

**AGREEMENT
BETWEEN
CITY OF PORT ORANGE, FLORIDA
AND
COASTAL FLORIDA POLICE BENEVOLENT
ASSOCIATION (PBA)**

PERC Certification # 326

October 1, 2017 through September 30, 2020

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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 Coastal Florida Police Benevolent Association (PBA), hereinafter referred to as the "Association".

Whenever a male gender is used in this Agreement, it shall be construed to include male and female employees.

Whenever the phrase "in writing" is used in this Agreement, it shall be construed to include regular mail, facsimile, and electronic mail (email) as an acceptable form of written communication unless specifically stated otherwise in a particular Article.

WITNESSETH:

WHEREAS, This Agreement reduces to writing the understandings of the City and the Association 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 Association and the City and to encourage more effective employee service in the public interest; and

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

ARTICLE 1

ASSOCIATION RECOGNITION

1.1 The City recognizes the Association as the exclusive collective bargaining representative for those employees in the following bargaining unit, as defined in PERC Certification # 326, dated May 25, 1977.

Included: All sworn Police Officers in the Port Orange Police Department, including Police Officers, Sergeants.

Excluded: Lieutenants, Captains, Chief, clerical employees, Service Officers and all other employees.

Any Amendment to the unit certified by Public Employees Relations Committee will be entitled to the terms and benefits of this Agreement.

ARTICLE 2

MANAGEMENT RIGHTS

- 2.1 The Association 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.
- 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. Unless specifically addressed in 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, rearrange, or change, extend, limit or curtail its operations or any part thereof.
- 2.3 Without limiting the provisions of Sections 2.1 and 2.2, but in order to clarify some of the more important unilateral rights retained by management, the City shall have the following unilateral management rights, unless such rights are specifically limited and in direct conflict with this Agreement or the law:
- (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 or abolish job classifications and the minimum qualifications for job classifications, and to determine the amount and type of work;

- (g) To determine the assignment of work, and to schedule the hours and days to be worked on each job and each shift, unless contrary to a specific provision of this Agreement;
- (h) To discontinue, temporarily or permanently, in whole or in part its operations and to transfer, or assign all or any part of its operation or any part thereto to new facilities;
- (i) Should management have a reasonable basis to believe the employee is not physically capable of performing his job they may 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 introduce new, different or improved methods, means and processes of conducting the operations, transportation, maintenance and service of the employer;
- (l) To determine the work to be performed during the employees' regular work day and require that all work be performed in a satisfactory and professional manner; and
- (m) To assign overtime work in accordance with the provisions of this Agreement.

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 or the law, 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 The City, subject to State law, has the sole authority to determine its purpose and mission and the amount and allocation of the budget.

2.7 If, in the sole discretion of the City, it is determined that civil emergency conditions exist, including but not limited to riots, civil disorders, hurricanes or

other weather conditions, or similar catastrophes the provisions of this Agreement may be suspended during the time of the declared emergency except for the economic provisions.

- 2.8 However, the exercise of the above rights shall not preclude employees or their representative from raising grievances or seeking other relief, should decisions on the above matters have the consequence of violating the terms and conditions of this Agreement or the law. The City of Port Orange acknowledges that the language in this agreement is not a waiver of any of the Association's rights under federal and Florida statutes nor is it a waiver of any employee or group of employees' rights under federal or Florida statutes.

ARTICLE 3

EMPLOYEE RIGHTS

- 3.1 The parties hereto agree not to interfere with the right of any employee to become a member of the Association, withdraw from membership from the Association, or refrain from becoming a member of the Association.
- 3.2 Nothing contained in this Agreement shall foreclose any employee covered by this Agreement from pursuing any right or remedy, not including arbitration, as defined in that Section available under this Agreement, without representation by the Association. Further, nothing contained in this Agreement shall foreclose any employee from discussing a non-contract problem directly with his immediate supervisor or other Departmental Official without the intervention of the Association, provided that the immediate supervisor or other Departmental Official agreed to discuss and/or attempt to resolve the matter.
- 3.3 In matters involving a formal grievance filed pursuant to the grievance Article of this Agreement, the Association shall be given the right to be present at any meeting called for the resolution of such grievance.
- 3.4 The employees and the Association expressly reserve all rights, powers, and authority customarily exercised by an employee organization or employees in a collective bargaining unit, including all inherent and common law rights and functions. Nothing in this Agreement shall be construed to be a waiver of any of these rights of the Association or the employees.

ARTICLE 4

STRIKES AND LOCKOUTS

- 4.1 The Association 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 Association 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.
- 4.2 The Association, its officers, agents, stewards and other representatives agree that it is their continuing obligation and responsibility to promote compliance with this Article and the law, including their responsibility to abide by the provision 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.
- 4.3 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.
- 4.4 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.
- 4.5 For the purpose of this Article, it is agreed that the Association shall be responsible and liable for any action committed by any of its 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 Association.
- 4.6 The City agrees that there will be no lockouts for the duration of the Agreement.

ARTICLE 5

DUES DEDUCTION

- 5.1 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 Association by each employee for dues. No authorization shall be allowed for payment of any collections of fines, penalties or special assessments. The City shall remit monies collected to the Treasurer of the Association monthly. The City remittance will be deemed correct if the Association 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 Association to notify the City Manager or his designee in writing of any change in the amount of dues to be deducted at least thirty (30) days in advance of said change. The City shall provide for 52 weekly deductions or 26 biweekly deductions, to occur each pay day. The City shall include the name of the employee, the amount deducted and for what period the deduction is for on each remittance report.
- 5.2 The Association 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 Association and not the City.
- 5.3 An employee may revoke his authorization for deduction of dues provided the employee gives thirty (30) days written notice to the City and the Association. 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.
- 5.4 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.
- 5.5 In the event the Association notifies the City of a change in dues by certified mail from the Association President or designee, or 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 procedure.

ARTICLE 6

PERSONNEL RECORDS

- 6.1 Each employee covered by this Agreement shall have the right to inspect his official personnel file provided, however, that such inspection shall take place during working hours at the location where the official personnel file is kept. The employee shall have the right to make duplicate copies, at his own expense, of any item contained in his official personnel file. The official personnel file is maintained in the City's Human Resources Office.
- 6.2 Employees shall have the right to file a written response to any letter of reprimand or other document which is placed in the employee's official personnel file, as a result of supervisory action or citizen complaint. At the employee's request, any such written response shall be included in the employee's official personnel file together with the letter of reprimand or other document against which it is directed.

ARTICLE 7

PROMOTIONAL PROCEDURES

7.1 PURPOSE

The purpose of this Policy is to identify the promotional procedures for the rank of Sergeant in the Port Orange Police Department.

7.2 POLICY

It is the policy of the Port Orange Police Department to promote personnel based on their knowledge, skills and abilities in an equal and impartial manner, consistent with the City's rules and regulations. A promotional examination will be given when a rank position becomes open and there is no current valid eligibility list. An eligibility list will be established within 60 days of the examination and will remain in effect for a period of two (2) years from the effective date of the new eligibility list. If there is no vacancy after the list has expired, a new list will not be established until a vacancy occurs necessitating a promotion. The date of the vacancy necessitating the process will determine the eligibility cutoff for all candidates. If the eligibility list has less than three persons, a new test can be given at the City's option.

7.3 GENERAL RULES

All Sergeant positions fall under the following rules and regulations regarding promotion.

The rank of Sergeant with the Port Orange Police Department will be achieved by the process herein.

Nothing in these rules precludes the Department Head from changing departmental staffing patterns or eliminating certain ranking positions. The Department Head reserves the right to make lateral transfers at his discretion.

7.4 APPLICATION AND QUALIFICATIONS

Any Officer who has been a full time Port Orange Police Officer for four (4) years as of the effective date of the vacancy necessitating the new process will be eligible to participate in the Sergeant's promotional process. Any officer with a break in service is required to have two consecutive years of service as of the effective date of the new process to be eligible.

Officers who have received major or minor disciplinary actions shall be

ineligible for actual promotion during set periods of time following their receipt of disciplinary actions, as specified in the following paragraphs. However, disciplinary actions against Officers shall not render them ineligible to participate in promotion testing, nor shall they affect Officers' placements on eligibility lists.

Any Officer receiving major disciplinary action (ten (10) suspension days or more) shall be ineligible for promotion for a period of two (2) years from the date of the adjudication of the offense.

Any Officer receiving major disciplinary action (four (4) to nine (9) suspension days) shall be ineligible for promotion for a period of one (1) year from the date of the adjudication of the offense.

Any Officer receiving minor disciplinary action (one (1) to three (3) suspension days) shall be ineligible for promotion for a period of six (6) months from the date of the adjudication of the offense.

The exam announcement will be posted and sent electronically to all sworn employees. The announcement shall contain the purpose of the exam, the prerequisites to be eligible for the exam, and a deadline date to sign up for the exam. It shall be the individual employee's responsibility to notify the Office of Chief of Police of their intent. If an eligible employee does not indicate his/her intent prior to the deadline date established in the announcement, it shall be assumed that he/she is not interested in taking said exam and will not be allowed to take said exam.

Any candidate who does not follow all requirements of this policy will be excluded from the promotional process.

7.5 TESTING PROCESS

The written examination for all candidates will be conducted as soon as possible after the effective date of the vacancy necessitating the new process taking into account a reasonable study preparation period and process timeline requirements.

Participants will be notified in writing as to the amount of credit they will receive for seniority, education and/or the military.

The Department Head will attempt to resolve any issues concerning these credits raised by any candidate.

Any issue that cannot be resolved by the Department Head is subject to resolution through Article 15 Grievance and Arbitration Procedure of this

Agreement.

The exam announcement shall be at least twenty-one (21) calendar days in advance of the test date. All participants must present themselves at the time and place indicated on the testing announcement. Candidates who absent themselves from the test without justification will forfeit their right to participate until the next promotional process is held.

Officers who have been excused under justifiable circumstances must take the test no later than seven (7) calendar days from the day the initial test was given.

The process for all positions shall consist of three (3) parts with relative weights as follows:

Written Test	60%
Outside Oral or Assessment	20%
Seniority	10%
Education	6%
Military Service	4%

A. Written = 60%

Officers taking the written test will be given credit for whatever score they achieve. This raw score will be multiplied by .60 to determine the written test credit.

B. Outside Oral Board or Assessment Center = 20%

Officers passing the written exam with a score of 70% or better, will be allowed to move forward to the “outside oral board or assessment center”, which will count towards 20% of the overall exam grade. The outside oral board or assessment shall be administered by individuals not employed by the City of Port Orange. The Chief shall assign a member of his/her staff to the Oral Board for Quality Assurance purposes only.

C. Seniority = 10%

Seniority is worth a total of 10% of the final test score. Eligible candidates will receive one-half (.5) point for each consecutive uninterrupted year of full time service as a Police Officer for the Port Orange Police Department to a maximum of 10 points. An officer with a break in service will be eligible for no more than four years prior service plus consecutive newly accumulated service time as of the

date of the new process. Credit for seniority will begin with the candidate's swear-in date. The candidate will receive .042 points for every full month of the partial year between the candidate's last anniversary date and date of the vacancy necessitating the new process. To receive full credit for the last partial month (if applicable) a minimum fifteen (15) day time in service period within that partial month is required. 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.

D. Education = 6%

Education is worth a total of 6% of the final test score. The maximum points attainable are 6. To qualify, a degree must be conferred from an accredited institution of higher education affiliated with the Council for Higher Education Accreditation. Points for education are not cumulative and are awarded as follows:

6	Masters/Law Degree or Higher
4	Bachelors Degree
2	Associates (AA or AS Degree)
2	Equivalent AA or AS Degree

- (1) An "EQUIVALENT" AA or AS Degree is defined as in Fla. Statute section 943.22(1)(c), "graduation from an accredited community college...or successful completion of 60 semester hours or 90 quarter hours AND eligibility to receive an associate degree."

E. Military Service Credit = 4%

- a) **Active Duty:** Military service is worth a total of 4% towards the final test score. The maximum points attainable are four. Points for military service are awarded for active duty as follows:

4	Four or more years of service
3	Less than four years of service but more than three
2	Less than three years of service but more than two
1	Less than two years of service but more than one

- b) **Reserve/National Guard:** Military Reservist and National Guard will receive 1 year of credit for every 365 days considered active duty. Points for this time will be awarded in accordance with (a) above.

The written test grade, oral board exam, seniority and college/military credit will all be compiled to determine the final score. Candidates will be listed in the order of the final score achieved. The Department Head will choose one of the eligible candidates from those with the top five final scores. No eligible candidate can be passed over more than twice in a testing period without written justification from the Department Head. 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 or reinstated position on the list. If any candidate wishes to have their name removed from the list said candidate will not be eligible for promotion for duration of the list period.

Employees who have been promoted to Sergeant within the bargaining unit shall serve a three hundred and sixty five (365) calendar day probationary period in the new classification. If at any time during the probationary period the promoted employee is found, by the City in its sole discretion, not to be suited for the position to which he was promoted, the employee shall be returned to his former classification.

When there is an opening for a Sergeant's position in any specialized unit (Motors, CID, SIU, etc.), the City agrees to post such opening for existing Sergeants to apply. The interested applicants will submit their names to the Department Head for review. The Department Head shall not be limited to the list for the appointment to specialized units.

7.7 TEST RESULTS NOTIFICATION

Candidates will receive their compiled test results and final eligibility ranking by letter.

The final eligibility list of all candidates will be posted. Said notice will contain the final test scores and seniority and education/military points credited (if applicable). Candidates will be identified by the last four digits of their social security number next to their results. No names will appear on these lists.

An Officer's current position on the eligibility list will be available at all times and can be obtained by the individual candidate through an inquiry to the Department Head's office.

7.8 FORMULATION OF ELIGIBILITY LISTS

The promotional list shall be effective for two years from the date the eligibility list is established.

ARTICLE 8

SENIORITY

8.1 For the purpose of this Agreement, employees shall have three (3) types of seniority: Department Seniority, Time in Grade Seniority and City Seniority. Department Seniority is defined as the length of continuous, uninterrupted service in the Port Orange Police Department. Time in Grade Seniority is defined as the length of continuous, uninterrupted service in a specific job classification or rank in the Port Orange Police Department. City Seniority is defined as the length of continuous, uninterrupted service with the City, measured from the employee's initial or adjusted date of employment.

8.2 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 twelve (12) months.

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

- (a) Time in Grade Seniority as defined in Section 8.1
- (b) Department Seniority as defined in Section 8.1;
- (c) Ability to perform work in a satisfactory manner and prior conduct;

8.3 For the purpose of filling any employment opening in the City, the City shall give preference to previously laid off employees over new hires provided that the laid off employee meets the minimum qualifications for the position; provided that there are no other eligible laid-off employees from the Department with an opening; and provided they are otherwise eligible to be rehired by the City.

8.4 Under no circumstances shall any employee be entitled to accrual of seniority or any other employee benefit during the period of his lay-off. Should an employee be hired after having been on lay-off the employee will retain his seniority.

8.5 For purposes of a recall, employees shall be returned to their former position in the inverse order of lay-off. No laid-off employee shall retain recall rights beyond one (1) year from date of lay-off.

- 8.6 In the event of a Reduction in Force or lay-off at the Lieutenant rank, Lieutenants will roll down to their previous rank of Sergeant. The Sergeant with the least amount of time in grade will be subject to a reduction in rank to officer. In the event of a reduction in rank from Lieutenant to Sergeant and/or from Sergeant to Officer, those personnel affected by such moves shall be given first consideration and preference if/when those positions re-open.

ARTICLE 9

PROBATIONARY EMPLOYEES

- 9.1 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 with or without cause and without recourse to the grievance and arbitration procedures of this Agreement. Shorter periods of employment shall not be cumulative but during such period, such new members shall be subject to other terms and conditions of this Agreement, except as limited in this Agreement. 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, the employee with the lowest social security number being considered the employee with the most seniority, subject to the provisions of Article 8.
- 9.2 All probationary employees as defined in Section 9.1 of this Article shall be entitled to the leave and holiday provisions of this Agreement.
- 9.3 The employee's starting date of employment for purposes of calculating his probationary status, longevity pay 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.
- 9.4 The City shall have the unilateral management right to extend the probationary periods set forth in Section 9.1 for 180 days in lieu of discharging the employee. The decision to extend the probationary period shall not be subject to the grievance and/or arbitration procedures of this Agreement.

ARTICLE 10

BILL OF RIGHTS

- 10.1 The parties agree to abide by the Law Enforcement Officer's and Correctional Officer's Bill of Rights, Section 112.531-532, Florida Statutes, as amended from time to time, which is incorporated herein by reference.
- 10.2. The findings of internal affairs investigations shall be labeled "sustained" (guilty as charged), the investigation disclosed sufficient evidence to clearly provide the allegations made in the complaint; or "not sustained" (not guilty), the investigation fails to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint; "exonerated", acts did occur, but were justified, lawful, and proper or "unfounded", the investigation indicates that the act(s) complained of did not occur or failed to involve police personnel;. No other terminology may be used.
- 10.3. Only "sustained" complaints from citizens will be inserted in an officer's personnel record located in the Human Resources office.
- 10.4. "Not sustained" "unfounded" and "exonerated" complaints from citizens will not be inserted in an officer's personnel record located in the Human Resources office.
- 10.5. The charge "conduct unbecoming an officer" and all similarly vague charges will not be employed by the City.

ARTICLE 11

BULLETIN BOARD

11.1 The City shall provide the Association with a Bulletin Board three (3) foot by three (3) foot in size across the hall from the time clock in the Patrol Division side of the building.

11.2 The Association agrees that it shall use space on the Bulletin Board provided for in Section 11.1, for the posting of the following:

Notices of Association Meetings
Association Elections of Officers (not including representation elections)
Reports of Association Committees
Rulings and Policies of the Association
Recreational & Social Affairs of the Association
Notices of Meetings by Public Bodies
Notices of Ratification Meetings
Contract Administration

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

11.3 Failure of the Association to follow the procedures for the posting of materials and notices on the Bulletin Board shall result in the materials or notices being removed from the Bulletin Board by the City and in suspension of all Bulletin Board privileges.

ARTICLE 12

DISCIPLINARY ACTION

- 12.1 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 Sergeant or a higher rank or sent by certified mail, return receipt requested, to the address in the City Human Resources Department records. The City agrees that no employee shall be disciplined except for just cause.
- 12.2 Except in extraordinary circumstances, before the employee is discharged or suspended without pay for disciplinary reasons the notification described in Section 12.1 will be provided to the employee in advance of the action so as to give the affected employee an opportunity to present his position.
- 12.3 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. Disciplinary actions except oral reprimands are subject to the grievance procedure, Article 15 or Florida Statutes Section 112.532, whichever is applicable.
- 12.4 The City and the Association agree that the vehicle GPS may not be used as a basis for initiating disciplinary action against any employee. However, vehicle GPS information may be used in connection with an internal affairs investigation which could lead to disciplinary action being taken, where the investigation was initiated on the basis of other information and provided that the vehicle GPS information is relevant to the investigation. Any officer who is determined to have tampered with any GPS/AVL device will be subject to disciplinary actions up to and including termination.
- 12.5 Disciplinary action, except termination or emergency suspension as detailed in Department Directive section 26.4, shall not become effective until such time that an employee has exhausted the grievance process through Step 4, or until such time that the time period for initiating Step 1 of the grievance process has expired.

ARTICLE 13

TRAINING AND TUITION REIMBURSEMENT

13.1 The City will make every reasonable effort to enable the employee to attend required in service training during the employee's normal working hours. When necessary to attend in-service training with schedules different from the normal work schedule, an Officer's work schedule can be adjusted with forty-eight (48) hours notice to the Officer.

13.2 Where the City requires any employee to attend supervisory training and/or training in specialized police techniques and/or any other job-related training, the City will make every reasonable effort to schedule the employee attending such training during his normal working hours. When necessary to attend training classes with schedules different from the normal work schedule, an Officer's work schedule can be adjusted with forty-eight (48) hours notice to the employee.

For special courses, such as Basic Recruit School, employees will be required to sign an Education Agreement with the City. The Education Agreement will require an obligated length of service depending on the length and cost of the course. These classes shall be police related courses or seminars and must be approved by the City.

13.3 This Article shall not in any manner apply to any training required by the Florida Police Standards Board to re-obtain Police Officer certifications for purposes of employment with reinstatement to the Department in the event that such certification shall have lapsed, expired, and/or terminated.

13.4 Subject to budgetary constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees categorized as "other fees") up to two (2) approved classes per semester (fall, spring, summer). Employee will be reimbursed at the Daytona State College (DSC) rate.

13.5 The City will reimburse the employee for tuition (excluding fees categorized as "other 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.

13.6 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.

- 13.7 The decision for approval or disapproval of courses is not subject to the grievance and arbitration provisions of this Agreement. The employee shall not be reimbursed 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.
- 13.8 Reserved
- 13.9 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.
- 13.10 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 13.4 and 13.5 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 may approve and pay for the courses. Employees shall not be allowed to work on internet-based college courses during normal work hours. If an employee wants to complete college courses using the internet, he or she may do so after normal working hours using City computers.
- 13.11 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.
- 13.12 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as defined in 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 Police Department's operational funds to provide tuition reimbursement for employees.

ARTICLE 14

LEAVE OF ABSENCE

- 14.1 The City of Port Orange will grant leave to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and in accordance with the City Family and Medical Leave Act Policy. This Policy, as amended from time to time, is set forth in the City's Administrative Policies Manual as Policy 1-22.
- 14.2 Longevity increases, if any, merit increases, if any, and any other increases, if any, 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
- 14.3 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 15

GRIEVANCES AND ARBITRATION PROCEDURE

15.1 In a mutual effort to provide a harmonious working relationship between the parties to this Agreement, it is agreed and understood that there shall be a procedure for the resolution of grievances between the parties and that such procedure shall cover grievances involving employee discipline or the application, violation, or interpretation of this Agreement.

15.2 Every effort will be made by the parties to settle any grievance as expeditiously as possible. Any grievance not answered by Management within the prescribed time limits shall automatically advance to the next higher step. Should the grieving party fail to observe the time limits as set forth in the steps of this Article, his grievance shall be considered conclusively abandoned.

15.3 All grievances shall begin at Step 1, except the following grievances shall begin at Step 3:

(1) A grievance that is general in nature, in that it applies to a number of employees, rather than a single employee, or

(2) A grievance that is directly between the Police Benevolent Association and the City, or

(3) A grievance involving a suspension, demotion, or discharge.

The above referenced grievances shall be reduced to writing, as outlined in 15.4, Step 1, and filed within ten (10) work days of the occurrence of the event(s) or notification of discipline.

15.4 Grievances shall be presented in the following manner:

Step 1. The employee, employee representative, or the Association shall first present his/her grievance in writing to the employee's immediate supervisor (or shift commander) within ten (10) work days of the occurrence of the event(s) which gave rise to the grievance or from the date on which the employee becomes knowledgeable of the cause of action. If the event(s) which gave rise to the grievance occurred at a time when the employee was on annual leave, sick leave, or other compensated leave, the ten (10) work days period shall commence running immediately upon the employee's return from such compensated leave. The immediate supervisor (or shift commander) shall answer the grievance in writing within (10) work days of

the presentation of the grievance. The answer shall be given to the employee, with a copy to the Association. All grievances must be reduced to writing and must contain the following information:

- (a) The specific article and section of the Agreement alleged to have been violated by the City;
- (b) A full statement of the grievance, giving a complete description of the facts, dates, and times of the events involved in the alleged violation, and the specific remedy desired by the grievant;
- (c) Signature of grievant or signature of the association representative and the date signed. In case of a group of employees filing a single grievance, the grievants will be identified.

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

Step 2. Any grievance which cannot be satisfactorily settled with the immediate supervisor (or shift commander) shall be reduced to writing as set forth in Step 1, by the employee, employee representative, or the Association, and shall next be presented to his/her Division Lieutenant or Captain.

Such grievance shall be presented to the Division Lieutenant or Captain within ten (10) work days of the date of receipt of the Step 1 answer. The Division Lieutenant or Captain shall, within ten (10) work days after presentation of the grievance render his/her decision of the grievance in writing, unless a longer period of time is mutually agreed upon. The decision shall be sent to the employee, with a copy to the Association.

Step 3. Any grievance which cannot be satisfactorily settled with the Division Lieutenant or Captain shall next be presented to the Department Head or his designee. The grievance as specified in writing in Step 1 shall be submitted within ten (10) work days after the receipt of the Step 2 answer. The Department Head or Designee may meet with the employee and his/her representative within ten (10) work days after receipt of the grievance (or such longer period of time as is mutually agreed upon). The Department Head or Designee shall render his decision in writing and send it to the employee, with a copy to the Association, within ten (10) work days after the grievance meeting or receipt of grievance, if no meeting is held.

Step 4. Any grievance which is not resolved at Step 3, shall next be presented to the City Manager within ten (10) work days after the receipt of the Step 3 answer. The City Manager shall meet with the employee and/or

his/her representative within ten (10) work days after receiving the grievance. The City Manager shall render his/her decision in writing within ten (10) work days after the grievance meeting and send it to the employee, with a copy to the Association.

Step 5 - Arbitration. In the event a grievance processed through the grievance procedure has not been resolved in Step 4 the Association shall request, in writing, that the grievance be submitted to arbitration within ten (10) work days after the City Manager renders a written decision on the grievance.

The Arbitrator may be any impartial person mutually agreed upon by and between the parties. If an impartial Arbitrator cannot be agreed upon within ten (10) work days after the date the grievance has been submitted for Arbitration, the Association shall request the Federal Mediation and Conciliation Services to furnish a panel of seven (7) Arbitrators within twenty (20) work days after the grievance is submitted to arbitration. Within ten (10) work days of receipt of the panel, each party shall have the option to alternatively strike three (3) names from the list in alternating fashion, thus leaving the seventh (7th) which will give a neutral or impartial Arbitrator.

The City and the party requesting arbitration shall attempt to mutually agree in writing as to the statement of the grievance to be arbitrated prior to the arbitration hearing, and thereafter, the Arbitrator shall confine his decision to the particular grievance thus specified. In the event the parties fail to agree on the statement of the grievance to be submitted to the Arbitrator, the arbitrator will confine his consideration and determination to the written statement of the grievance presented in Step 2 of the grievance procedure. The Arbitrator shall fashion an appropriate remedy for violations of the provisions contained in this Agreement.

The Arbitrator shall have no authority to change, amend, add to, subtract from, or otherwise alter or supplement this Agreement or any part thereof or amendment hereto. The Arbitrator shall have no authority to consider or rule upon any matter which is stated in this Agreement not to be subject to arbitration or 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, except to the extent as herein provided. The arbitration hearing shall be conducted in accordance with the rules of procedure promulgated by the American Arbitration Association.

Each party shall bear the expense of its own witnesses and of its own representatives for purpose of the arbitration hearing. The impartial Arbitrator's fees and related expenses and expenses in retaining a hearing

room, if any, shall be paid by the party declared by the Arbitrator to be the loser of the decision. The Arbitrator shall have the obligation in resolving the case before him/her to declare which party has lost the decision. If the Arbitrator fails to specify the losing party, the Arbitrator's fees and related expenses and expenses in 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 the parties.

15.5 Consistent with the provisions of the Florida Public Employees Relation Act, Chapter 447 Florida Statutes unless amended, it is mutually acknowledged and agreed that this Agreement shall be administered within the amounts agreed to by the City Council for funding of the Agreement. Accordingly, and notwithstanding any other provision of the Agreement, the Arbitrator shall have no authority, power or jurisdiction to construe any provision of the law, statute, ordinance, resolution, rule or regulation or provision of this Agreement to result in, obligate or cause the City to have to bear any expense, debt, cost or liability which would result, directly or indirectly, in the City exceeding the amounts initially agreed to by the City council for the funding of this Agreement as agreed upon by the parties. Any such award which contravenes or is not in compliance with the provisions of this paragraph shall be null and void.

15.6 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. Failure of the grievant to observe the time limits for any steps in this Article without a mutually agreed written extension of time shall terminate the grievance. 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.

ARTICLE 16

HOLIDAYS

16.1 It is recognized that the City will close its offices for seven (7) official holidays. The City will recognize the following as paid holidays for employees:

Thanksgiving Day
Friday after Thanksgiving
Christmas Day
New Year's Day
Memorial Day
Fourth of July
Labor Day

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

Floating Holiday: Annual leave, in an amount of hours equal to the number of hours in the employee's regular work shift, shall be added to the employee's annual leave accruals 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: Annual leave, in an amount of hours equal to the number of hours in the employee's regular work shift, shall be added to the employee's annual leave accruals 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. Annual leave, in an amount of hours equal to the number of hours in the employee's regular work shift, shall be added to the employee's annual leave accruals on the first pay period after the first of January for the employee to use as he or she wishes. The 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. Annual leave, in an amount of hours equal to the number of hours in the employee's regular work shift, shall be added to the employee's annual leave accruals on the first pay period after the first of January for the employee to use as he or she wishes. The 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.

- 16.2 The actual day of the holiday will be the observed day for all members of the bargaining unit.
- 16.3 An employee who is eligible and is not scheduled to work on one of the seven official holidays listed under 16.1 shall receive additional compensation, paid at his/her regular rate of pay, for the number of hours in his/her regular work shift.
- 16.4 An employee who is required to start his/her work shift on one of the official holidays listed under 16.1 shall receive payment at one and one half times his/her regular rate of pay for all hours that he/she works on that shift in addition to holiday pay, whether or not the employee's work shift extends into the following day.

ARTICLE 17

ANNUAL LEAVE

- 17.1 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. No employee shall be permitted to use annual leave for any period spent on unauthorized leave or participating in an unlawful work stoppage.
- 17.2 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.
- 17.3 The following sections 17.3, A – G apply to current employees hired before January 24, 2011.
- A. General Terms of Accrual - Annual leave shall be 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 three (3) 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 January 24, 2011 - 40 Hours - Full time employees working a forty (40) hour week shall accrue 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

<u>Length of Continuous Service</u>	<u>Hours Accrued Each Year</u>
Less than 5 years	96
5 through 7 years	112
8 through 10 years	128
11 through 15 years	144
16 through 19 years	160
More than 20 years	176

- C. Accrual for Current Full-Time Employees Hired Prior to January 24, 2011 Working Extended Shifts - 84 Hours Bi-weekly - Full time employees working extended shifts (Eighty four [84] hours biweekly) shall accrue 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:

<u>Length of Continuous Service</u>	<u>Hours Accrued Each Year</u>
Less than 5 years	100
5 through 7 years	118
8 through 10 years	134
11 through 15 years	151
16 through 19 years	168
More than 20 years	185

- D. Accrual for Current Part-Time Employees Hired Prior to January 24, 2011 - Designated part-time employees who work at least twenty (20) hours, but less than forty (40) hours, or more per week shall receive annual leave credit at one-half (1/2) the rate of permanent full-time employees. Such employees may not use vacation credit until after three (3) months have passed from their date of continuous employment. Temporary, seasonal, or part-time employees working less than twenty (20) hours per week shall not accrue annual leave.
- E. Probationary Period - Should a new employee, as defined in Article 9.1, fail to successfully complete his probationary period or should such employee be discharged the employee shall forfeit all accrued annual leave.
- F. Maximum Accrual - 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 twenty (320) hours. Leave in excess of 320 hours as indicated on the second to last paystub received in September can be sold back to the City, or at the employee's option, deferred into the employee's ICMA-RC 457 Plan account, at a rate of one hour of leave for one hour of pay. An employee will be paid for, or have deferred into the employee's ICMA-RC 457 Plan account, all accumulated annual leave in excess of 320 hours, as shown on the second to last pay stub received in September of each fiscal year. This payment will be made by the last pay period in September of each year at the employee's regular rate of pay in effect on September 15th.

- G. Employees will be permitted to use annual leave in units of not less than one-half (1/2) hour subject to approval of their supervisor. In case of conflict, annual leave shall be granted on the basis of seniority.

17.4 The following sections (17.4 A-G) apply to employees hired after January 24, 2011:

- A. Accrual for full time employees working a forty (40) hour week hired on or after January 24, 2011 shall accrue no more than ninety six (96) hours of Annual Leave each year.
- B. Accrual for full time employees working extended shifts – 84 hours bi-weekly hired on or after January 24, 2011 shall accrue no more than one hundred (100) hours of Annual Leave each year.
- C. Part-Time Employees hired on or after January 24, 2011 that are designated part-time employees who work at least twenty (20) hours per week, but less than forty (40) hours, or more per week shall receive forty eight (48) hours of Annual Leave per year. Temporary, seasonal, or part-time employees working less than twenty (20) hours per week shall not accrue annual leave.
- D. Reserved
- E. Reserved
- F. Unused annual leave may be accumulated up to a maximum accrual of three hundred twenty (320) hours. Leave in excess of three hundred twenty (320) hours effective the second to last pay check in September of each successive fiscal year shall be forfeited.
- G. Employees will be permitted to use annual leave in units of not less than one-half (1/2) hour subject to approval of their supervisor. In case of conflict, annual leave shall be granted on the basis of seniority.

17.5 Termination, Resignation, Retirement or Death for Employees Hired Prior to January 24, 2011 - An employee who is terminated for cause or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated unused annual leave. An employee who resigns with a two (2) week notice 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

17.3 (F). Pay for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. The employee may also have the option of deferring his or her accumulated unused leave into an ICMA-RC 457 Plan account, up to the maximum provided by law. In case of death, compensation shall be paid to the surviving spouse or the employee's estate.

17.6 Termination, Resignation, Retirement or Death for employees hired after January 24, 2011- An employee who is terminated for cause or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated unused annual leave. An employee who resigns with a two (2) week notice 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 220 hours. Pay for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. The employee may also have the option of deferring his or her accumulated unused leave into an ICMA-RC 457 Plan account, up to the maximum provided by law. In case of death, compensation shall be paid to the surviving spouse or the employee's estate.

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

ARTICLE 18

HOURS OF WORK AND OVERTIME

- 18.1 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 herein.
- 18.2
- a. The basic work period for bargaining unit employees in the Administration, Detective, Traffic and Patrol Division will consist of 84 hours during a fourteen (14) day period. Hours worked in an amount less than or equal to eighty (80) in a fourteen (14) day work period in the Administration, Detective, Traffic and Patrol Division which are assigned by the City, shall be compensated at the regular hours rate of pay. Hours worked in excess of eighty (80) in a fourteen (14) day work period, which are assigned by the City, shall be compensated at the rate of one and one-half (1 ½) the employees regular rate of pay. An employee is not guaranteed 84 hours of work. The City shall have the right to reduce the numbers of hours of work should it become financially necessary, or pursuant to disciplinary action or light duty assignment.
 - b. Officers in the Patrol Division will work twelve (12) hour shifts. Management has the right to schedule early and late cars at times different from the above. Officers of the Patrol Division assigned to inside desk duty will work an eighty four (84) hour bi-weekly work week with their schedule being dictated by the Department Head or his designee.
 - c. The hours of work for employees in the Traffic Unit will be flexible taking into consideration peak traffic periods, special events, weather, hours of light and darkness.
 - d. Hours of work in the Detectives division will be flexible and based upon work load and assignments.
 - e. Employees scheduled to work during the time change in March shall receive one (1) hour of overtime pay. Employees scheduled to work during the November time change shall make up the one (1) hour of time during the pay period in which that time change occurs.
- 18.3 Should an employee voluntarily switch shifts with another employee for the employee's convenience, the shift exchange will only be permitted when the shifts are exchanged between two employees scheduled on the same shift

rotations in that pay period as to preclude any overtime compensation as a result of the shift exchange. All such shift exchanges must be approved by the immediate shift supervisor prior to the shift exchange and prior to the pay period that the shift exchange has been requested.

- 18.4 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 Fair Labor Standards Act. Premium payments shall not be duplicated for the same hours worked under any of the terms of this Agreement. During pay periods in which a holiday occurs, employees who are not shift employees and who are not required to work on the holiday (Detectives and Administration) shall be paid for hours worked in excess of their normally scheduled hours, at a rate of one and one half (1 ½) their normal rate of pay.
- 18.5 An employee who has left his normal place of work and who is "called-back" for overtime work shall receive a minimum payment of three (3) hours at one and one-half (1½) the employee's regular rate of pay or the actual hours worked at one and one half (1½), 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.
- 18.6 Upon proof of attending court pursuant to subpoena, state attorney investigation (SAI), deposition or other court order involving a job-related case, not as a plaintiff in litigation against the City, an off-duty employee will receive pay equal to one and one-half (1½) the employee's regular straight time hourly rate of pay for the hours he attends court, SAI, or deposition. Provided, that such employee shall receive a minimum of three (3) hours pay at the rate of one and one-half (1½) 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.
- 18.7 No employee except Sergeant or above shall authorize scheduled 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.
- 18.8 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.

There are some specialized overtime details, such as the Christmas parade and the Fourth of July celebration and etc., which cannot be run smoothly if put on a rotation detail list. Such special events require a police motorcycle for traffic control. Such events will be exempted from the rotation detail list.

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

18.10 Except for Detectives, employees covered by this Agreement shall be given forty eight (48) hours notice of any change in their regular hours of work, unless an emergency necessitates a quicker change. Whenever possible, Detectives will be given a forty eight (48) hour notice of any change in their shift. If an employee is not notified prior to forty eight (48) hours of a shift change, he shall receive one and one-half (1½) times the straight time hourly rate for the first eight (8) hours of the new shift.

18.11 Nothing herein shall require the payment of compensation when an insubstantial amount of time (less than 15 minutes) is worked in excess of the length of the employee's normal shift.

18.12 Except for Detectives, Detective Sergeants, and Meth Team members there will be no telephone standby ("on call"). Employees issued pagers and/or cell phones shall be required to have those devices with them whenever possible. Detectives, Detective Sergeants, or Meth Team members will receive three (3) hours overtime pay per week when assigned as the "on call" Detective, Detective Sergeants, or Meth Team member. These employees will not be placed informally on a restrictive telephone standby.

When an employee is formally designated to an "on call" status for at least a half a week, that employee will receive three (3) hours overtime pay for that week. "On Call" is defined as: Formal notification by a supervisor that while off duty, the employee is designated as "on call" for a specific period and is expected to be able to respond ready and fit for duty within twenty (20) minutes during that designated period of time.

18.13 There will be no duplication of premium payments and no claims that provide for "overtime on overtime".

18.14 The maximum number of overtime hours that can be used to calculate average final compensation for pension purposes shall be no more than three hundred (300) hours per calendar year.

ARTICLE 19

AUTHORIZED USE OF PRIVATE AUTOMOBILES

- 19.1 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.
- 19.2 A written claim for compensation under this Article must be submitted to the Department Head by the employee within five (5) scheduled working days following the last day that the private automobile was used. Failure to follow this procedure will result in the claims being denied.
- 19.3 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 20

TEMPORARY ASSIGNMENT TO A HIGHER CLASSIFICATION

- 20.1 The City may select any employee from a lower classification to temporarily fill a bargaining unit position.
- 20.2 An employee who is temporarily assigned to a position of higher rank for a period of more than one (1) month (four (4) consecutive weeks) shall be entitled to the salary pertaining to that rank or position for the period of time the employee is so assigned.
- 20.3 If the employee selected for a temporary position is not selected to the permanent position, this employee shall be returned to his previous classification and pay rate.

ARTICLE 21

SICK LEAVE

21.1 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. The City may require a physician's certificate to authenticate an absence or to determine qualifications to resume work.

21.2 General Terms of Accrual - Sick leave shall be accrued from the most recent day of continuous employment under the conditions hereinafter stated. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no sick 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. No employee shall be permitted to use sick leave for any period spent on unauthorized leave or participating in an unlawful work stoppage.

A. Accrual for Full-Time Employees - Each full-time employee shall accrue sick leave at an equally prorated amount per pay period to yield 100.8 hours of sick leave 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 each member maintains a balance of at

least forty (40) hours of accumulated sick leave after the sick leave requested for pay or deferral is deducted from their accumulation, provided the requirements of Section 21.3 are met.

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

Subject to the provisions of this Agreement employees may accumulate sick leave from year to year for use in future years as needed. 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 October 1, 2009, will be able to carry forward each fiscal year a sick leave balance equal to their total sick leave accruals as of October 1, 2009 but in no case more than 1000 hours. Leave indicated on the second to last paystub received in September in excess of the above cap 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 15th, by last pay check in September.

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.

Sick Leave Exchange for Pay or Deferral

- a. 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. 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.

- b. 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) 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 forty (40) 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 of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

- 21.4 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 Department no later than September 1 of such fiscal year, subject to the restrictions indicated in Section 21.2.B. Failure to submit this form will result in an employee's accrued sick leave being "banked" for future use or pay-off as provided herein. Any sick leave taken after the filing of such form shall first be deducted from accrued sick leave "in the bank" and, secondly, from those days for which payment is sought but not yet paid.
- 21.5 All payments or deferrals for unused sick leave made under this Article shall be paid by check issued by the City on or about last pay check received in September.
- 21.6 Participants receiving sick leave shall be paid and their account charged for the actual number of scheduled hours absent because of sickness.
- 21.7 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.
- Employees shall not be allowed to utilize sick leave in lieu of annual leave.
- 21.8 Retirement, Resignation 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 death, his or her heirs) shall be entitled to a lump sum payment for all unused sick leave accrued at a rate of one hour of pay for one hour of leave. The employee may also have the option of deferring his or her payment of unused leave into an ICMA-RC 457 Plan account, up to the maximum amount provided by law.

21.9 An employee who is fired, dismissed or who quits and/or separates from the City for any reason other than detailed in section 21.8 shall forfeit accrued sick leave.

21.10 Employees may sell a maximum of ten (10) hours of sick time to donate to families of Port Orange Officers in need within the central Florida area. This subsection shall be exempt from the minimum forty (40) hour bank rule.

21.11 SICK LEAVE BANK

Both parties agree to consider the establishment and maintenance of a voluntary Sick Leave Bank.

An employee's participation in the Sick Leave Bank is voluntary.

ARTICLE 22

ASSOCIATION REPRESENTATIVES AND ACTIVITIES

- 22.1 The Association shall be represented by its President or his designee.
- 22.2 The Association shall notify the City Human Resources Director in writing of the name of the President or his designee, at least ten (10) working days prior to the effective date of his taking office. It shall be the responsibility of the Association to immediately notify the City's Human Resources Director and the Department Head in writing of any change in the designation of President or his designee.
- 22.3 The City shall provide the President of the Association a copy of the agenda of each regularly scheduled meeting of the City Council, which may be picked up at City Hall.
- 22.4 The employee or Association shall not engage in Association business of any kind, including solicitation of membership during working hours. An Employee Representative of the Association, designated in writing by the President, shall be permitted reasonable access to all Department locations at reasonable times during a working day for investigating grievances provided the City is first notified of the investigation, and provided further that such absence would not unduly hamper the operation where the officer is employed. The Association Representative may attend departmental Labor Management meetings.
- 22.5 Two bargaining unit employees will be permitted to attend local and state seminar functions of the Association without loss of pay for a maximum of two (2) days per year 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.
- 22.6 Two (2) members of the Association negotiating committee (employees of the City) shall be permitted to attend all negotiating sessions without loss of pay, as well as the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor.

ARTICLE 23

INSURANCE

- 23.1 The City will enable the employees to insure themselves under a group life insurance plan with the amount available being one times base annual salary rounded to the next higher thousand. The employer will pay the premium.
- 23.2 The City agrees to maintain a health insurance program for the employees, with the City paying the lowest “employee only” rate among all health insurance plans with a co-pay offered. Dependent coverage will be at the employee’s expense. The employee electing coverage with a carrier which has a higher rate shall pay the difference in any premium charged by that carrier. Dependent coverage will also be at the employee’s expense.
- 23.3 The City will continue to provide the Department with the personal injury liability and false arrest policy.

ARTICLE 24

UNIFORMS AND EQUIPMENT

- 24.1 The City will provide to all Officers the following equipment and clothing and other items as necessary:
- 4 Trousers
 - 2 Long sleeve shirts
 - 3 Short sleeve shirts
 - 1 Winter jacket
 - 2 Collar insignias
 - 1 Tie
 - 1 Tie Clasp
 - 2 Badges
 - 1 Identification card and carrier
 - 1 Walkie talkie holder swivel
 - Shoes as needed. Not to exceed two (2) pair per year.
 - 1 Rechargeable flashlight
 - 1 Pocket pen
 - 1 Pocket notebook
 - 1 Pair non-prescription sunglasses for employees in the Traffic Division
 - 1 Bullet proof vest to be worn in accordance with Department policy
 - 1 pair Handcuffs
 - 3 Summer shirts
 - 1 Baseball Cap
- 24.2 The City agrees to furnish all sworn Officers, at City expense, those replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct.
- 24.3 Any employee who shall receive any breakage or damage to his personal equipment in the line of duty shall have it replaced at no cost to the employee, to a maximum of one hundred (\$100.00) dollars per item. However, if the employee is not negligent, then, in the case of loss or damage to prescription eyeglasses they will be replaced or repaired, as the case may be, without regard to the one hundred (\$100.00) dollar limitation.
- 24.4 The City agrees to provide each uniformed and non-uniformed-employee dry cleaning at City expense for all uniforms and business attire used for employment
- 24.5 The City and the Association agree that sworn Officers who are required to wear non-issue clothing in the course of their employment shall receive a

clothing allotment. Sworn Officers who are required to wear non-issue clothing shall receive their first-year clothing allotment prorated monthly to the end of the calendar year, prior to the commencement of assignments that require them to wear such clothing. Clothing allotment will be \$750.00 pro-rata per year. This allowance shall be paid in one installment annually paid during the first pay period in January. Upon departure from assignment, employee will be responsible to re-pay the prorated share for the time not in the assignment and in the amount that exceeds \$150.00. If an employee works any day in a calendar month, they will not be required to repay the prorated amount for that given month.

- 24.6 The City agrees to arrange to have each police vehicle inspected by a mechanic on a regular basis. At the start of each shift, the driver will inspect his assigned vehicle before he goes on the street. If the driver finds any fault in the vehicle which might be construed as a safety hazard, the driver shall immediately inform the Shift Commander. It is understood the driver may not order or take the vehicle out of service as this is a management responsibility. Based upon experience, the vehicle check list may be changed, revised, or withdrawn. The vehicle should have the following equipment in working order: rotating emergency lights, siren, loud speaker, two-way mobile radio, shotgun and shotgun shells, first aid kit, fire extinguisher, rechargeable flashlight, spare batteries, and a prisoner cage guard in all vehicles which are used to transport prisoners.
- 24.7 The City will provide each Officer with a two-way portable radio.
- 24.8 City-issued uniforms and other articles of clothing are provided for wear while at work, and are not to be worn for non-duty purposes.
- 24.9 The City will issue uniforms in compliance with IRS regulations pertaining to work clothes and Uniform Allowances and Reimbursements.

ARTICLE 25

BEREAVEMENT LEAVE

- 25.1 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., 48 hours for extended shift employees per event, for a maximum 96 hours annually for extended shift employees, 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. The decision of the Department Head to grant or not grant the employee additional leave time beyond the maximum hours provided for in this part shall not be subject to grievance and arbitration proceedings.
- 25.2 Management may require the employee to verify the employee's relationship to the deceased and to provide proof of death.
- 25.3 In the event of the need for additional time for a death, an employee may use accrued sick or vacation leave.

ARTICLE 26

WAGES

26.1 Effective the first full pay period following 10/01/2017 through 09/30/2020, employees will be slotted into the following pay schedule:

Officers		Sergeants	
Year	Pay/Hr.	TIG	Pay/Hr.
Start	\$18.01	Start	\$24.50
1	\$18.19	1	\$25.11
2	\$18.37	2	\$25.74
3	\$18.56	3	\$26.38
4	\$18.74	4	\$27.04
5	\$19.12	5	\$27.72
6	\$19.50	6	\$28.41
7	\$19.89	7	\$29.12
8	\$20.29	8	\$29.85
9	\$20.69		
10	\$21.21		
11	\$21.74		
12	\$22.28		
13	\$22.84		
14	\$23.41		
15	\$24.00		

- A. Employees will have their hourly rate adjusted effective the first full pay period following 10/01/2017, or upon ratification of the agreement, whichever is later, according to the above pay schedule. The Officer rate is based on Years of Service (YOS). The Sergeant Rate is based on Time in Grade (TIG). Any employee who is currently above the rate as described for the appropriate YOS/TIG will not receive a pay decrease, but will maintain their rate of pay until they reach such time in which they would fall into this schedule.
- B. During the duration of the contract (10/1/2017-9/30/2020), employees will be moved through the pay schedule as provided on their anniversary date for officers or promotion date for Sergeants (to include probationary Sergeant status).
- C. Effective the first full pay period following October 1st of each year of the current contract (10/1/17, 10/1/18, 10/1/19), any employee who is not eligible to receive an adjustment based on the pay schedule within the given fiscal year due to or their current rate being above the specified rate for their YOS/TIG shall receive a one and one half percent (1.5%) increase to base, not to exceed the maximum of the pay schedule.

- D. On or around the first full pay period in October 1st of each year of the current contract (10/1/17, 10/1/18, 10/1/19), any employee whose current rate of pay is in excess of the top of the pay schedule shall receive a one-time payout in an amount equivalent to two percent (2%) of their base wage.
- E. This pay schedule will be eliminated with the expiration of the contract. In the event a successor agreement is not reached prior to the expiration of this agreement, employees shall not continue to be awarded any adjustments based on the pay schedule in 26.1

26.2 Employees will 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 shall be subject to negotiation by the parties.

26.3 New hires will start at the minimum rate of pay established for the classification. Requests for a starting rate up to the YOS-2 rate will require the approval of the Police Chief and the Administrative Services Director.

26.4 The City performance evaluation system will be a satisfactory/unsatisfactory procedure. If the employee's performance for the previous year has been satisfactory, they will receive a rating of satisfactory. The employee will then undergo performance evaluations each year thereafter. Should the employee receive a rating of unsatisfactory, due to unsatisfactory work or performance, the employee will be placed under intensive management guidelines, and re-evaluated in ninety (90) days. If the employee has still not raised his/her performance level to satisfactory at the conclusion of this ninety (90) day period, additional counseling may be provided, and the employee may be re-evaluated at the conclusion of another extended rating period; or, the supervisor may initiate action to terminate the employee.

26.5 The rate of pay for promotional appointments shall be in line with the pay schedule detailed in 26.1. The Police Chief, at their sole discretion, may promote an Officer with more than 14 years of service to the rank of Sergeant at a starting rate up to the TIG-2 rate.

26.6 In addition to wages, incentive pay, if appropriate, shall be provided in accordance with pertinent Florida Statutes or in accordance with this contract.

- a. Specialty pay will be provided to all employees who are assigned as members of a specialized or hazardous unit (division) or other groups which are herein specified as follows:

<u>Specialty Assignment</u>	<u>Amount of Pay</u>
Motorcycle Officer	\$60.00/pay period

Emergency Response Team	\$60.00/pay period
Traffic Homicide Investigator	\$60.00/pay period
Field Training Officer	\$60.00/pay period
Canine Officer	\$60.00/pay period
Drug Recognition Expert	\$60.00/pay period
Meth Team	\$60.00/pay period
Detective Assignment	\$90.00/pay period

ARTICLE 27

RETIREMENT PLAN

- 27.1 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 185, Florida Statutes. The Police Pension Fund Ordinance of the City is set forth in the Port Orange City Code. Pensions and other retirement benefits for Bargaining Unit employees not specifically set forth in this Labor Agreement are as set forth in the Police Pension Fund Ordinance.

The City of Port Orange agrees to maintain a retirement plan for Police Officers as required by City Ordinance.

The City agrees to maintain the benefits and member contributions set forth in the Police Pension Fund Ordinance, with the changes provided below affecting this bargaining unit.

There will be no change in the accrued benefits of Plan members.

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

The parties agree to amend the Police Pension Fund Ordinance, effective the first of the month following the adoption of the Ordinance, using a tiered approach as follows:

27.2 Tier One – Current Employees:

- A. Leave the normal retirement age at the current 48 years of age with 0 years of credited service.

The alternative retirement age of 20 years of credited service irrespective of age, is changed to age 45 with 25 years of credited service.

- B. Leave the early retirement age at the current 45 with 10 years of credited service. The early retirement benefit shall be the normal benefit level reduced by three (3) percent for each year by which the participant's age at retirement preceded the normal retirement age indicated under paragraph 27.2 A. above.

- C. Leave the definition of "average final compensation" of the current 3 best of the last 10 years of credited service.

- D. Exclude from the calculation of average final compensation for pension purposes: a.) all overtime compensation in excess of 300 hours per calendar year; b.) extra duty or special detail work performed on behalf of a second party employer; and c.) one half (1/2) of lump sum payments of sick leave and vacation leave accrued up to the effective date of this agreement; d.) all lump sum payments of sick leave and vacation leave accrued after the effective date of this agreement.
- E. To be eligible for the cost of living adjustment (COLA) a member must attain a minimum age of fifty nine (59) years.
- F. To be eligible for a COLA, a member must retire with 25 or more years of credited service.
- G. Add a maximum Retirement Benefit cap of \$95,000.00 that includes the COLA.
- H. To be eligible for the insurance supplemental retirement benefit a member must retire with 25 or more years of credited service.
- I. Prior Military service buy back will be at full actuarial value and cannot be used for vesting purposes.
- J. Prior Police service for which a member is not earning a Pension must be purchased at the full actuarial value and cannot be used for vesting purposes.
- K. Change the DROP plan to provide that, only those employees who have completed 25 years of service will be eligible to enter the DROP.
- L. Increase the member contribution from the current 0.5% of salary to 7.5% of salary in conjunction with an increase of in service disability from fifty percent (50%) to fifty one (51%).

27.3 Tier Two – Employees Hired After the Adoption of the Police Pension Ordinance revised on January 31, 2011:

Upon adoption of the Police Pension Ordinance, all police officers hired after the adoption of the Ordinance shall receive the Retirement benefits provided in Florida Statutes Chapter 185 at the Minimum Benefit Levels that were in place in 1999.

- A. Define “average final compensation” from the current 3 best of the last 10 years of credited service to one twelfth of the average of a Participants annual compensation for the five highest years of Service as of the date of benefit determination.

- B. Member contribution of 8% of salary.
- C. Provide an insurance supplemental retirement benefit as follows:
 - 1. \$100 per month if the Participant has 10 complete years of service.
 - 2. An additional \$10 per month for each complete year of service in excess of 10, to a maximum additional amount of \$100.
- D. In no event shall a member receive less than 2% of average final compensation multiplied by the number of vesting credits.
- E. Normal retirement age is 48 years of age with 10 years of credited service.
- F. Early retirement age 45 years of age with 10 years of credited service. The early retirement benefit shall be the normal benefit level reduced by 3% percent for each year by which the participant's age at retirement preceded the normal retirement age indicated under paragraph 27.3 E. above.
- G. Exclude lump sum payments of sick leave and vacation leave from the calculation of average final compensation for pension purposes.

Tier two employees shall not receive a Cost of Living Adjustment (COLA) and shall not receive a Deferred Retirement Option (DROP)

27.4 Mutual Consent Agreement:

In accordance with section 185.35(6), F.S., a defined contribution plan component ("share plan") shall be established as part of the defined benefit pension plan, to be funded exclusively with Ch. 185 premium tax revenues. However, the City and the Union have mutually agreed that no Ch. 185 premium tax revenues will be allocated to a share plan at this time. The share plan shall not be activated until Ch. 185 premium tax revenues are allocated to the share plan by mutual agreement of the parties. At such time as the City and Union agree to allocate Ch. 185 premium tax revenues to the share plan, the parties will negotiate the details of the share plan.

- A. All annual premium tax revenues received pursuant to Ch. 185 will continue to offset the City's pension contributions.
- B. All accumulated excess premium tax revenues as of 10/01/2016 will be used to offset the City's pension contributions.

ARTICLE 28

JURY DUTY AND APPEARANCE AS A WITNESS

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

ARTICLE 29

ALCOHOL AND DRUG TESTING

- 29.1
- A. The parties agree to work together to fully comply with the Criminal Justice Standards and Training Commission Rules (11B-27.0011 et seq., F.A.C.) concerning the use of any controlled substances by, and drug testing for, all applicants for certification, employment or appointment of bargaining unit positions.
 - B. In the event the Department Head or his designee has a reasonable suspicion to believe that an employee is under the influence of drugs or alcohol on duty or has used drugs off duty based on reasonable suspicion, the Department Head may require that the employee submit to breathalyzer tests, blood tests, urinalysis, and/or other appropriate testing. Should the employee test positive to a drug test, the Department Head will utilize a confirmatory process before instituting disciplinary action. Such test shall be conducted by a state certified lab or technician at the City's expense.
 - C. In the event the Department Head request that an employee submit to breath, blood, urine and/or other tests and the employee chooses not to submit to such test or tests, such refusal shall be grounds for discipline. As used in this Article 29, a positive alcohol reading or a positive alcohol test shall mean a blood or breath alcohol reading of .02 or above.
 - D. If the employee submits to the tests and the results indicate statutory alcohol impairment or drug use other than as indicated in Section G, the employee shall be suspended without pay. Within forty (40) days, a suspended employee desiring reinstatement shall, upon written request, be given the opportunity to submit to further blood or urine drug/alcohol screening 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 Department Head, 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 use.

- 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. The request must be voluntarily made in writing prior to the institution of disciplinary measures for alcohol or substance abuse.
- F. The Department Head has the right to search lockers, city vehicles, desks, handbags, lunchboxes, other containers, or other personal effects of employees at any time provided the Department Head has reasonable suspicion to believe that an employee is under the influence of drugs or alcohol. If deemed necessary by the Department Head, 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. Upon either request being made, such search shall be witnessed by an independent witness of the employee's choice in the Department; provided this choice will not prevent, inhibit, or unreasonably delay the searching of the employee. An employee's refusal to cooperate with or submit to a search may be treated as 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 the Supervisor that they are taking such medication on the advice of a physician. It is the employee's responsibility to inform the Supervisor of the possible side effects of the drug on performance and expected duration of use. See also D2.
- 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. Involvement in an accident while on duty when there is reasonable suspicion to believe alcohol or narcotics was responsible, such cause shall be considered reasonable cause for purposes of this Article.
- K. Decisions of an arbitrator under this article shall be limited to a determination of whether there existed reasonable suspicion to activate the provisions of this Article and if this issue is determined in the employee's favor, he shall be reinstated. The questions of whether or not the employee was under the influence of alcohol or

drugs shall be subject to arbitration, but not the subsequent disciplinary measure imposed by the City.

- L. Reasonable suspicion as used in this Article shall be reduced to writing and signed by the person initiating the allegation before activating the provisions of this Article.

29.2

A. PURPOSE

This Article provides Police Department policy relative to the use of narcotics, illegal drugs, and the abuse of legally prescribed drugs by any member of the Department and sets forth circumstances in which drug tests will be required.

B. POLICY

The Port Orange Police Department has a legal responsibility and management obligation to ensure as safe a work environment as possible, as well as a paramount interest to protect the public by ensuring that its Officers have the physical stamina and emotional stability to perform their assigned duties. The Police Department must maintain public confidence in the Department's competence and adopt procedures to ensure that its Officers are fit for duty.

The abuse of drugs or chemical substances is illegal and counter-productive to the good order and reputation of the Police Department and will not be tolerated. Officers must have physical coordination and unimpaired judgment to react prudently and effectively to the demands of police service.

C. TERMINOLOGY

1. The term Drug includes cannabis, narcotics, or any controlled substances which have not been legally prescribed and/or dispensed.
2. The term Drug Abuse includes the use of cannabis, narcotics, or any controlled substance, which has not been legally prescribed and/or dispensed, or the abuse of a legally prescribed drug.
3. Reasonable Suspicion Standard - An apparent state of facts and/or circumstances found to exist by a supervisor or fellow employee which would cause a reasonably intelligent person to believe the employee to be under the influence or a user of drugs or narcotics. The standard of reasonable suspicion is less than probable cause.
4. Probationary Employee - Any sworn Officer with less than one full year of service.

5. Administrative Review Board - The board that reviews disciplinary matters.
6. Medical Review Officer - The physician designated by the testing laboratory who will review the analysis results before sending them to the City.
7. Drug Analysis - The submission of a urine or hair specimen for testing to determine the presence of the following groups of drugs:
 - a. 10-Panel Urine Drug Screen by Immunoassay Methodology for Amphetamines, Barbiturates, Benzodiazepines, Cocaine, Methadone, Methaqualone, Opiates, Phencyclidine, Propoxyphene, and Tetrahydrocannabinol (marijuana metabolites).

D. General Rules

1. The use of illegal drugs, cannabis, or nonprescribed controlled substances or the abuse of legally prescribed drugs or controlled substances by a Port Orange Police Officer is strictly prohibited.

Violation of this policy will result in disciplinary action.

2. Police Officers who are required to take prescription medicine that may affect the Officers' ability to perform their duties while on duty shall notify their commander or lieutenant prior to their tour of duty.
3. Police Officers who have knowledge that another individual is illegally using drugs or narcotics shall report the facts and circumstances immediately to their supervisor.
4. Refusal by a Police Office to take the required drug test shall be considered insubordination and will result in the immediate relief from his/her duties pending disposition of any additional action.

E. Mandatory Drug Testing

1. Mandatory drug testing is the submission of a specimen in order to test such samples for the presence of drugs.
2. Mandatory drug analysis will be conducted only upon the approval of the Department Head under the following circumstances:

- a. Based on REASONABLE SUSPICION (as set out in G), citing specific instances when a member was incapable of performing his/her required duties or exhibited unusual work performance measures and/or behavioral traits.
- b. When an Officer is scheduled to submit to an ordered psychiatric or psychological examination.
- c. At any time during the probationary period.
- d. For counseling assistance programs or as a condition of discipline when the Officer refuses to take the test.
- e. When an Officer has used deadly force.
- f. When an Officer has operated a motor vehicle involved in an accident resulting in death or serious injury to an individual.
- g. Prior to assignment to special units, i.e., Vice and Intelligence, and Emergency Response Team.
- h. Mandatory testing no more than four times each year for all personnel listed in g. above. (Random testing will count)
- i. When an Officer is scheduled for promotion to a higher rank. Said promotion will be withheld due to any refusal to take said test.
- j. When an Officer returns to duty after an absence of 15 days or more on a non-hospitalization sick leave without medical documentation of his/her illness.

F. PROCEDURES FOR THE ORDERING OF DRUG TESTING IN CASES OF REASONABLE SUSPICION

- 1. A ranking Officer (Lieutenant or above) will be notified by the initiating Officer of the circumstances leading to the request for a drug test.
- 2. If the request for a drug test is approved, the Officer requesting the test will direct a memo to the Department Head indicating the circumstances of reasonable suspicion that formed the basis of the request.
- 3. The memo will then be presented to the accused Officer who will sign his/her name at the bottom of the report indicating that the Officer has

read it. This signature will in no way be considered an admission of guilt, but only an acknowledgment of the fact that the report was read. A copy of this report will be given to the accused Officer.

4. An Officer who refuses to submit to a properly required drug test shall be deemed insubordinate. Charges shall be referred by the requesting supervisor or other commanding officer, and the Officer will be transported to a place of his choice within reason.
5. If the Officer agrees to take the drug test, that individual shall complete and sign the drug testing Consent Form. If the accused Officer is unable to read the Consent Form, the supervisor shall read it to the individual. A copy of the Consent Form will be given to the Officer.
6. A supervisor will transport the individual to the approved testing facility and will stand by until the test has been administered and will then transport the individual to a place of his/her choice within reason. At the testing facility, the supervisor will verify all preliminary documentation associated with the test.
7. Upon completion of the drug test, a copy of all police reports will be forwarded through the chain of command to the Department Head.

G. ALLEGATION OF MISCELLANEOUS DRUG-RELATED ACTIVITY ON OR OFF DUTY

1. Allegations of miscellaneous drug-related activity which would be considered reasonable suspicion requiring a drug test include, but are not limited to, the following:
 - a. Unauthorized involvement with a person or enterprise engaged in the illegal sale, delivery, manufacture, purchase, or possession of drugs and narcotics.
 - b. Illegal sale, delivery, manufacture, purchase or possession of drugs or narcotics.
 - c. Whenever the results of a preliminary criminal investigation indicate a reasonable suspicion to believe that the accused Officer is involved in illegal drug-related activity; or upon completion of the initial stages of an administrative investigation which indicates a reasonable suspicion to believe the accused is personally using illegal drugs or is personally

misusing or abusing legally prescribed or dispensed medication.

d. A reasonable suspicion exists when a person has a reasonable belief that an individual is under the influence of a drug or drugs, which affect behavior, supportable by direct observation, articulable reasons and common sense. The following, in addition to other evidence or suspected drug abuse, are some of the indicators that may give rise to a reasonable suspicion to believe that an employee's physical or mental abilities to perform assigned duties and responsibilities are affected by drugs.

1. Changes in speech pattern.
2. Staggering gait or poor coordination.
3. An accident while operating a City owned or leased vehicle, equipment or property.
4. Unusual behavior, variations in mood, deterioration of performance during a work period.
5. Physical or verbal altercations.
6. Possession of drugs.
7. Information from a reliable person with personal knowledge who is willing to publicly state the information.
8. Erratic operation of a motor vehicle.

H. RANDOM DRUG TESTING

1. Random drug testing is the submission of a urine or hair specimen in order to test such sample for the presence of drugs. (See Section 3)
2. Specimen types and protocols will be uniform during individual random testing operations.
3. Random drug analysis will be conducted only upon approval of the Department Head.
4. All Officers will be included in the random drug testing group which will be eligible to be tested.
5. Random testing will take place no more than four (4) times a year.
6. Employee numbers of all Officers in this group will be placed in the computer, which will randomly select individuals for testing.

7. Shift Commanders will be given no more than forty-eight (48) hours notice that Officers under their command have been selected. Those Officers will be notified verbally at inspection or while on duty. Officers will have four (4) hours to submit a specimen. Only personnel on duty when notice is given will be tested, except for Officers working steady night shift, who will be compensated if held over for testing. If an Officer is selected to be tested on their day off or when the Officer is not at work, they will be tested immediately upon their return to work.

I. ANALYSIS PROCEDURE

1. A supervisor will transport Officers to the facility where their specimens will be collected and tested by certified laboratory technicians.
2. The supervisor will verify all the preliminary documentation associated with the test for each Officer by initialing it, and will positively identify each Officer prior to the test. A copy of the Consent Form will be given to the supervisor who will return it to the Department Head.
3. The urine specimen will be collected in a manner that will preserve the dignity of the Officer and ensure the integrity of the sample according to the National Institute of Drug Abuse standards.
4. The Medical Review Officer will send results to the Human Resources Director.
5. Drug Analysis Methodologies:
 - a. A positive report of the presence of a drug must meet the following criteria: First, the drug and/or its metabolites must be present at a concentration greater than that listed as the cut-off for the screening methodology. Second, the drug or its metabolites must be measured by GC/MS confirmation methodology and found to be at a level greater than that listed for this method and particular drug. Note that the minimum reporting level is different for each drug and/or metabolite.
 - b. Drug analysis will be done by immunoassay screening with confirmation of all positive screens by Gas Chromatography/Mass Spectrometry (GC/MS). These methodologies follow the National Institute of Drug Abuse's suggested guidelines for specificity and sensitivity.

Initial drug screening is performed at the following detection sensitivities:

Amphetamines	500 ng/ml
Barbiturates	300 ng/ml
Benzodiazepines	300 ng/ml
THC (marijuana metabolite)	50 ng/ml
Cocaine metabolite	150 ng/ml
Methadone	300 ng/ml
Opiate metabolites	2000 ng/ml
Phencyclidine	25 ng/ml
Propoxyphene	300 ng/ml

c. Confirmation by GC/MS is detected at the following sensitivity levels (minimum reporting concentration):

Amphetamines	250 ng/ml
Methamphetamines	250 ng/ml
Barbiturates	150 ng/ml
Benzodiazepines	150 ng/ml
THC (marijuana metabolite)	15 ng/ml
Cocaine or cocaine metabolite	100 ng/ml
Methadone	100 ng/ml
Methaqualone	100 ng/ml
Opiates - Total	300 ng/ml
Codeine	2000 ng/ml
Morphine	2000 ng/ml
Phencyclidine	25 ng/ml
Propoxyphene	150 ng/ml

J. VOLUNTARY TESTING

1. Treatment for Officers who seek help:
 - a. Officers who come forward and admit to drug abuse before being tested will be given an opportunity to obtain treatment without having disciplinary action taken against them.
 - b. These individuals will, however, be considered a first confirmed positive result as far as future testing is concerned only.
 - c. Employees seeking assistance should contact the City's Employee Assistance Program, or the Department Head.

K. CONFIDENTIALITY

Any information gained as a result of the drug test shall be kept as confidential as possible, except for City purposes, and shall not be revealed except in accordance with a proper judicial or legislative order. Breach of confidentiality by any employee shall result in disciplinary action.

L. DISCIPLINARY ACTION

1. Any Officer refusing to take the drug test pursuant to this policy shall be subject to disciplinary action up to and including termination.
2. Any Police Officer who refuses to be tested shall be placed on immediate unpaid suspension and an internal investigation for the violation of the directive(s) shall commence.
 - a. The individual will be notified in writing by the Department Head or his designee that, because of the refusal, he/she has been placed in the mandatory testing group for twelve (12) months.
 - b. The individual is further notified of the consequences of a refusal and ordered to take a test within twelve (12) hours.
 - c. If the individual refuses to take the test as ordered, the matter will be referred to the Disciplinary Review Board. The penalty for said refusal will be discipline up to and including termination.
3. Individuals who are already in the mandatory test group as a result of the following circumstances are subject to termination for refusal to take the test:
 - a. Individuals with a first confirmed positive test result.
4. First Confirmed Positive Result - Abuse of Prescription Drugs, or use of Prescription Drugs without a doctor's valid prescription:
 - a. Probationary Officers with a confirmed positive test result will be placed on immediate suspension pending a hearing before the Administrative Review Board. The penalty for such an offense is termination. No rehabilitation opportunity is offered to probationary employees.

- b. For any other individual who has a first time confirmed positive test result of prescription drugs, which are being abused or used without a doctor's valid prescription, the following steps will be taken:
 - 1. The individual will be placed on immediate unpaid suspension.
 - 2. The Internal Affairs Division will conduct a thorough investigation, and the case will go to the Administrative Review Board.
 - 3. The individual will also be ordered to enter a City approved substance abuse treatment program.
 - 4. The individual may take appropriate authorized leave to participate in treatment. This may include sick leave, vacation, compensatory time off, or leave without pay.
 - 5. While in treatment, an Officer may return to a limited duty assignment that does not require carrying a gun or operating a vehicle, provided the Officer has a negative test result and such an assignment is available.
 - 6. The expense for said treatment program (if not covered by the City health insurance plan) is the responsibility of the individual.
 - 7. To return to full duty status, the individual must receive a drug test result which does not indicate the presence of illegal drugs, upon completion of the program and be cleared by the Substance Abuse Professional.
 - 8. When returned to full duty, the Officer will be placed in the mandatory drug testing group for a period of twelve (12) months.
- 5. Positive Test Results for Controlled Dangerous Substances or Illegal Drug.
 - a. The following step will be taken for any Officer who has a confirmed positive test result for cocaine or methamphetamine (for which there is no valid prescription) or any Schedule I, Schedule 2, or any illegal drug.

1. The individual will be placed on immediate unpaid suspension pending termination.
6. Second confirmed Positive Drug Test Result - Abuse of Prescription Drugs
 - a. The treatment program for a first confirmed positive drug test result (abuse of prescription drugs) is not an option for a non-probationary Officer.
 - b. Upon a confirmed second positive drug test result, the individual will be placed on immediate unpaid suspension pending termination.
 1. The Internal Affairs Division will conduct a thorough investigation to gather all pertinent information.
 2. The Department Head will initiate the termination procedure.
7. Any individual may request that his/her sample be retested by either the original testing laboratory or by a Substance Abuse and Mental Health Service Administration (SAMSHA) certified laboratory. Any testing done at the individual's request will be paid for by that individual.
8. Termination
 - a. In any case, when the Department Head has determined that termination for an offense is appropriate, the Department Head will initiate the termination procedure. Said individual will be given written notice of termination proceedings.

M. GENERAL RULES

1. All property belonging to the Port Orange Police Department and/or the City of Port Orange is subject to inspection at any time pursuant to reasonable suspicion.
 - a. This includes all property belonging to or used by the Port Orange Police Department and/or the City of Port Orange including, but not limited to, vehicles, desks, containers, files and storage lockers.

ARTICLE 30

PHYSICAL EXAMINATION AND WORKERS' COMPENSATION

30.1 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, paid disability leave shall not exceed sixty (60) calendar days for any one injury. 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) calendar days, the employee shall revert to normal Workers' Compensation benefits.
- b. Once an employee is receiving Worker's Compensation benefits directly from the Worker's Compensation carrier, the employee may utilize available sick and/or annual leave in order to supplement their wages for the amount not paid under the Worker's Compensation carrier. At no point shall the compensation be in excess of their normally scheduled base wage.
- c. Leave for Worker's Compensation shall run concurrent with leave as covered under the Family Medical Leave Act (FMLA)
- c. If, in the City's opinion, this benefit is being abused, this Article will be subject to renegotiation at that time and prior to the expiration of this contract.

30.2 The City may direct any employee claiming disability to submit to a physical and/or mental examination conducted by a physician, psychiatrist or psychologist selected by the employee from a list of not less than three (3) physicians designated by the City. The sole purpose of such examination under this Article shall be to determine whether the employee has a physical and 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 a 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 determined by the physician 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. For employees that have exhausted their paid leave prior to any exhaustion of an approved FMLA will generally be separated from service upon exhaustion of the approved FMLA leave, except as otherwise provided for by law. For employees with accrued paid leave in excess of the standard FMLA time will be able to utilize their accrued paid leave to stay in a paid status beyond the standard FMLA time, however, this period will not generally extend beyond twelve (12) months, unless an imminent return has been documented by a physician, or as otherwise provided for by law. 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.

- 30.3 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.

ARTICLE 31

RULES AND REGULATIONS

- 31.1 The City shall have the right to establish, maintain and enforce, or rescind, amend or change, reasonable rules and regulations and standard operational procedures, it being understood that such rules and regulations and standard operational procedures shall not conflict with the provisions of this Agreement. If the proposed additions, deletions or changes affect the terms and conditions of employment of any bargaining unit employees, the Union shall have the right to request bargaining over the proposed additions, deletions or changes. This request must be made in writing to the Department Head and submitted to him/her within seven (7) days of the change being published. If no request for bargaining is made by the Union during this seven (7) day period, or the proposed additions, deletions or changes do not affect terms and conditions of employment of bargaining unit members, the modifications shall become effective on the date specified when published. If bargaining is timely requested, and the additions, deletions or changes affect terms and conditions of employment of bargaining unit members, the changes shall not go into effect until the City and the Union reach agreement on the matter.
- 31.2 Failure to discipline 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.
- 31.3 Any employee violating a rule or regulation or standard operational procedure may be subject to disciplinary action, including dismissal.

ARTICLE 32
RESERVED

ARTICLE 33

MILITARY LEAVE

- 33.1 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.

ARTICLE 34

EDUCATIONAL LEAVE

- 34.1 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 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 be the sole and exclusive function of the City Manager and shall not be subject to the grievance and arbitration procedures of this Agreement.
- 34.2 An employee granted education leave with full pay shall be entitled to receive all City benefits in the 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. Such determination shall not be subject to the grievance and arbitration procedures of this Agreement.

ARTICLE 35

SEVERABILITY

- 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 may 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 after the exercise of that right and opportunity are set forth in this Agreement.
- 36.2 Therefore, the City and the Association, for the duration of this Agreement, each voluntarily and unqualifiedly 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, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the same time they negotiated or signed 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.

ARTICLE 37

DURATION OF AGREEMENT

- 37.1 This Agreement will be in full force and effect as of the 1st day of October, 2017 and shall remain in full force and effect until midnight of the 30th day of September, 2020 and thereafter from year to year unless notice is given in writing by either party to the other via electronic mail (email) or certified mail return receipt requested by April 1st 2020, of intent to modify, terminate, or change the terms of this Agreement, except as provided hereinafter.
- 37.2 Except as specified in Section 4 of this Article, no item or provision of this Agreement shall be a proper subject for negotiation during the term of this Agreement unless it is mutually agreed by the parties in writing to renegotiate such items in negotiations.
- 37.3 Upon expiration or termination of this Agreement all provisions of the Agreement concerning wage rate increases shall cease and shall not be considered to be part of the status quo.
- 37.4 Article 18 entitled HOURS OF WORK AND OVERTIME PAYMENT shall be subject to renegotiation by either party in the event that the Federal Fair Labor Standards Act of 1938 is amended, or federal regulations are promulgated by the United States Department of Labor with respect to overtime payment to public employees, or the provisions of this agreement concerning overtime payment should become inconsistent with federal law or regulation.

ARTICLE 38

HEALTH, SAFETY AND PHYSICAL FITNESS

- 38.1 The purpose of this Article is to promote the health, safety and physical fitness throughout the Port Orange Police Department.
- 38.2 The City and the Union agree that employees covered hereunder must maintain a high level of physical fitness in order to safely and efficiently perform their assigned duties and serve and protect the citizens.
- 38.3 Each bargaining unit shall be required to complete the Physical Abilities Test (PAT) previously established by the Division of Criminal Justice Standards and Training of the Florida Department of Law Enforcement every two years. The physical abilities test measures specific physical abilities through participation in a series of job-related tasks as follows:
- A. Exiting car/enter trunk.
 - B. 220 yard run.
 - C. Obstacle course.
 - D. Dummy drag.
 - E. Obstacle course (repeat).
 - F. 220 yard run (repeat).
 - G. Weapon fire.
 - H. Enter trunk/enter car.
- The test is intended to be conducted in a continuous fashion resulting in a total composite score (i.e., time to complete the course). The test will be administered on a pass/fail basis. The employee must complete the test in 6 minutes and 30 seconds or less to pass. (Employees scoring at or above 6 minutes and 31 seconds fail.)
- 38.4 All bargaining unit employees shall be scheduled to take the PAT every two years.
- 38.5 Reserved
- 38.6 An employee who has a bona fide medical condition or injury which prevents him/her from taking the physical abilities test (or a portion thereof) will be dealt with on an individual basis. In all such cases, the physician conducting the annual examination under Section 38.8 below will determine the nature and extent of the employee's medical condition or injury (if such medical condition or injury is temporary); whether the test may be modified so as to

accommodate the employee's medical condition while still measuring the same physical abilities; and such other medically-related issues which facilitate proper measurement of the physical abilities necessary to successfully perform the employee's job.

- 38.7 The parties agree that all members shall undergo an annual physical exam paid for by the City prior to the scheduling of the biennial PAT, and the doctor shall clear the individual to take the PAT. These exams may 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 Administrative Services Director 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 Human Resources Director to the effect that the employee is medically fit to return to full duty.

- 38.8 It is acknowledged and agreed by the parties hereto that a statutory presumption exists, under Section 112.18 F. S., that any condition or impairment of health of a bargaining unit member that results in a disability, or death, was accidentally suffered in the line of duty. Therefore, the parties further acknowledge and agree that the Port Orange Police Department is a tobacco-free workplace and that it is a condition of employment that each new member of this bargaining unit hired on and after ratification of this Agreement refrain from the use of tobacco during the period of his or her employment with the City. New employees or those offered conditional employment with this bargaining unit, shall be required to sign an affidavit attesting that they agree to be tobacco-free throughout the term of their employment.

ARTICLE 39

RESERVED

ARTICLE 40


VOLUNTARY SPECIAL EVENT WORK

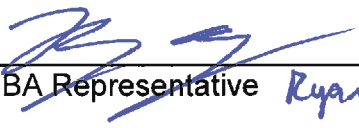
- 40.1 Voluntary, special event work performed for a second-party employer, other than work performed for City-sponsored events, shall be paid by the second-party employer to the City and the City shall, in turn, pay these second-party wages to the Officer or Sergeant as a separate line-item on the employee's pay stub, after deducting a fifteen percent (15%) administrative per-hour fee thereof for use of City property while performing the special event work. The hourly rate charged to the second party will be determined by the Department Head. These second-party wages will not be considered as wages paid by the City and will therefore be excluded for purposes of calculating overtime and shall not be factored into the average final compensation for pension purposes. No pension contributions or insurance payments will be withheld from payments made for work performed for a second party employer.
- 40.2 Officers engaged in extra-duty employment (Special Detail) are authorized to wear and use department issued uniforms and equipment. Employees shall observe their normal standards of conduct during such special event work and disciplinary action shall be taken against those who fail to do so.
- 40.3 Voluntary Special Event Work will be administered in accordance with Police Department Directive 22.5 related to Off Duty and Extra-Duty Employment.

Approved and ratified this

30 day of AUG, 2017

COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION:

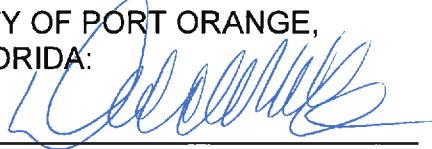

PBA Authority KEVIN MCCARTHY
CFPBA

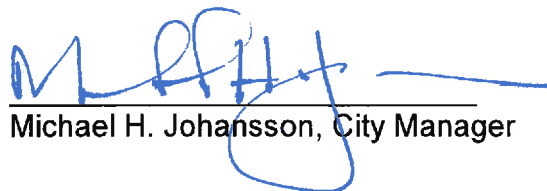

PBA Representative Ryan Magee

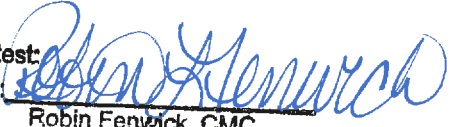
Approved and ratified this

19 day of Sept, 2017

CITY OF PORT ORANGE,
FLORIDA:


Donald O. Burnette, Mayor
City of Port Orange


Michael H. Johansson, City Manager

Attest:
By: 
Robin Fenwick, CMC
Port Orange City Clerk