~

~~1) Upon retirement following completion of 20-22 full years of credited service - $10/month per year of credited service.~~

~~2) Upon retirement following completion of 23-24 full years of credited service - $15/month per year of credited service.~~

~~3) Upon retirement following completion of 25 or more full years of credited service - $20/month per year of credited service, up to a maximum of $500/month.~~

F. ~~The definition of salary is base pay and excludes overtime, education pay, specialty and incentive pay, lump sum payments of annual and sick leave, and compensation leave, and all other non-regular compensation.~~

G. ~~The maximum benefit at retirement (including the base benefit plus any supplemental benefits) shall not exceed 90% of average final compensation. However, in no event shall a member receive less than 2% of average final compensation for each year of credited service. The maximum annual benefit including COLA and supplemental benefit shall not exceed $95,000.00.~~

~~The cost of living adjustment (COLA) shall be revised as follows:~~

1. ~~To be eligible for a COLA, a member must obtain age fifty-two (52) and complete twenty-five (25) full years of credited service.~~

~~Exceptions:~~

a) ~~Any current bargaining unit member who is employed and not participating in the DROP on the effective date and first attains eligibility for normal retirement at age fifty-five (55) with ten (10) or more years of credited service shall be eligible for COLA benefits upon completion of at least twenty (20) full years of credited service. (Names of eligible members will be included as an exhibit to the ordinance.)~~

b) ~~Current bargaining unit members who qualify for the alternative normal retirement date of forty-eight (48) years of age with twenty-five (25) years credited service pursuant to paragraph B. above must complete at least twenty-five (25) full years of credited service to be eligible for COLA benefits.~~

2. ~~The first COLA for eligible members will be applied on the first day of January following the recipient attaining fifty-nine (59) and one-half (½) years of age and having been retired a minimum of eight (8) full years, provided the conditions under paragraph 22.2 H. 4. below are met.~~

3. ~~When a COLA is applied in accordance with paragraph 22.2.H.4. below, the amount of the COLA will be the lesser of~~

~~a.) the most recent cost of living adjustment calculated by the Social Security Administration for payments to Social Security recipients; or b.) 3% of the current benefit. However, if Social Security recipients receive no increase in benefits in any given year, then no COLA will be applied in that same year.~~

4. ~~A COLA will be applied only in those years in which the Plan meets or exceeds the actuarial assumptions reflected in the Plan's Actuarial Valuation Report as of October 1, 2007, such that there is no actuarial loss for the most recent plan year. In addition, the Funded Ratio reflected in the "Disclosure Information Per Statement No. 25 of the Governmental Accounting Standards Board – Schedule of Funding Progress" (page 25 of the Actuarial Valuation Report of October 1, 2007) in the most recent actuarial valuation report must be 80% or more.~~

~~Exceptions:~~

a) ~~Under the Retirement Plan, as revised, current members will be eligible for the current COLA in effect prior to Ord. 2012-19 as applied to that portion of their benefit based on service prior to the effective date. Benefits earned prior to the effective date of the plan changes, including the COLA as applied to those benefits, would be protected.~~

b) ~~Credited years of benefits accrued prior to the ratification of the contract shall be subject to the former ordinance as it relates to COLA provisions. Members must meet vesting requirements as outlined in the ordinance before actually receiving any benefits.~~

~~Example:~~

a) ~~A member has earned 2 years of credited service as defined by the pension ordinance prior to ratification of the contract. This same member completes 23 more years of credited service. This member would be eligible for a COLA, computed using the 2 years of credited service at the former benefit level and 23 years of credited service under the current benefit formula.~~

~~b) A member earns 15 years of credited service prior to ratification of the contract. This same member completes 10 more years of credited service following the ratification of this contract. This member would be eligible for a COLA computed using 15 years at the former benefit level and 10 years computed at the current benefit level.~~

H. ~~DROP accounts will be credited or debited at a rate equal to the net rate of investment return realized by the retirement system. A self-directed DROP option may be established by the Fire Pension Board.~~

I. ~~Increase the member contribution from the current 0.5% of salary to 7.5% of salary.~~

J. ~~Multiplier shall remain at 3% of average final compensation per year of credited service.~~

~~22.3 Tier Two - Employees Hired After the ratification of this agreement - All members hired after the ratification of this agreement shall receive the retirement benefits provided in the Retirement Plan, as revised below:~~

~~A. The normal retirement date shall be 55 years of age with 10 years of credited service. The alternative normal retirement date shall be 52 years of age with 25 years of credited service.~~

~~B. The early retirement date shall be 50 years of age with 10 years of credited service.~~

~~C. The definition of "average final compensation" shall be the five (5) best years of the last ten (10) years of credited service.~~

~~D. The definition of salary is base pay and excludes overtime, education pay, specialty and incentive pay, lump sum payments of annual and sick leave, and compensation leave, and all other non-regular compensation.~~

~~E. Tier two employees shall not receive a Cost of Living Adjustment (COLA); shall not be eligible to participate in a Deferred Retirement Option Program (DROP); and shall not receive a supplemental benefit.~~

~~F. The maximum benefit at retirement shall not exceed 80% of average final compensation. However, in no event shall a member receive less than 2% of average final compensation for each year of credited service.~~

~~The maximum annual benefit shall not exceed $95,000.00.~~

~~G. Member contribution shall be 8% of salary.~~

~~H. The multiplier shall be two and one-half percent (2.5%) of average final compensation per year of credited service.~~

22.4 After the Retirement Plan achieves a funded ratio of 100% or greater as reflected in the current Disclosure Information prepared in accordance with ~~Per Statement No. 25 of the~~ Governmental Accounting Standards Board requirements~~– Schedule of Funding Progress~~, the City will make a contribution, of the higher of either the normal cost of the plan or a minimum thirteen percent (13%) towards a stabilization fund for use during economic downturns to smooth the volatility of required pension payments. This ~~fund~~ contribution shall be paid to the pension ~~board~~ fund and shall not be used by the City or the members to acquire or fund new or additional benefits.

22.5 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.

22.6 In compliance with Florida Statute 175.351(6), the City agrees that a defined contribution plan ("DC Plan") shall be created as a component of the Retirement Plan, but will not be activated unless and until a portion of Chapter 175 premium tax revenues have been assigned to fund the DC Plan. The provisions of the DC Plan, when and if activated, shall be negotiated by the parties at the time funding is assigned to the DC Plan. With regard to the use of Chapter 175 premium tax revenues, the Retirement Plan will continue to operate under the "Naples Letter" interpretation until September 30, 2018, as allowed by Florida Statute 175.351(7).

22.7 The current pension ordinance except as modified by this contract is attached to this collective bargaining agreement as Appendix A.

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 normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he is absent from work as a result of fulfilling his jury duty obligation. The employee summoned as a juror shall attach a copy of his summons to the Leave of Absence Request. An employee who is released from jury duty prior to four (4) hours from his normal end of the workday, shall be required to report to his work site immediately after his release.

23.2 An employee subpoenaed as a witness for a court proceeding, not involving personal litigation, shall be granted leave with 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 normal starting time for that work day, he shall be required to report to his work site immediately after his release from such subpoena.

23.3 Any court proceeding of a personal nature will not be subject to this Article.

ARTICLE 24

ALCOHOL AND DRUG TESTING

24.1 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. 2 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 Department Head, 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 Department Head, 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 test.

C. In the event the Department Head, 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.

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. 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.

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 Department Head, 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 Department Head, 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 Department Head 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.

24.3 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.

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 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.

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 Department Head, 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 standard operational procedures.

26.2 Failure to take corrective action against an employee for violation of these rules, regulations and/or standard operational procedures 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 standard operational procedure may be subject to corrective action, including dismissal for just cause.

Whenever an action occurs which may or m ay 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.

26.4 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

~~RESERVED~~ POLICIES OF THE FIRE DEPARTMENT

27.1 Employees shall comply with all applicable Fire Department policies and amendments thereto, which are currently in effect unless in conflict with an express or specific provision of this Agreement or MOU's. In such case the negotiated provisions of this Collective Bargaining Agreement will control. Amendments shall be made in accordance with the procedures outlined in this Agreement.

27.2 Except in exigent circumstances as defined by law, the City will provide the Union with a copy of all proposed additions and modifications of rules, regulations and standard operating procedures at least seven (7) calendar days before implementing the new rule or regulation.

27.3 After adoption, all employees must have a right to have the amendment explained to them by the Chief or his designee if requested.

ARTICLE 28

MILITARY LEAVE

28.1 Bargaining unit members will be allowed military leave in accordance with conditions set forth in the Uniformed Services Employment and Reemployment Act (USERRA), and Sections 115.07, 115.09, 115.14 and 250.48, Florida Statutes and in accordance with the City's Military Leave Policy. This Policy, as amended from time to time, is set forth in the City's Civil Service Rules and Regulations, Chapter 3, Attendance and Leave, 3.07, Military Leave.

28.2 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.

28.3 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.

28.4 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 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 Department Head and the City Manager. Requests for such educational leave must be approved in writing in advance by the Department Head 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 Department Head.

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.

ARTICLE 30

SPECIALTY AND EDUCATION INCENTIVE PAY

30.1 This will establish a Specialty Payment Program within the Fire and Rescue Department whereby members of special teams and members with special assignments are to receive a Specialty Payment for their assignments to these positions. Specialty Payments will only be received for periods in which an individual is actually assigned to and working in the special duty. ~~, and annual payments will be prorated to exclude non-special duty periods~~:

~~EMS Coordinator~~	~~$780.00, payable annually~~
~~EMS Assistant~~	~~$780.00, payable annually~~
~~ERT Member~~	~~$1,040.00, payable annually~~
EMS Coordinator	$15.00 per week
EMS Assistant	$15.00 per week
EMS Quality Assurance (Reporting)	$15.00 per week
HAZMAT Team Member	$15.00 per week
Training Committee Member	$15.00 per week
EMS Instructor	$15.00 per week

- For EMS Instructor, one of the following categories qualifies: BLS, ACLS, ITLS/PHTLS, PEPP or PALS.

The determination of the number of authorized members assigned to and working in the special duty shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation. The total number of special duty assignments as listed above will be limited to two (2) assignments per employee.

30.2 In accordance with State requirements, ~~a Firefighter or Paramedic~~ an employee covered under this Collective Bargaining Unit 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

Payments detailed in this section will be paid on a prorated basis each pay period.

30.3 A Firefighter or Paramedic who completes the following courses and Department testing shall be designated by the Department Head as a relief driver/pump operator and will be entitled to receive a $15.00 a week ~~$780.00 annual~~ incentive payment. All relief drivers must be qualified to drive all apparatus:

Fire Service Hydraulics
Fire Apparatus Operations

30.4 A Firefighter or Driver Engineer who is State of Florida Certified as Fire Officer I shall receive specialty pay in the amount of $15.00 per week. Promotion to Lieutenant will result in elimination of this incentive pay.

Upon promotion, the $15.00 a week will be converted into an hourly amount based on the standard base pay for a week and incorporated into the employee's current base rate of pay prior to determining the employee's promotional rate of either the 5% or minimum starting rate for their promotional assignment. If the starting rate for the promotional assignment is the higher, they will go to the starting promotional rate, not the starting promotional rate plus the additional $15.00 a week.

~~30.4~~30.5 An employee who completes the requirements for, and becomes certified as a ~~Municipal~~ Fire Safety Inspector, will be entitled to receive a $20.00 weekly ~~$1,040.00~~ education incentive payment~~, payable annually~~.

30.~~5~~6 Any employee completing and maintaining certification for State of Florida Fire Instructor shall ~~the following Instructor ratings will~~ receive a payment of: ~~$520.00, payable annually, for the first certification and $780.00, payable annually for each additional certification, with the exception that, only Lieutenants will be eligible for the additional payment for the certification under No. 3. below.~~

1. Fire Instructor I: $10.00 per week
2. Fire Instructor II: $25.00 per week
3. Fire Instructor III: $40.00 per week

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

Employees will receive payment for the highest instructor level held and maintained.

30.~~6~~7 ~~Lieutenants who are also certified paramedics will receive a $2,080.00~~

~~Specialty Payment, payable annually, as long as Paramedic certification is maintained. Driver Engineers who are also certified paramedics will receive a $1,040.00 payment, payable annually, as long as Paramedic certification is maintained, in addition to continuing to be paid at the "Paramedic" pay scale range.~~

Effective 10/01/2014, covered employees who are certified paramedics who have been cleared by the department and medical director and eligible for paramedic specialty pay will receive $55.00 per week of specialty pay, as long as the paramedic certification is maintained. The determination of the number of authorized members receiving paramedic specialty pay shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation.

Effective 10/01/2015, covered employees who are certified paramedics who have been cleared by the department and medical director and eligible for paramedic specialty pay will receive $85.00 per week of specialty pay, as long as the paramedic certification is maintained. The determination of the number of authorized members receiving paramedic specialty pay shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation. This rate for paramedic specialty pay will continue through 09/30/2016.

30.~~7~~8 All payments under this Article~~, other than those paid under Article 30.2 above, shall be paid in a single, lump-sum payment in the employee's last paycheck of the calendar year, and~~ shall not be included in the employee's annual salary for the purpose of calculating pension benefits. ~~An employee's lump-sum payment shall be pro-rated in the year the employee first qualifies for the payment, based upon the number of days remaining in the calendar year from the date the employee first qualifies for the payment. Payments will also be pro-rated to exclude~~ Employees will not be eligible for payments for periods in which an individual was not assigned to special duty, or where a required certification lapses.~~ An employee who is terminated by the City for cause shall not be entitled to any payments under this Article. However, an employee who voluntarily leaves employment with the City and provides his or her supervisor with two (2) weeks advance notice of termination shall be entitled to a pro-rated payment of accrued, unpaid specialty pay pursuant to this Article 30.~~

~~30.8~~ ~~Upon the effective date of this Agreement the City shall implement all terms of the Article 30, Specialty and Education Incentive Pay, as imposed~~

~~effective March 4, 2010.~~

~~The Union and the City agree that those members that received Specialty or Incentive pay that were eliminated during the time period that this Article 30, Specialty and Education Incentive Pay was being litigated would owe that money retroactively back to the City. The Union and the City agree that the City would not seek to recoup that money owed.~~

30.9 The Union and the City agree to re-open Article 30, Specialty Pay to negotiate any changes for the year of October 1, 2016 to September 30, 2017.

30.10 The City agrees to administer a one-time retroactive paycheck to each active covered member for any specialty pay described herein that were not implemented by the effective dates described above in this Section.

ARTICLE 31

~~RESERVED~~ TUITION REIMBURSEMENT

31.1 Subject to budget constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees) up to two (2) approved classes per semester. The employee will be reimbursed at the Daytona State College (DSC) rate.

31.2 The City will reimburse the employee for tuition (excluding fees) for graduate course work at the rate of one half (1/2) the cost of tuition for graduate course work at the University of Central Florida (UCF) rate, regardless of where the courses are taken. Courses will be paid on a reimbursement basis with proof of payment and grade.

31.3 The City will require each employee to remain in the service of the City for one (1) year after completion or termination of the most recent class paid for by the City or the employee will be required to reimburse the City for the costs of tuition unless the employee is terminated by the City. This obligation will begin on the day after the school semester is completed.

31.4 The employee shall reimburse the City for all costs and expenses paid by the City if the course is not passed with a grade of "C" or better or a passing grade on a pass/fail system or if grades are not received within three (3) months after the completion of the course.

31.5 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.

31.6 All employees must pre-register with the Human Resources Department regardless of where the courses are taken, if the employee intends to apply for tuition reimbursement. The City maintains the option to refuse to pay for courses that are not directly related to a degree program or courses that have excessively high costs.

31.7 The City of Port Orange will also provide reimbursement for internet and correspondence courses to the employee at the same reimbursement rates as stated in section 31.1 and 31.2 above. Employees who wish to complete internet-based courses, which are job related, but do not relate to a college degree, will be monitored by Department Directors who will approve and pay for the courses. Employees shall not be allowed to work on internet-based college courses during normal work hours (8:00 A.M.-5:00 P.M.). At a Lieutenant's discretion, an employee may be permitted to work on college courses while on shift outside of these work hours.

31.8 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.

31.9 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as defined in the line item 001-1000-519.40-10. The funds assigned to this line item are for use City Wide and approval of funds will be based on a first come, first serve basis upon applying for reimbursement prior to the course beginning. All documentation must be complete when turned into the Human Resources department in order to be considered for tuition reimbursement. Notwithstanding the aforesaid, the Department Head may within his discretion, allocate from the various Fire Department's operational funds to provide tuition reimbursement for employees.

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.

33.2 When an investigatory interview occurs, the following rules apply:

Rule 1: The employee must make a clear request for Union representation before or during the interview. The employee can't be punished for making this request.

Rule 2: After the employee makes the request, the supervisor has three (3) options. S/he may either:

a) Grant the request and delay the interview until the Union representative arrives and has had a chance to consult privately with the employee: or
b) Deny the request and end the interview immediately; or
c) Give the employee a choice of:
    1. Having the interview without representation; or
    2. Ending the interview

Rule 3: If the supervisor denies the request and continues to ask questions, the employee has the right to refuse to answer. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

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~~ DISCIPLINARY ACTION

~~37.1 This Agreement shall commence and become effective on December 5, 2012 and shall continue in full force and effect until midnight of the 30th day of September 2014 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, 2014, 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.~~

37.1 In the event an employee is discharged, suspended or demoted for just cause, the City agrees that he shall be provided with written notification of the action. This notification shall be hand delivered to the employee by a supervisor at the rank of Battalion or higher rank or sent by certified mail, return receipt requested, to the address in the City of Human Resource Department records. The City agrees that no employee shall be disciplined except for just cause.

37.2 Except in extraordinary circumstances, before the employee is discharged or suspended without pay for disciplinary reasons the notification described in Section 37.1 will be provided to the employee in advance of the action so as to give the affected employee an opportunity to present his position. Disciplinary action requiring a signature shall be signed by the employee, not in admission of the offense, but in acknowledgement that a copy of the reprimand has been delivered to the employee.

37.3 In the event an employee becomes the subject of a formal Departmental or City investigation arising from a complaint or allegation, the Department or the City, whichever is appropriate, shall notify the employee of the disposition of the complaint upon the conclusion of the formal investigation.

37.4 Disciplinary action, except termination, shall not become effective until such time that an employee has exhausted all appeals or until such time that the time period for an appeal has expired.

37.5 Disciplinary action shall follow the guidelines for progressive disciplinary action set forth in the City's civil service procedures for all City employees, except that oral reprimands will only be considered active for a period of one year. Discipline shall be accomplished in a constructive, progressive manner, so as to rehabilitate and correct an offender, if at all possible.

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 Annual Physical Ability Assessment Program, designed to ensure a firefighter is capable of meeting the physically demanding challenges of his/her job. This shall become mandatory for all personnel. This Program will be included within the departmental standard operational guidelines. Changes to this Program must be approved by the Department Head or his/her designee.

38.3 Medically determined stress tests shall be provided for all employees according to the following schedule:

AGE	FREQUENCY
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 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 this need for further testing. However, this shall not apply to tests that the employee might voluntarily take which are not medically determined as a result of the annual, City-paid exam.

Employees who are instructed by a physician to undertake further testing 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 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.

ARTICLE 39

DURATION OF AGREEMENT

39.1
~~37.1~~ This Agreement shall commence and become effective upon ratification by both parties ~~on December 5, 2012 and~~ shall continue in full force and effect until midnight of the 30th day of September ~~2014~~ 2017 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, ~~2014~~ 2017, of intent to modify, terminate, or change this Agreement.

39.2
~~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.

Approved this

____ day of ___________, 201~~2~~.

PORT ORANGE PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 3118, IAFF, AFL-CIO, PFF, FLA.:

____

~~Mark Vroman~~, President, Local 3118
Carol Calache

Approved this

____ day of __________, 201~~2~~.

CITY OF PORT ORANGE, FLORIDA:

____

Allen Green, Mayor

Attest:

____

~~Kenneth W. Parker~~, City Manager
M. H, Johansson,

Appendix A – Fire and Rescue Pension Fund As of December 4, 2015

ARTICLE IV. - FIRE AND RESCUE PENSION FUND (As of December 4, 2015)

FOOTNOTE(S):

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Editor's note—Ord. No. 2007-29, § 1, adopted Sept. 18, 2007, amended and restated the former Art. IV, §§ 54-76—54-91, 54-93—54-102, and enacted a new Art. IV as set out herein. The former Art. IV pertained to similar subject matter. For complete derivation see the Code Comparative Table at the end of this volume.

Sec. 54-76. - Title.

The City of Port Orange Firefighters' Pension Fund is hereby restated as a local law pension ordinance entitled "City of Port Orange Fire and Rescue Pension Fund."

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-77. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings indicated to them in this section, except where the context clearly indicates a different meaning:

Accumulated contributions means a member's own contributions without interest. For those members who purchase credited service with interest or at no cost to the system, any payment representing the amount attributable to member contributions based on the applicable member contribution rate, and any payment representing interest and any required actuarially calculated payments for the purchase of such credited service, shall be included in accumulated contributions.

Actuarial equivalent means a benefit or amount of equal value, based upon the RP 2000 Mortality Table and an interest rate of eight and one-half percent per annum. This definition may only be amended by the city pursuant to the recommendation of the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to city discretion.

Average final compensation, for members who are employed and not participating in the DROP on January 1, 2013, means one-twelfth of the average salary of the five best years of the last ten years of credited service prior to retirement, termination or death, or the career average as a full-time firefighter, whichever is greater. Provided, in no event shall the average final compensation of a member who is employed and not participating in the DROP on January 1, 2013, be less than one-twelfth of the average salary of the three best years of the last ten years of credited service prior to January 1, 2013. A year shall be 12 consecutive months. In the case of a member who has credited service as a full-time firefighter and as a volunteer firefighter, average final compensation shall be determined in accordance with this subsection, except that a separate calculation shall be made for service as a full-time firefighter and for service as a volunteer firefighter.

Beneficiary means the person or persons entitled to receive benefits under this article at the death of a member who has or have been designated in writing by the member and filed with the board. If no such designation is in effect, or if no person so designated is living, at the time of death of the member, the beneficiary shall be the estate of the member.

Board means the board of trustees, which shall administer and manage the system provided for in this article and serve as trustees of the fund.

City means the City of Port Orange, Florida.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Credited service.

(1) "Credited service" means the total number of years and fractional parts of years of service as a full-time firefighter with member contributions when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter. Service as a volunteer firefighter shall be credited at one month of credited service for each complete year of volunteer service. If a member accumulates service as both a full-time firefighter and as a volunteer firefighter, credited service shall be calculated separately for full-time and volunteer service, with the sum of all years and fractional parts of years of service used only for vesting and benefit eligibility purposes. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire and rescue department pending the possibility of being reemployed as a firefighter without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire and rescue department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter with the fire and rescue department within five years, his accumulated contributions, if $1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than $1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system shall be forfeited and terminated. Upon any reemployment, a firefighter shall not receive credit for the years and fractional parts of years of services for which he has withdrawn his accumulated contributions from the fund unless he repays into the fund the contributions he has withdrawn, together with interest as determined by the board, within 90 days after his reemployment.

(2) The years or fractional parts of years that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment as a firefighter with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

a. The member is entitled to reemployment under the provisions of USERRA.

b. The member returns to his employment as a firefighter with the city within one year from the earlier of the date of his military discharge or release from active service, unless otherwise required by USERRA.

c. The maximum credit for military service pursuant to this paragraph shall be five years.

d. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA qualified military service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Effective date means March 17, 1995, the date on which the ordinance from which this article is derived became effective.

Firefighter means an actively employed full-time person employed by the city, including his initial probationary employment period, who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life and to protect property. The term "firefighter" shall also include a volunteer firefighter whose name is carried on the active membership rolls of the fire and rescue department and whose duty it is to extinguish fires, to protect life and to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

Fund means the trust fund established in this article as part of the system.

Member means an actively employed firefighter who fulfills the prescribed membership requirements. Benefit improvements to the system which have been adopted in the past and which may be made in the future by amendments to this article shall apply prospectively and shall not apply to members who terminate employment or who retire prior to the effective date of any amendment to this article adopting such benefit improvements, unless such amendment specifically provides to the contrary.

Plan year means the 12-month period beginning October 1 and ending September 30 of the following year.

Retiree means a member who has entered retirement status.

Retirement means a member's separation from city employment with eligibility for immediate receipt of benefits under the system or entry in the deferred retirement option plan.

Salary means the member's fixed compensation (base pay) for services rendered to the city as a firefighter, plus all tax-deferred, tax-sheltered and tax-exempt items of income derived from elective employee payroll deductions or salary reductions. Base pay excludes overtime, education pay, specialty and incentive pay, lump sum payments of annual leave, sick leave, and compensation leave, and all other nonregular compensation. Compensation in excess of the limitations set forth in section 401(a)(17) of the Code. As of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed $200,000.00, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an eligible employee shall not be less than the amount which was allowed to be taken into account in effect on July 1, 1993. Eligible employee means an individual who was a member before the first plan year beginning after December 31, 1995.

Spouse means the lawful wife or husband of a member or a retiree at the time benefits become payable.

System means the city fire and rescue pension fund as contained in this article, and all amendments thereto.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 1, 9-25-2012; Ord. No. 2012-36, § 1, 12-20-2012; Ord. No. 2014-3, § 1, 3-18-2014; Ord. No. 2015-7, § 1, 6-2-2015)

Editor's note— Ord. No. 2012-36, § 8, adopted Dec. 20, 2012, provides that the benefit changes contained in § 54-77 herein shall not apply to members who attained age 50 with ten or more years of credited service, or 20 years of credited service regardless of age, prior to the effective date of this ordinance.

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 54-78. - Membership conditions of eligibility.

(a) Conditions of eligibility. All firefighters employed by the city as of the effective date [of this article] shall be members of this system and all future firefighters shall become members of this system upon their employment with the city.

(b) Designation of beneficiary. Each firefighter shall complete a form prescribed by the board designating a beneficiary or beneficiaries.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-79. - Board of trustees.

(a) Authority; membership; term of office. The sole and exclusive administration of and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in a board of trustees. The board is hereby designated as the plan administrator. The board shall consist of five trustees, two of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city council, and two of whom shall be members of the system, who shall be elected by a majority of the firefighters who are members of the system. The fifth trustee shall be chosen by a majority of the previous four trustees as provided for in this subsection, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board of trustees as the fifth trustee. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as provided in this subsection and shall serve a two-year term, unless he sooner vacates the office. Each resident trustee shall serve as trustee for a period of two years, unless he sooner vacates the office or is sooner replaced by the city council, at whose pleasure he shall serve. Each member trustee shall serve as trustee for a period of two years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself in office. DROP participants can be elected as but not vote for elected trustees. The board shall establish and administer the nomination and election procedure for such election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained in this article, the power to bring and defend lawsuits of every kind, nature and description.

(b) Officers; minutes; compensation of members. The trustees shall, by a majority vote, elect a chairman and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

(c) Voting. Each trustee shall be entitled to one vote on the board. Three affirmative votes shall be necessary for any decision by the trustees at any meeting of the board. A trustee shall abstain from voting as the result of a conflict of interest, and shall comply with the provisions of F.S. § 112.3143.

(d) Employment of advisers; payment of expenses. The board shall engage such actuarial, accounting, legal and other services as it deems necessary to administer the system. The compensation of all persons engaged by the board and all other expenses of the board necessary for the operation of the system shall be paid from the fund at such rates and in such amounts as the board shall agree. If the board chooses to use the city's actuary, legal counsel, or professional, technical or other advisors, it shall do so under terms and conditions acceptable to the board.

(e) Duties. The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:

(1) To construe the provisions of the system and determine all questions arising thereunder.

(2) To determine all questions relating to eligibility and membership.

(3) To determine and certify the amount of all retirement allowances or other benefits under this article.

(4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the system.

(5) To distribute to members, at regular intervals, information concerning the system.

(6) To receive and process all applications for benefits.

(7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the system and fund.

(8) To have performed actuarial studies and valuations, at least as often as required by law, and to make recommendations regarding any and all provisions of the system.

(9) To perform such other duties as are specified in this article.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-80. - Finances and fund management.

(a) As part of the system, there is hereby established the fund, into which shall be deposited all of the contributions and assets whatsoever attributable to the system, including the assets of the prior firefighters' pension fund.

(b) The actual custody and supervision of the fund (and assets thereof) shall be vested in the board. Payment of benefits and disbursements from the fund shall be made by the disbursing agent but only upon written authorization from the board.

(c) All funds of the fire and rescue pension fund may be deposited by the board with the finance director of the city, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he is liable for the safekeeping of funds for the city. However, any funds so deposited with the finance director of the city shall be kept in a separate fund by the finance director or clearly identified as such funds of the fire and rescue pension fund. In lieu thereof, the board shall deposit the funds of the fire and rescue pension fund in a qualified public depository as defined in F.S. § 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of F.S. ch. 280. In order to fulfill its investment responsibilities as set forth in this article, the board may retain the services of a custodian bank, an investment advisor registered under the Investment

Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the board, in the investment of all fund assets.

(d) All funds and securities of the system may be commingled in the fund, provided that accurate records are maintained at all times reflecting the financial composition of the fund, including accurate current accounts and entries as regards the following:

(1) Current amounts of accumulated contributions of members on both an individual and aggregate account basis;

(2) Receipts and disbursements;

(3) Benefit payments;

(4) Current amounts clearly reflecting all monies, funds and assets whatsoever attributable to contributions and deposits from the city;

(5) All interest, dividends and gains (or losses) whatsoever; and

(6) Such other entries as may be properly required so as to reflect a clear and complete financial report of the fund.

(e) An audit shall be performed annually by a certified public accountant, who may, in the board's discretion, be the accountant retained by the city for the city audit. The city will pay the cost for the audit of the system if the board selects the certified public accountant retained by the city. If the board retains its own certified public accountant to perform auditing services, all expenses incurred in connection with the audit shall be paid by the fund. The audit shall be for the most recent fiscal year of the system showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year. Such report shall reflect a complete evaluation of assets on both a cost and market basis, as well as other items normally included in a certified audit.

(f) The board shall have the following investment powers and authority:

(1) The board shall be vested with full legal title to the fund, subject, however, in any event, to the authority and power of the city council to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this system except as otherwise provided in this article. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

(2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

a. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this system, and to pay the initial and subsequent premium thereon.

b. Time or savings accounts of a nation bank, a state bank insured by the Bank Insurance Fund, a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation, or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

c. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.

d. Bonds issued by the State of Israel.

e. Stocks, comingled funds, mutual funds, and bonds or other evidences of indebtedness, provided that:

   1. Except as provided in subsection (f)(2)e.2, all individually held securities and all securities in a comingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, and the corporation must be listed on a recognized national stock exchange and, in the case of bonds only, shall hold a rating in one of the three highest classifications of a major rating service.

   2. Up to 25 percent of the assets of the fund at market value maybe invested in foreign securities.

   3. The board shall not invest more than five percent of its assets in the common stock, capital stock or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company, nor shall the aggregate of its investments in common stock, capital stock and convertible securities at market exceed 70 percent of the assets of the fund.

f. Real estate. The board may invest in real estate directly or through an investment vehicle approved by the board.

(3) At least once every three years, and more often as determined by the board, the board shall retain a professionally qualified independent consultant, as defined in F.S. § 175.071, to evaluate the performance of all current investment managers and make recommendations regarding the retention of all such investment managers. These recommendations shall be considered by the board at its next regularly scheduled meeting.

(4) The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the system.

(5) Neither the board nor any trustee shall be liable for the making, retention or sale of any investment or reinvestment made as provided in this section, or for any loss or diminishment of the fund, except due to his or its own negligence, willful misconduct or lack of good faith.

(6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain such securities unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

(7) The board is empowered, but is not required, to vote upon any stocks, bonds or securities of any corporation, association or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

(8) The board shall not be required to make any inventory or appraisal or report to any court, or to secure any order of court for the exercise of any power contained in this article.

(9) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms in this article or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city or any other entity of specific information, certification, direction or instruction, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

(10) Any overpayments or underpayments from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled shall be paid. Overpayments shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayments shall be made up from the fund in a prudent manner.

(11) The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits provided for in this article.

(12) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.

(13) Any of the powers and functions provided for in this section reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent, and provided, further, that legal title to the fund shall always remain in the board.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2014-7, § 1, 3-18-2014)

Sec. 54-81. - Contributions.

(a) Member contributions.

(1) Amount. Each member of the system shall be required to make regular contributions to the fund in the amount of one-half of one percent of his salary through December 31, 2012, except as otherwise provided in this subsection (1). Effective January 1, 2013, each member of the system hired before December 4, 2012, shall be required to make regular contributions to the fund in the amount of seven and one-half percent of salary. Each member of the system hired on or after December 4, 2012, shall be required to make regular contributions to the fund in the amount of eight percent of salary. Member contributions withheld by the city on behalf of the member shall be deposited with the board immediately after each pay period, but in any event, not more than five days following the pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions.

(2) Method. Such contributions shall be made by payroll deduction.

(b) State contributions. Any monies received or receivable by reason of laws of the state, for the express purpose of funding and paying for retirement benefits for firefighters of the city, shall be deposited in the fund comprising part of this system immediately and under no circumstances more than five days after receipt by the city. In conjunction with the city's adoption of an ordinance implementing this system pursuant to F.S. § 175.351, the board of trustees, with the approval of a majority of city firefighters, and the city have acknowledged and agreed that the insurance premium tax revenues received pursuant to F.S. § 175.101 shall be deposited into and become an integral part of this fund, and not used for any other purpose.

(c) City contributions. So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to the difference, in each year, between the total aggregate member contributions for the year, plus state contributions which are legally available to offset city funding for such year, and the total cost for the year, as shown by the most recent actuarial valuation of the system. The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in Part VII, F.S. ch. 112.

(d) Other contributions. Private donations, gifts and contributions may be deposited to the fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the board, and may not be used to reduce what would have otherwise been required city contributions.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2012-36, § 2, 12-20-2012; Ord. No. 2014-3, § 2, 3-18-2014)

Sec. 54-82. - Retirement benefit amounts and eligibility.

(a) Normal retirement date. A member's normal retirement date shall be the first day of the month coincident with or next following the earlier of the attainment of age 55 and the completion of ten years of credited service or upon the completion of 25 years of credited service and attainment of age 52. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date. Notwithstanding any other provision of this subsection (a), a member who is employed and not participating in the DROP on September 25, 2012, may retire upon attainment of age 50 and the completion of ten years of credited service or upon the completion of 20 years of credited service regardless of age, and upon such retirement shall be eligible to receive the benefit accrued as of September 25, 2012; and such member shall be eligible to receive the benefit based on credited service after the effective date of this section upon attainment of age 55 and the completion of ten years of credited service or upon the completion of 25 years of credited service and attainment of age 52. Notwithstanding any other provision of this subsection (a), a member with ten or more years of credited service on January 1, 2013, may retire upon attainment of age 48 and completion of 25 years of credited service, and upon such retirement shall be eligible for the normal retirement benefit provided in subsection (b) below.

(b) Normal retirement benefit. A member retiring under this section on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during the member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. The monthly retirement benefit shall equal three percent of average final compensation for each year of credited service. For a member with credited service as both a full-time firefighter and as a volunteer firefighter, the monthly retirement benefit shall be calculated separately for full-time service and volunteer service, based on the applicable accrual rate provided in this subsection and added together to determine the total benefit.

(c) Early retirement date. A member may retire on his early retirement date, which shall be the first day of any month coincident with or next following the attainment of age 50 and the completion of ten years of credited service. Early retirement under the system is retirement from employment with the city on or after the early retirement date and prior to the normal retirement date.

(d) Early retirement benefit. A member retiring under this section on his early retirement date may receive either a deferred or an immediate monthly retirement benefit payable in the same form as for normal retirement as follows:

(1) A deferred monthly retirement benefit which shall commence on what would have been his normal retirement date had he continued employment as a firefighter and shall be continued on the first day of each month thereafter. The amount of each such deferred monthly retirement benefit shall be determined in the same manner as for retirement on his normal retirement date, except that credited service and average final compensation shall be determined as of his early retirement date; or

(2) An immediate monthly retirement benefit which shall commence on his early retirement date and shall be continued on the first day of each month thereafter. The benefit payable shall be as determined in subsection (1) of this subsection, which is actuarially reduced from the amount to which he would have been entitled had he retired on the date which would have been his normal retirement date had he continued employment as a firefighter and with the same number of years of credited service as of the time his benefits commence and based on his average final compensation at that date.

(e) Supplemental retirement benefit. An additional monthly supplemental benefit shall be paid to all eligible normal and early service retirees and their beneficiaries or joint annuitants as provided in this subsection (e). The amount of the monthly supplemental benefit for members retiring on or after October 1, 2003, but prior to September 25, 2012, with at least 20 years of credited service shall be $20.00 for each full year of credited service, plus a prorated amount for each additional completed month, for a total amount not to exceed $600.00. For those members retiring on or after September 25, 2012, only those with at least 25 years of credited service shall be eligible for a supplemental retirement benefit. The supplemental retirement benefit for those eligible members retiring on or after September 25, 2012, shall be $20.00 for each full year of credited service, plus a prorated amount for each additional completed month, for a total amount not to exceed $500.00. Retirees under the predecessor fire fighter pension fund shall not be eligible to receive the supplemental retirement benefits under this subsection (e). Notwithstanding any other provision of this subsection (e), members who are employed and not participating in the DROP on January 1, 2013, who first attain eligibility for normal retirement at age 55 with ten or more years of credited service shall be eligible for a supplemental benefit as follows:

(1) Upon retirement following completion of more than 20 but less than 22 full years of credited service—$10.00/month per year of credited service.

(2) Upon retirement following completion of 22 or more but less than 25 full years of credited service—$15.00/month per year of credited service.

(3) Upon retirement following completion of 25 or more full years of credited service—$20.00/month per year of credited service, up to a maximum of $500.00/month.

(f) Cost-of-living adjustment.

(1) For those members who retire prior to January 1, 2013:

a. Beginning on the first January 1 following one full year of retirement, and on each subsequent January 1 thereafter, the monthly benefit of each retiree with less than 20 years of credited service, including disability retirees and terminated vested persons, or any beneficiaries or joint annuitants of such retirees who are receiving a retirement benefit, shall be increased by one percent; except that retirees with more than 19 years of credited service who retired prior to October 1, 2003, shall be annually granted a cost-of-living (COLA) increase equal to three percent of their then current annuity amount commencing upon the 61st month following commencement of DROP participation or receipt of pension benefits. Retirees participating in the DROP shall be eligible for the one percent increase beginning on the first January 1 following one full year of receipt of benefits after terminating participation in the DROP. Effective October 1, 2003, but prior to the effective date of all current and future retirees who have attained 20 years of creditable service shall be annually granted a cost-of-living (COLA) increase equal to three percent of their then current annuity amount commencing upon the 61st month following commencement of DROP participation or receipt of pension benefits.

b. For those members retiring on or after January 1, 2013, the COLA for that portion of the member's benefit based on credited service after January 1, 2013, will be subject to all of the following provisions:

1. Only those members retiring after attaining age 52 with 25 or more years of credited service shall be eligible for a COLA; except members who are employed and not participating in the DROP on January 1, 2013, and first attain eligibility for normal retirement at age 55 with ten or more years of credited service shall be eligible for a COLA upon completion of 20 years of credited service; and members who are employed and not participating in the DROP on January 1, 2013, and first attain eligibility for normal retirement at age 48 with 25 or more years of credited service shall be eligible for a COLA upon completion of 25 years of credited service.

2. The first COLA shall be applied, if at all, on the first day of January following the member's attainment of age 59 and one-half and eight full years of retirement, and annually thereafter;

3. Cost-of-living adjustments will be limited to the lesser of:

i. The most recent cost-of-living adjustment calculated by the Social Security Administration for payments to Social Security recipients; or

ii. Three percent of the current benefit; except that, if Social Security recipients receive no increase in benefits in any given year, then no COLA will be applied in that same year; and

4. The COLA will be applied only in those years in which the plan meets or exceeds the actuarial assumptions reflected in the plan's most recent actuarial valuation report, such that there is no actuarial loss for the most recent plan year. In addition, the funded ratio reflected in the "Disclosure Information Per Statement No. 25 of the Governmental Standards Board - Schedule of Funding Progress" in the most recent actuarial valuation report must be 80 percent or more.

(2) The cost-of-living increase provided in this subsection (f) shall not apply to the supplemental retirement benefit provided in subsection (e) above.

(3) Notwithstanding any other provision of this subsection (f), members who are employed and not participating in the DROP on January 1, 2013, shall be eligible for the COLA in effect prior to September 25, 2012, as applied to that portion of their benefit based on credited service prior to January 1, 2013.

(g) Required distribution date. The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 2, 9-25-2012; Ord. No. 2012-36, § 3, 12-20-2012; Ord. No. 2014-3, § 3, 3-18-2014)

Editor's note— Ord. No. 2012-36, § 8, adopted Dec. 20, 2012, provides that the benefit changes contained in § 54-82 herein shall not apply to members who attained age 50 with ten or more years of credited service, or 20 years of credited service regardless of age, prior to the effective date of this ordinance.

Sec. 54-83. - Preretirement death.

(a) Prior to vesting or eligibility for retirement. The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.

(b) Deceased members vested or eligible for retirement with spouse as beneficiary. This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies while actively employed and who, at the date of his death, was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit, payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

(2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise normal or early retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.

(3) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 54-86(g).

(4) A spouse beneficiary may, in lieu of any benefit provided for in subsection (1) or (2) of this subsection, elect to receive a refund of the deceased member's accumulated contributions.

(5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70½.

(6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2), but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.

(c) Deceased members vested or eligible for retirement with non-spouse beneficiary. This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.

(2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.

(3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to section 54-86, subsection (g).

(4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.

(5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.

(6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-84. - Disability benefits.

(a) In-line of duty disability.

(1) Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duties as a firefighter, shall, upon establishing such disability to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average final compensation for each year of credited service, but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member. The benefit for a member with credited service as both a full-time firefighter and as a volunteer firefighter shall be calculated in the same manner as the normal retirement benefit as provided in section 54-82(b). Terminated persons, either vested or nonvested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for disability benefits within 30 days after termination.

(2) Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in the line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such

condition, and provided, further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance. F.S. § 112.181, as amended, is hereby adopted and incorporated by reference and is applicable to conditions described therein that are diagnosed on or after January 1, 1996.

(b) Not in-line of duty disability. Any member with ten years or more of credited service who shall have become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was not directly caused by the performance of his duties as a firefighter, shall, upon establishing such disability to the satisfaction of the board, be entitled to a monthly pension equal to three percent of average final compensation for each year of credited service. The benefit for a member with credited service as both a full-time firefighter and as a volunteer firefighter shall be calculated in the same manner as the normal retirement benefit as provided in section 54-82(b). Terminated persons, either vested or non-vested, are not eligible for disability benefits, except that those terminated by the city for medical reasons may apply for disability benefits within 30 days after termination.

(c) Conditions disqualifying disability benefits. Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

(1) Excessive or habitual use of any drugs, intoxicants or narcotics.

(2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.

(3) Injury or disease sustained while serving in any branch of the armed forces.

(4) Injury or disease sustained after his employment as a firefighter with the city shall have terminated.

(d) Physical examination requirement.

(1) A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for such purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

(2) Any retiree receiving disability benefits under provisions of this article may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic reexaminations by a qualified physician or surgeon, who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter, the board shall recommend to the city that the retiree be returned to performance of duty as a firefighter, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. If the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his pension.

(3) The cost of the physical examination or reexamination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs, as determined by the board, incident to the physical examination, including but not limited to transportation, meals and hotel accommodations, shall be borne by the fund.

(4) If the retiree recovers from disability and reenters the service of the city as a firefighter, his service will be deemed to have been continuous, but the period beginning with the first month for which

he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the system.

(5) The board shall have the power and authority to make the final decisions regarding all disability claims.

(e) Disability payments. The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. Disability retirement benefits shall be payable for 120 months or the member's lifetime, whichever is longer, or until the member recovers from disability, in which case the last payment shall be the payment due next preceding the date of such recovery. Notwithstanding any provision of this subsection, a disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as provided in subsections 54-86(a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

(f) Workers' compensation. When a member is receiving a disability pension and workers' compensation benefits pursuant to F.S. ch. 440, for the same disability, and the total monthly benefits received from both exceed 100 percent of the member's average monthly wage, the disability pension benefit shall be reduced so that the total monthly amount received by the member does not exceed 100 percent of such wage. This subsection shall apply to the extent it does not violate the minimum requirements of F.S. ch. 175. In the case of a lump sum workers' compensation settlement, the disability retirement income payable from the plan shall be adjusted as follows:

(1) The amount of the lump sum settlement shall be divided by the participant's remaining life expectancy (in months) as determined using standard actuarial tables approved by the plan actuary.

(2) If the number obtained as provided in subsection (1) of this subsection, when added to the participant's monthly disability retirement income from the plan, exceeds the participant's average monthly wage on the date of disability, the amount of the excess shall be deducted from the participant's monthly disability retirement income from the plan, for the duration of the participant's remaining life expectancy as determined in subsection (1) of this subsection.

(3) If the number obtained as provided in subsection (1) of this subsection, when added to the participant's monthly disability retirement income from the plan, does not exceed the participant's average monthly wage on the date of disability, there shall be no reduction of the participant's disability retirement income from the plan.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-85. - Vesting.

If a member terminates his employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

(1) If the member has less than ten years of credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund for up to five years following termination.

(2) If the member has ten or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation, and the benefit accrual rate as of the date of termination, provided, however, that vested terminated

persons shall not receive the monthly supplemental benefit. The retirement benefit shall be payable to him commencing at the member's otherwise normal or early retirement date, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his normal or early retirement date, his designated beneficiary shall be entitled to a pre-retirement death benefit as provided in subsection 54-83(b) for a deceased member, vested or eligible for retirement.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-86. - Optional forms of benefits.

(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in this article, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(1) A retirement income of a monthly amount payable to the retiree for his lifetime only.

(2) A retirement income of a modified monthly amount payable to the retiree during the lifetime of the retiree and, following the death of the retiree, 100 percent, 75 percent, 662/3 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the Retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q&A-2 of § 1.401(a)(9)-6)

(3) If a member retires prior to the time at which Social Security benefits are payable, he may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the Social Security law in effect at the time of the member's retirement.

(b) The member, upon electing any option provided in subsection (a), shall designate the joint pensioner (subsection (a)(2)) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of the member's death. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, such member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume the joint pensioner has deceased for purposes of calculating the new payment.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries or joint pensioners to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially determined to take into account the age of the former joint pensioner the new joint pensioner and the retiree and to ensure that the benefit paid is the actuarial equivalent of the present value of the retiree's then-current benefit at the time of the change. Any such retiree shall pay the actuarial recalculation expenses. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. If no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his retirement shall be paid as provided in section 54-87.

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(1) If a member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 54-83.

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his retirement.

(3) If both the retiree and the beneficiary (or beneficiaries) designated by the member or retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a) of this section, the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 54-87.

(4) If a member continues beyond his normal retirement date pursuant to the provisions of section 54-82(a), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his death occurred.

(5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(f) A retiree may not change his retirement option after the date of cashing or depositing his first retirement check.

(g) Notwithstanding anything in this section to the contrary, the board in its discretion may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the monthly income payments to be paid do not exceed $1,000.00. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-87. - Beneficiaries.

(a) Each member or retiree may, on a form provided for that purpose, signed and filed with the board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death. Each designation may be revoked or changed by such member or retiree by signing and filing with the board a new designation-of-beneficiary form. Upon such change, the rights of all previously designated beneficiaries to receive any benefits under the system shall cease.

(b) If a deceased member or retiree failed to name a beneficiary in the manner prescribed in subsection (a) of this section, or if the beneficiary (or beneficiaries) named by a deceased member or retiree predeceases the member or retiree, the death benefit, if any, which may be payable under the system with respect to such deceased member or retiree shall be paid to the estate of the member or retiree and the board, in its discretion, may direct that the commuted value of the remaining monthly income benefits be paid in a lump sum.

(c) Any payment made to any person pursuant to this section shall operate as a complete discharge of all obligations under the system with regard to the deceased member and any other persons with rights under the system and shall not be subject to review but shall be final, binding and conclusive on all interested persons.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-88. - Claims procedures.

The board shall establish administrative claims procedures to be utilized in processing written requests ("claims") on matters which affect the substantial rights of any person ("claimant"), including any member, retiree, beneficiary, or other person affected by a decision of the board.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-89. - Reports to division of retirement.

No later than March 15 of each year, the board shall file an annual report with the division of retirement containing the documents and information required by F.S. § 175.261.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-90. - Roster of retirees.

The secretary of the board shall keep a record of all persons receiving benefits under the provisions of this article, in which it shall be noted the time when the benefits commence and when the benefits shall cease to be paid. Additionally, the secretary shall keep a record of all members in such a manner as to show the name, address, date of employment, and date of termination of employment.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-91. - Maximum pension.

(a) Basic limitation. Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of code section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in code section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) ($160,000.00), subject to the applicable adjustments in code section 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.

For purposes of code section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to code section 415(n)) and to rollover contributions (as defined in code section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(b) Adjustments to basic limitation for form of benefit. If the benefit under the plan is other than the annual benefit described in subsection (a), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using fractions prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the code section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(1) For a benefit paid in a form to which section 417(e)(3) of the code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

a. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code).

(2) For a benefit paid in a form to which section 417(e)(3) of the code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code); or

c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the code), divided by 1.05.

(3) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections (b)(1) and (2) above.

(c) Benefits not taken into account. For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) Any other benefit not required under section 415(b)(2) of the code and regulations thereunder to be taken into account for purposes of the limitation of code section 415(b)(1); and

(3) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

(d) COLA effect. Effective on and after January 1, 2003, for purposes of applying the limits under code section 415(b) (the "limit"), the following will apply:

(1) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year of benefit payments without regard to any automatic cost of living adjustments;

(2) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the code section 415(b)(1)(A) dollar limit under code section 415(d), and the regulations thereunder; but

(3) In no event shall a member's benefit payable under the system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to code section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under code section 415(b), a member's applicable limit will be applied taking into consideration cost of living increases as required by section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(e) Other adjustments in limitations.

(1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of code section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a $160,000.00 annual benefit beginning at age 62.

(2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire or police department of the city, the adjustments provided for in subsection (e)(1) shall not apply.

(3) The reductions provided for in subsection (e)(1) shall not be applicable to disability benefits pursuant to section 54-84, or pre-retirement death benefits paid pursuant to section 54-83.

(4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(f) Less than ten years of participation. The maximum retirement benefits payable under this section to any member who has completed less than ten years of participation shall be the amount determined under subsection (a) multiplied by a fraction, the numerator of which is the number of the member's years of participation and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to section 54-84, or pre-retirement death benefits paid pursuant to section 54-83.

(g) Participation in other defined benefit plans. The limit of this section with respect to any member who at any time has been a member in any other defined benefit plan as defined in code section 414(j) maintained by the city shall apply as if the total benefits payable under all city defined benefit plans in which the member has been a member were payable from one plan.

(h) Ten thousand dollar limit; less than ten years of service. Notwithstanding anything in this section, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed $10,000.00 for the applicable limitation year or for any prior limitation year, and the city has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten years of credited service with the city, the limit under this subsection shall be a reduced limit equal to $10,000.00 multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten.

(i) Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(j) Service credit purchase limits.

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in sections 54-101 and 54-102, then the requirements of this section will be treated as met only if:

a. The requirements of code section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of code section 415(b); or

b. The requirements of code section 415(c) are met, determined by treating all such contributions as annual additions for purposes of code section 415(c).

For purposes of applying subsection (j)(1)a., the system will not fail to meet the reduced limit under code section 415(b)(2)(C) solely by reason of this subparagraph, and for purposes of applying subsection (j)(1)b. the system will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subsection.

(2) For purposes of this subsection, the term "permissive service credit" means service credit:

a. Recognized by the system for purposes of calculating a member's benefit under the plan;

b. Which such member has not received under the plan; and

c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and, notwithstanding subsection (j)(2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(k) Contribution limits.

(1) For purposes of applying the code section 415(c) limits which are incorporated by reference and for purposes of this subsection (k), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulations section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of code section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under code sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in code section 3401(a)(2).

a. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under code sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of code section 132(f)(4).

b. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

2. The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

c. Back pay, within the meaning of Treasury Regulations section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under the definition of salary in section 54-77.

(2) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in code section 415 by using the following methods:

a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under code section 415(c) or 415(n).

b. If payment pursuant to subsection (k)(2)a. of this section will not avoid a contribution in excess of the limits imposed by code section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(3) If the annual additions for any member for a limitation year exceed the limitation under section 415(c) of the code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection (k) shall not exceed the annual limit under section 401(a)(17) of the code.

(l) Additional limitation on pension benefits. Notwithstanding anything in this section to the contrary:

(1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, and retires prior to January 1, 2013, shall not exceed 100 percent of his average final compensation. However, nothing contained in this subsection shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

(2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from different employer's system or plan. This restriction does not apply to social security benefits or federal benefits under 10 U.S.C. 1223.

(3) The normal retirement benefit or pension payable to a member who retires on or after January 1, 2013, including supplemental retirement benefits but excluding cost-of-living adjustments, shall not exceed 90 percent of average final compensation; provided however, if a member's accrued normal retirement benefit on the effective date of this section, including any supplemental retirement benefit, exceeds 90 percent of average final compensation on that date, the normal retirement benefit or pension payable to such member upon retirement, including supplemental retirement benefits but excluding cost-of-living adjustments, shall not exceed the member's accrued benefit, expressed as a percentage of average final compensation, as of the effective date of this section. Cost of living adjustments shall be calculated in accordance with section 54-82(f). In no event shall a member receive less than two percent of average final compensation for each year of credited service.

(4) The normal retirement benefit or pension payable to a member who retires on or after January 1, 2013, including supplemental retirement benefits and cost-of-living adjustments, shall not exceed $95,000.00 annually; provided, however, if a member's accrued benefit on January 1, 2013, including any supplemental retirement benefit and cost of living adjustment, exceeds $95,000.00 on that date, the normal retirement benefit or pension payable to such member upon retirement, including supplemental retirement benefits and cost-of-living adjustments, shall not exceed the member's accrued benefit, expressed in dollars as an annual amount, as of January 1, 2013. In no event shall a member receive less than two percent of average final compensation for each year of credited service.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 3, 9-25-2012; Ord. No. 2012-36, § 4, 12-20-2012; Ord. No. 2015-7, § 2, 6-2-2015)

Editor's note— Ord. No. 2012-36, § 8, adopted Dec. 20, 2012, provides that the benefit changes contained in § 54-91 herein shall not apply to members who attained age 50 with ten or more years of credited service, or 20 years of credited service regardless of age, prior to the effective date of this ordinance.

Sec. 54-92. - Reserved.

Sec. 54-93. - Minimum distribution of benefits.

(a) General rules.

(1) Effective date. Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) Precedence. The requirements of this section will take precedence over any inconsistent provisions of the plan.

(3) TEFRA section 242(b)(2) elections. Notwithstanding the other provisions of this section other than this subsection (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

(b) Time and manner of distribution.

(1) Required beginning date. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ or the calendar year in which the member terminates employment with the city.

(2) Death of member before distributions begin. If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:

a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70½, if later, as the surviving spouse elects.

b. If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the member. For purposes of this subsection (b)(2) and subsection (e), distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.) the date distributions are considered to begin is the date distributions actually commence.

(3) Death after distributions begin. If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(4) Form of distribution. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and Treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and Treasury regulations that apply to individual accounts.

(c) Determination of amount to be distributed each year.

(1) General requirements. If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.

b. The member's entire interest must be distributed pursuant to section 54-82, section 54-83, section 54-85, or section 54-86 (as applicable) and in any event over a period equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(2) Amount required to be distributed by required beginning date. The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under section 54-83) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., monthly. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

(3) Additional accruals after first distribution calendar year. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) General distribution rules.

(1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-

1(b)(1)(l) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25 percent of the cost for all of the members' benefits received from the retirement system.

(e) Definitions.

(1) Designated beneficiary. The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 54-83.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-94. - Miscellaneous provisions.

(a) Interest of members in system. At no time prior to the satisfaction of all liabilities under the system with respect to members and retirees and their spouses or beneficiaries shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(b) No reduction of accrued benefits. No amendment or ordinance shall be adopted by the city council which shall have the effect of reducing the then-vested accrued benefits of members or a member's beneficiaries.

(c) Qualification of system. It is intended that the system will constitute a qualified public pension plan under applicable provisions of the Code for a qualified plan under Code Section 401(a) and a governmental plan under Code Section 414(d), presently in effect or hereafter amended. Any amendment of this article or modification of the system may be made retroactive, if necessary or appropriate to qualify or maintain the system as a plan meeting the requirements of applicable provisions of the Code, presently in effect or hereafter amended, or any other applicable provisions of the federal tax laws, presently in effect or hereafter amended or adopted, and regulations promulgated or issued thereunder.

(d) Use of forfeitures. Forfeitures arising from termination of service of members shall be used only to reduce future city contributions.

(e) Prohibited transactions. Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

(f) USERRA. Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.

(g) Vesting.

(1) Member will be 100 percent vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and

(2) A member will be 100 percent vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

(h) Electronic forms. In those circumstances where a written election or consent is not required by the plan or the Internal Revenue Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treasury Regulations Section 1.401(a)-21.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-32, § 1, 12-11-2012)

Sec. 54-95. - Repeal or termination of system.

(a) This article establishing the system and fund, and subsequent ordinances pertaining to the system and fund, may be modified, terminated or amended, in whole or in part; provided, however, that, if this article or any subsequent ordinance shall be altered, amended or repealed in its application to any person benefiting under this article, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the member or beneficiary shall not be affected thereby.

(b) If this article shall be repealed, or if contributions to the system are discontinued, or if there is a transfer, merger or consolidation of governmental units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of such members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of governmental units, services or functions, there shall be full vesting (100 percent) of benefits accrued to the date of repeal and such benefits shall be nonforfeitable.

(c) The fund shall be distributed in accordance with the following procedures:

(1) The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection (3).

(3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the firefighter's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the firefighter.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the state.

(5) The board shall distribute, in accordance with subsection (2), the amounts determined under subsection (3). If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the city or

the board of the fund affected has not complied with all the provisions in this section, the state department of management services will effect the termination of the fund in accordance with this section.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-96. - Domestic relations orders; retiree directed payments; exemption from execution and nonassignability.

(a) Domestic relations orders.

(1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.

(2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

(b) Retiree directed payments. The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city and to make any payments for child support or alimony.

(c) Exemption from execution, nonassignability. Except as otherwise provided by law, the pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-97. - Pension validity.

The board shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. The board is empowered to purge the pension rolls or correct the pension amount of any person heretofore granted a pension under prior or existing law or any person hereafter granted a pension under this article if the pension is found to be erroneous, fraudulent or illegal for any reason and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this article be erroneously, improperly or illegally classified. Any overpayments or underpayments shall be corrected and paid or repaid in a reasonable manner as determined by the board.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-98. - Forfeiture of pension.

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions as of the date of termination. Specified offenses are as follows:

(1) The committing, aiding or abetting of an embezzlement of public funds;

(2) The committing, aiding or abetting of any theft by a public officer or employee from employer;

(3) Bribery in connection with the employment of a public officer or employee;

(4) Any felony specified in F.S. ch. 838;

(5) The committing of an impeachable offense;

(6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public, or the public agency for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains or attempts to obtain a profit, gain or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position; or

(7) The committing on or after October 1, 2008, of any felony defined in F.S. § 800.04, against a victim younger than 16 years of age, or any felony defined in F.S. ch. 794, against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

(b) As used in this section:

(1) Conviction means an adjudication of guilt by a court of competent jurisdiction, a plea of guilty or nolo contendere, a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation, or a conviction by the senate of an impeachable offense.

(2) Court means any state or federal court of competent jurisdiction which is exercising its jurisdiction to consider a proceeding involving the alleged commission of a specified offense. Prior to forfeiture, the board shall hold a hearing, of which notice shall be given to the member whose benefits are being considered for forfeiture. The member shall be afforded the right to have an attorney present. No formal rules of evidence shall apply, but the member shall be afforded a full opportunity to present his case against forfeiture.

(c) Any member who has received benefits from the system in excess of his accumulated contributions after the member's rights were forfeited shall be required to pay back to the fund the amount of the benefits received in excess of his accumulated contributions. The board may implement all legal action necessary to recover such funds.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10)

Sec. 54-98.5. - Conviction and forfeiture; false, misleading or fraudulent statements.

(a) It is unlawful for person to willfully and knowingly make, or cause to be made, or to assist, conspire with or urge another to make, or cause to be made, any false, misleading or fraudulent oral or written statement, or to withhold or conceal material information to obtain any benefit from the system.

(b) Any person who violates this subsection (a) commits a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or § 775.083.

(c) In addition to any applicable criminal penalty, upon conviction for a violation of subsection (a) of this section, a member or beneficiary of the system, may, in the discretion of the board, be required to forfeit the right to receive any or all benefits to which such person would otherwise be entitled under the system. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-99. - Direct transfers of eligible rollover distributions; elimination of mandatory distributions.

(a) Rollover distributions.

(1) General. This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) As used in this section:

a. Eligible rollover distribution means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Effective January 1, 2001, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a), to an individual retirement annuity described in section 408(b) or to a qualified defined contribution plan described in section 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or on or after January 1, 2007, to a qualified defined benefit retirement plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

b. Eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in section 403(b) of the Code; a qualified trust described in section 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

c. Distributee includes an employee or former employee, the employee's or former employee's surviving spouse, and the employee's or former employee's spouse or former spouse. Effective January 1, 2007, distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a nonspouse beneficiary may roll over the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

d. Direct rollover means a payment by the plan to the eligible retirement plan specified by the distributee.

(b) Rollovers or transfers into the fund. On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

(1) Transfers and direct rollovers or member rollover contributions from other plans. The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.

(2) Member rollover contributions from IRAs. The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over.

(c) Elimination of mandatory distributions. Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of $1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2012-32, § 2, 12-11-2012)

Sec. 54-100. - Deferred retirement option plan.

(a) Definitions. As used in this section:

DROP means the fire and rescue deferred retirement option plan.

DROP account means the account established for each DROP participation under this section.

Self-directed DROP option means an investment option which may be adopted by the board to allow members to select among various options for investment of their DROP account.

(b) Participation.

(1) Eligibility to participate.

a. In lieu of terminating employment as a firefighter, any member who is eligible for normal retirement under the system may elect to defer receipt of his service retirement pension and to participate in the DROP, provided that the election to participate in the DROP is made within 12 months following the date on which the member first become eligible for normal retirement. Any member who fails to make the election within such 12-month period shall forfeit all rights to participate in the DROP.

b. Notwithstanding subsection 54-100(b)(1)a, above, any member with 25 or more years of credited service on September 25, 2012, who previously became eligible to participate in the DROP in accordance with subsection 54-100(b)(1)a, above, but did not elect to participate in a timely manner, may make a DROP election within 30 days following September 25, 2012. All provisions of the plan as amended by this section shall apply to any eligible employee who elects to participate in the DROP pursuant to this subsection b. Any member who is eligible to make a DROP election pursuant to this subsection b who fails to make such election within 30 days following September 25, 2012, shall forfeit all rights to participate in the DROP.

(2) Election to participate. A member's election to participate in the DROP must be made in writing at a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.

(3) Period of participation. A member who elects to participate in the DROP shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the city not later than the date provided for in the previous sentence. A member may participate only once.

(4) Termination.

a. A member's participation in the DROP shall cease at the earlier of:

1. Termination of his employment as a firefighter with the city; or

2. The expiration of the 60th month of participation in the DROP. Upon the occurrence of the termination event, the termination shall be effective on the first day of the following month.

b. Upon the member's termination of participation in the DROP, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings and losses, shall cease to be transferred from the system to the DROP account. Any amounts in the DROP account shall be paid to the participant in accordance with the provisions of subsection (d) of this section when he terminates his employment as a firefighter.

c. A member who terminates participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.

(5) Effect of DROP participation on the system.

a. A member's credited service and accrued benefit under the system shall be determined on the date his election to participate in the DROP first becomes effective. The member shall not accrue any additional credited service or any additional benefits under the system (except for additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for pre-retirement death benefits or disability benefits except as provided for in section 54-103.

b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a firefighter, no amounts shall be paid to him from the system until he terminated his employment as a firefighter. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only on the termination of his employment as a firefighter.

(c) Funding.

(1) Establishment of DROP account. A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of amounts transferred to the DROP and earnings/losses on those amounts, in accordance with subsection (c)(2).

(2) Transfers from system.

a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a firefighter and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (b)(4), but in no event shall it continue past the date he terminates his employment as a firefighter.

b. Except as otherwise provided in subsection (b)(4)b, the DROP account of a member who enters the DROP under this subsection (c)(2) prior to the effective date of the ordinance from which this section is derived shall be debited or credited after each fiscal year quarter with either:

1. Interest at an effective rate of six and one-half per annum, compounded monthly on the prior month's ending balance; or

2. Earnings or losses determined as follows: The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter.

For purposes of this subsection, net investment return is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his DROP account to be determined as provided above.

c. The DROP account of a member who enters the DROP under this subsection (c)(2) on or after September 25, 2012, shall be debited or credited after each fiscal year quarter with earnings or losses determined as follows:

1. The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the system for that quarter. For purposes of this subparagraph, net investment return is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions and transaction costs.

2. If the board approves a self-directed DROP option, for members who elect that option, the member's DROP account shall be credited or debited at a rate equal to the actual earnings and losses on the self-directed account, less administrative fees.

d. A member's DROP account shall only be credited or debited with earnings or losses and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation plus earnings/losses earned as of that date plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter and prior to distribution. Notwithstanding the provisions above, if a member fails to terminate employment in accordance with his irrevocable election to resign for any reason after participating in the DROP for permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited or debited with earnings/losses, nor will monthly benefits be transferred to the DROP account. All such nontransferred amounts shall be forfeited and continue to be forfeited while the member is employed as a firefighter, and no cost-of-living adjustments shall be applied to the member's credit during such period of continued employment. A member employed by the fire department after the permissible period of DROP participation will still not be eligible for pre-retirement death or disability benefits and will not accrue additional credited service except as provided for in section 54-103.

(d) Distribution of DROP accounts on termination of employment.

(1) Eligibility for benefits. A member shall receive the balance in his DROP account in accordance with the provisions of this subsection upon his termination of employment as a firefighter. Except as provided in subsection (4), no amounts shall be paid to a member from the DROP prior to termination of employment as a firefighter.

(2) Form of distribution.

a. Distribution of a member's DROP account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). Elections under this paragraph must be in writing and shall be made in such time or manner as the board shall determine.

b. Notwithstanding the preceding, if a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.

(3) Date of payment of distribution. Except as otherwise provided in this subsection, distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.

(4) Proof of death and right of beneficiary or other person. The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its. determination of the right of the beneficiary or other person to receive payment shall be conclusive.

(5) Distribution limitation. Notwithstanding any other provisions of this subsection, all distributions from the DROP shall conform to the "Minimum Distribution Of Benefits" provisions as provided for herein.

(6) Direct rollover of certain distributions. This paragraph applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 54-99.

(e) Administration of the DROP.

(1) Board administers the DROP. The general administration of the DROP, the responsibility for carrying out the provisions of the DROP, and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf, may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP, and may allocate among themselves or delegate to other persons all or any portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.

(2) Accounts, records and reports. The board shall maintain, records showing the operation and condition of the DROP, including records showing the individual balances in each member's

DROP account, and the board shall keep, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare, and distribute to members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns and data required to be distributed or filed for the DROP pursuant to the Code, and any other applicable laws.

(3) Establishment of rules for administration. Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The board shall have discretionary authority to construe and interpret the DROP, (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP, and the date on which any individual ceased to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.

(4) Limitation of liability.

a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.

b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) General provisions.

(1) Amendment of DROP. The DROP may be amended by an ordinance enacted by the city council at any time, and retroactively, if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be approved which has the effect of decreasing the balance of the DROP account of any member.

(2) Facility of payment. If a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or because he is a minor, the board shall direct that any benefit due him, shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for such benefit.

(3) Information. Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board all information that it shall require to establish his rights and benefits under the DROP.

(4) Prevention of escheat. If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the system, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the system. Upon such cancellation, the system shall have no further liability therefor except that, if such person or his

beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

(5) Written elections, notifications.

a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making elections, notifications or designations by members under the DROP if it determines after due deliberation that such action is justified in and improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and any new administrative procedures, those new administrative procedures shall prevail.

b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree here under shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(6) Benefits not guaranteed. All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the board nor the city shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(7) Construction. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

(8) Forfeiture of retirement benefits. DROP participants shall be subject to applicable forfeiture provisions provided for under state or federal law. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(9) Effect of DROP participation on employment. Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2009-13, § 1, 7-21-09; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2012-19, § 4, 9-25-2012; Ord. No. 2012-36, § 5, 12-20-2012; Ord. No. 2014-3, § 4, 3-18-2014)

Sec. 54-101. - Military service prior to employment.

The years or fractional parts of years that a firefighter serves or has served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the city fire department shall be added to his years of credited service provided that:

(1) The member contributes to the fund an amount equal to eight percent of the member's current annual salary times the total number of years of credited service purchased, if the purchase is made by the member on or before the later of March 4, 2002 or six months from the date of his employment or reemployment with the fire department. If the purchase is made subsequent to

the date described in the previous sentence, the member must contribute to the fund the sum that he would have contributed, based on his salary and the member contribution rate in effect at the time that the credited service is requested had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.

(3) Payment by the member of the required amount shall be made within six months of his request for credit, but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given.

(4) The maximum credit under this section shall be four years.

(5) Credited service purchased pursuant to this section shall count toward vesting but not for eligibility for not-in-line of duty disability benefits.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-102. - Prior fire service.

Unless otherwise prohibited by law, and except as provided for in the definition of "credited service" in section 54-77, the years or fractional parts of years that a member previously served as a firefighter with the city during a period of previous employment and for which period accumulated contributions were withdrawn from the fund, or the years and fractional parts of years that a member served as a full-time firefighter for any other municipal, county or special district fire department in the state shall be added to his years of credited service provided that:

(1) The member contributes to the fund the sum that he would have contributed based on his salary and the member contribution rate in effect at the time that the credited service is requested, had he been a member of the system for the years or fractional parts of years for which he is requesting credit plus amounts actuarially determined such that the crediting of service does not result in any cost to the fund plus payment of costs for all professional services rendered to the board in connection with the purchase of years of credited service.

(2) Multiple requests to purchase credited service pursuant to this section may be made at any time prior to retirement.

(3) Payment by the member of the required amount shall be made within six months of his request for credit , but not later than the retirement date, and shall be made in one lump sum payment upon receipt of which credited service shall be given or the member may elect to make payment for the requested credited service over a period of time as provided for in subsection (5).

(4) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county or special district fire department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in subsection 54-91(l)(2).

(5) In lieu of the lump sum payment provided for in subsection (3), a member may elect to make payments over a period of time in order to fully pay the amount provided for in subsection (1). The member shall be required to notify the board, in writing, of his election to make payments in the manner provided for in this paragraph. The payment plan provided for in this paragraph shall be subject to the following terms:

a. The principal amount to be paid shall be determined as set forth in subsection (1).

b. The original principal amount shall be amortized over the period beginning with the first payment and ending no later than 24 months from the date of the first payment and shall be reamortized annually to reflect changes in the interest rate provided for in subsection c. below.

c. Payments shall consist of principal, interest and a one percent per annum administrative fee, with interest adjusted annually to be equal to the fund's rate of investment return for the prior year, or eight percent per annum simple interest, whichever is less.

d. Payments shall be made by payroll deduction from each paycheck on an after-tax basis.

e. In the event that a member dies, retires (including entry into the deferred retirement option plan (DROP)) or otherwise terminates his employment, without having made full payment of the principal amount necessary to receive all credited service requested, the member shall receive so much of the credited service requested, determined using procedures established by the actuary, which could be purchased with the amount of principal paid by the member to the date of his death or termination of employment.

f. In the event that the member's employment is terminated for any reason and he is not entitled to any benefit from the plan other than the return of the amounts he has had deducted from his paycheck as his normal contribution to the plan, the amounts which the member has paid pursuant to this subsection to purchase additional credited service, shall be returned to him, less all interest paid and less the one percent administrative fee.

(6) The maximum credit under this section for service other than with the city shall be five years of credited service and shall count for all purposes, except vesting and eligibility for not-in-line of duty disability benefits. There shall be no maximum purchase of credit for prior service with the city and such credit shall count for all purposes, including vesting.

(Ord. No. 2007-29, § 1, 9-18-07; Ord. No. 2010-26, § 1, 9-28-10; Ord. No. 2015-7, § 3, 6-2-2015)

Sec. 54-103. - Reemployment after retirement.

(a) Any retiree under this system, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Reemployment by the city shall be subject to the limitations set forth in this section.

(b) After normal retirement. Any retiree who is retired under normal (or early) retirement pursuant to this system and who is reemployed as a firefighter and, by virtue of that reemployment, is eligible to participate in this system, shall upon being reemployed, discontinue receipt of benefits. Upon reemployment, the member shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service (and early retirement reduction factor, if applicable) as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period and not including any period of DROP participation), and credited service (and early retirement reduction factor, if applicable) as of the date of subsequent retirement. The amount of any death or disability benefit received during a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the retiree may select a different optional form and joint pensioner applicable only to the subsequent retirement benefit.

(c) Any retiree who is retired under normal retirement pursuant to this system who is reemployed by the city in a position other than as a firefighter, shall upon being reemployed, continue receipt of benefits for the period of any subsequent employment period. Former DROP participants shall begin receipt of benefits under these circumstances.

(d) After early retirement. Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity, shall discontinue receipt of benefits from the system. If the reemployed person, by virtue of his reemployment, is eligible to participate in this system, that person shall accrue a second benefit as provided for in subsection (b) above and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not eligible to participate in this system, that person's pension benefit payments shall be suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this system.

(e) Reemployment of terminated vested persons. Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

(f) DROP participants. Members or retirees who were in the deferred retirement option plan shall have the options provided for in this section upon reemployment following DROP participation.

(Ord. No. 2007-29, § 1, 9-18-07)

Sec. 54-104. - Benefits and contribution for members hired on or after December 4, 2012.

Notwithstanding any other provision of this system, members hired on or after December 4, 2012, shall be subject to the provisions of sections 54-76 through 54-103, except as otherwise provided below:

(1) The normal retirement date shall be 55 years of age with ten years of credited service. The alternative normal retirement date shall be 52 years of age with 25 years of credited service.

(2) The early retirement date shall be 50 years of age with ten years of credited service.

(3) The definition of "average final compensation" shall be the five best years of the last ten years of credited service.

(4) The definition of salary is base pay and excludes overtime, education pay, specialty and incentive pay, lump sum payments of annual and sick leave, and compensation leave, and all other non-regular compensation.

(5) Members hired on or after December 4, 2012, shall not receive a cost of living adjustment (COLA); shall not be eligible to participate in the deferred retirement option program (DROP); and shall not receive a supplemental benefit.

(6) The maximum benefit at retirement shall not exceed 80 percent of average final compensation. The maximum annual benefit shall not exceed $95,000.00. However, in no event shall a member receive a benefit that is less than two percent of average final compensation for each year of credited service.

(7) The member contribution shall be eight percent of salary.

(8) The benefit multiplier shall be two and one-half percent of average final compensation per year of credited service.

(Ord. No. 2012-36, § 6, 12-20-2012)

Sec. 54-105. - Stabilization fund.

After the retirement system achieves a funded ratio of 100 percent or greater as reflected in the Disclosure Information Per Statement No. 25 of the Governmental Accounting Standards Board - Schedule of Funding Progress, the city will make a contribution of the higher of either the normal cost of the plan or a minimum 13 percent towards a stabilization fund for use during economic downturns to smooth the volatility of required pension payments. This contribution shall be paid to the retirement fund and shall not be used by the city or the members to acquire or fund new or additional benefits.

(Ord. No. 2012-36, § 7, 12-20-2012)

Secs. 54-106—54-120. - Reserved.