

WORKING AGREEMENT

BETWEEN

CITY OF PORTSMOUTH, NEW HAMPSHIRE

(The Portsmouth Board of Fire Commissioners)

AND

FIREFIGHTERS ASSOCIATION OF PORTSMOUTH, NEW HAMPSHIRE

LOCAL #1313

AFFILIATED WITH

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

July 1, 2008~~14~~ through June 30, 2014~~6~~

PREAMBLE

The City of Portsmouth, hereafter referred to as City and the Firefighters Association of Portsmouth, New Hampshire, Local #1313, affiliated with the International Association of Firefighters, hereinafter referred to as Union, in order to arrange and maintain fair and equitable labor rates and operating conditions, and to promote methods of fair and amicable means of adjustment of any and all disputes which may arise between the parties hereto, and to continuing the existing harmonious relationship between the City and its permanent employees of the Fire Department, and to promote the morale, equal rights, well-being and security of the employees covered by this Agreement, agrees as follows:

SECTION I. RECOGNITION

The City and the Board of Fire Commissioners recognizes the Union as the sole collective bargaining agent and sole exclusive representative of all permanent fire fighters of the Portsmouth Fire Department with the rank of private or Firefighter Engineer who are now or become during the term of this Agreement, members of the Union for the purpose of bargaining with respect to wages, hours of duty and working conditions, subject to conditions of probation. Discharge of probationary employees may be with or without cause and shall not be subject to the grievance procedure or to a PELRB charge for breach of contract.

SECTION II. MANAGEMENT RIGHTS

The City and the Fire Commission, as appropriate, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the Laws of the Constitution of the State of New Hampshire and of the United States. Further, all rights which ordinarily vest in and are exercised by employers except such as specifically relinquished herein are reserved to and remain vested in the City.

- A. To manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of materials, tools and equipment to be used and the discontinuance of any services, material or methods of operation;
- B. To introduce new equipment, methods, machinery or processes, change or eliminate existing equipment and institute technological changes, decide on materials, supplies, equipment and tools to be purchased;
- C. To determine the number, location and type of facilities and installations;
- D. To determine the size of the work force and increase or decrease its size;
- E. To hire, assign, and layoff employees to reduce the workweek or the workday or effect reductions in hours worked by combining layoffs and reductions in workweek or workday;
- F. To permit municipal employees not included in bargaining unit to be allowed to perform bargaining unit work in case of emergency only after all permanent fire fighters have been assigned;

- G. To direct the work force, assign work and determine the number of employees assigned to operations;
- H. To determine lunch, rest periods, and cleanup times, the starting and quitting time and the number of hours to be worked over forty-two;
- I. To establish a work schedule;
- J. To discipline and discharge employees for just cause;
- K. To adopt, revise and enforce working rules and carry out cost and general improvement programs;
- L. To transfer, assign and re-assign employees from one assignment, division or shift to another;
- M. To determine the qualifications and competency of employees to perform available work subject to the terms of this Agreement.

This article shall not give authority to the City or the Commission to vary terms of this Contract without mutual agreement to the parties hereto.

SECTION III. UNION SECURITY

The City and the Commission agrees that all employees as defined in Section I, may become members of the Union within thirty (30) days. The City and the Commission agree not to interfere with the decision to become a Union member, if he or she so desires. The Commission shall have the exclusive right to determine the selection of applicants for employment and shall be the sole judge of the requirements and qualification of such applicants.

SECTION IV. CHECK OFF

- A. **UNION DUES:** Upon written authorization by an employee, as defined in Section I., approved by the Union President, the City agrees to deduct from each employee the sum authorized per month for Union dues, to be collected from the first paycheck of each month only, and deliver the same to the Union Treasurer at his/her request, providing, however, that if any employee has no check coming to him, or the check is not large enough to satisfy the assignment, then and only in that event no collection will be made from the said employee for that month. In no case will the City attempt to collect fines or special assessments for the Union. The Union agrees in return for itself and its members that they will individually and collectively perform loyal and efficient work and service and will use their influence and best efforts to promote and advance the interest of the citizens of Portsmouth. The Union will indemnify and save the Department harmless against any liability which shall arise because of dues checked off under this Section.
- B. **NEW EMPLOYEES:** 1). All new employees shall have no seniority rights during their probationary period. All employees who have worked twelve (12) months and satisfactorily complete their probationary period shall be known as permanent employees. Seniority shall commence from the first day of employment as a probationary employee on a full time basis.

- 2.) Effective January 1, 1996, all new employees shall either possess the EMT-I or EMT-P certification within one year of their date of employment and maintain it throughout his/her career.
- C. **REHIRED EMPLOYEES:** Any rehired employee who has already served a probationary period shall not be required to serve another probationary period.
- D. **SENIORITY LISTS:** The Commission shall establish a seniority list and it shall be brought up to date on January 1st of each year and immediately posted thereafter on the Central Fire Station Bulletin Board for a period of no less than thirty (30) days and a copy of same shall be mailed to the Secretary of the Union. Any objection to the Seniority List as posted shall be reported to the Fire Chief within fourteen (14) days from the date such list is posted or it will stand approved.
- E. **SHIFT ASSIGNMENT:** It shall be the goal of the Commission and the Union to insure that all fire fighters are proficient in operating all fire equipment and apparatus in the Department. In order to insure continued proficiency, shift assignments shall be made by the Chief of the Department based upon:
- 1 **SENIORITY:** A firefighter's normal work assignment shall be determined on the basis of seniority. The most senior employee on a shift shall select his/her preference for his/her job assignment and shall be assigned to said job provided he/she is qualified for the position consistent with the requirement for the department to maintain a level of proficiency of the department as set forth above. The Department Head shall be the sole judge of qualifications and ability provided that such judgment shall not be exercised arbitrarily or unreasonably. At the request of the Union, the Department Head shall provide written reasons for the denial of a senior employee's request to an assignment and the same shall be subject to the grievance procedure under this contract. For purposes of this Section, the ambulance shall not be considered as part of the firefighter apparatus. The least senior employee on a shift shall be assigned to ambulance duties unless a firefighter with a higher level of medical certification (EMT-I, EMT-P) is on duty. At least one EMT-I or EMT-P shall be assigned to an ambulance when possible.
- F. **PROMOTIONS:** The parties will follow the policies as outlined in Fire Department Policy #100-20 with respect to promotions.
- G. **PERSONNEL REDUCTION:** In case of personnel reduction in the Fire Department personnel, an employee with the least seniority shall be laid off first and employees with the most seniority shall be rehired first for a period of three (3) years after the lay-off. A laid-off employee must inform the Department of his/her current address and respond within ten (10) business days of the postmark of the recall notice.
- H. **SENIORITY:** Seniority shall also be the ruling factor in choice of vacation dates.

I. **APPOINTMENTS AND PROMOTIONS:** All appointments and promotions shall be made from the ranks, provided the member appointed or promoted is qualified for the positions

J. **PLATOON AND DUTY STATION CHANGES:**

1. The Chief of the Department may detail a firefighter from one station to another or from one platoon to another as part of a tour of duty when, in his/her judgment, it is in the best interest of the Department.
2. Compensation for such platoon change will be based on the total number of hours worked in each cycle. Any amount of time required over the total number of hours usually worked in a work cycle will be paid at time and one-half at that person's usual hourly rate of compensation. The work cycle is defined as that number of weeks in which a complete rotation of schedule is established.
3. **WORKING OUT OF CLASSIFICATION:** Whenever possible only those fire fighters whose names are on the Officers Eligibility List shall be designated to temporarily fill an officer assignment. The City agrees to accept the revised position classification for the position of firefighter.

SECTION V.

A. **SALARY SCHEDULE:**

~~July 1, 2008 — August 31, 2013~~

~~Start of
Probation period ————— \$ 36,562~~

~~End of
Probation 12 months ————— \$ 38,573~~

~~End of 24 months ————— \$ 40,694~~

~~After One additional
year 36 months ————— \$ 42,932~~

~~After One Additional
year 48 months ————— \$ 45,293~~

~~After 5 years
60 months ————— \$ 47,786~~

Effective September 1, 2013 employee's wages will be adjusted by the 10-year rolling COLA average of 2.24%

Start of
Probation period — ~~\$37,381~~

End of Probation — ~~\$39,437~~
12 months

End of 24 months — ~~\$41,606~~

After One additional — ~~\$43,893~~
Year — 36 months

After One Additional — ~~\$46,308~~
Year — 48 months

After 5 years — ~~\$48,856~~
60 months

Effective February 18, 2014, the wage schedule will be reconfigured to include the following two categories: EMT Basic (base rate of compensation); EMT-Intermediate/Advanced EMT (3% above the base rate of compensation). This will eliminate the current EMT-I stipend. Paramedics will continue to receive an additional 5% stipend.

July 1, 2014

	FireFighter/EMT Basic	FireFighter/EMT Intermediate/Advance EMT
Start of Probation period	\$37,381 <u>38,990</u>	\$38,502 <u>40,160</u>
End of Probation 12 months	\$39,437 <u>41,135</u>	\$40,620 <u>42,369</u>
End of 24 months	\$41,606 <u>43,397</u>	\$42,854 <u>44,699</u>
After One additional Year – 36 months	\$43,893 <u>45,782</u>	\$45,210 <u>47,157</u>
After One Additional Year – 48 months	\$46,308 <u>48,301</u>	\$47,697 <u>49,750</u>
After 5 years 60 months	\$48,856 <u>50,960</u>	\$50,322 <u>52,489</u>

Effective ~~March 1, 2014~~ July 1, 2015, employee's wages will be adjusted by the 10 year rolling COLA average of 2.24%.

	FireFighter/EMT Basic	FireFighter Intermediate/Advance EMT
Start of Probation period	<u>\$38,218,39,770</u>	<u>\$39,365,40,963</u>
End of Probation 12 months	<u>\$40,320,41,958</u>	<u>\$41,530,43,216</u>
End of 24 months	<u>\$42,538,44,265</u>	<u>\$43,814,45,593</u>
After One additional Year – 36 months	<u>\$44,876,46,698</u>	<u>\$46,223,48,100</u>
After One Additional Year – 48 months	<u>\$47,345,49,267</u>	<u>\$48,765,50,745</u>
After 5 years 60 months	<u>\$49,951,51,979</u>	<u>\$51,449,53,538</u>

COLA ADJUSTMENT

Effective ~~September 1, 2013~~ July 1, 2014 and ~~March 1, 2014~~ July 1, 2015, a COLA Adjustment percentage increase shall be computed which shall not be less than 2% nor more than 5%.

The COLA Adjustment percentage shall be determined by the annual increase in the CPI-U for the Boston-Brockton-Nashua—MA-NH-ME-CT all items index as computed by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent calendar year preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference based as used by BLS.

Thus if the CPI-U for the Boston SMSA calendar year 2003 (Nov. 2002-Nov. 2003) is 1.5% the applicable COLA Adjustment on July, 2004 would be 2%; if it is 3.5% the applicable COLA Adjustment would be 3.5%; if it is 5.5% the applicable COLA Adjustment would be 5.0%.

Applicability After Contract Expires: It is clearly understood that in the event that the five year Working Agreement expires without a successor Working Agreement being settled prior to July 1, 2008~~16~~ that no further COLA Adjustments after July 1, 2007~~15~~ will be generated under the Working Agreement even if the Working Agreement has an evergreen clause. It is further agreed that continuation of COLA Adjustments are not to be deemed "status quo" as the term has been used by the PELRB in the event that a successor agreement has not been settled by July 1, 2008~~16~~.

- B. **LONGEVITY BONUS:** In the December following five (5) years of municipal service, an employee shall become entitled to an annual longevity bonus. Effective July 1, 2003~~14~~, bonus shall be paid in accordance with the following schedule

Longevity Step	Bonus July 1, 2008
0 through 4 years of service	\$ 0
5 years of completed service	\$111.33
6 years of completed service	\$144.73
7 years of completed service	\$178.12
8 years of completed service	\$211.52
9 years of completed service	\$244.92
10 years of completed service	\$278.32
11 years of completed service	\$311.72
12 years of completed service	\$345.11
13 years of completed service	\$378.51
14 years of completed service	\$411.91
15 years of completed service	\$445.31
16 years of completed service	\$478.71
17 years of completed service	\$512.11
18 years of completed service	\$545.50
19 years of completed service	\$578.90
20 years of completed service	\$612.30
21 years of completed service	\$667.96
22 years of completed service	\$779.29
23 years of completed service	\$890.62
24 years of completed service	\$1,001.95
25 years of completed service	\$1,113.27
26 years of completed service	\$1,224.60 effective December 2014
27 years of completed service	\$1,335.93 effective December 2014
28 years of completed service	\$1,447.26 effective December 2014
29 years of completed service	\$1,558.59 effective December 2014
30 years of completed service	\$1,669.92 effective December 2014

The next regularly scheduled longevity payment ~~after February 18, 2014~~ will be increased consistent with the COLA wages referenced in Section V.

The next regularly scheduled longevity payment after February 18, 2014 for eligible employees will include additional years added for years 26, 27, 28, 29 and 30. A “catch-up” payment will be made when the next longevity payment is due to put employees on their proper step on the schedule.

- C. **CLOTHING ALLOWANCE:** The City agrees to credit each firefighter with a clothing allowance of \$600.00 per year effective July 1, 2004 payable by July 15 of each year. This Section shall not be deemed to cede or waive any management rights regarding the Commissions authority to establish and implement uniform

policies and regulations. In addition to the clothing allowance, each employee shall receive protective clothing for firefighting duties which require special clothing at the expense of the City. All special clothing will meet N.F.P.A. standards OSHA standards or standards as set by the Board of Fire Commissioners. It is understood that when standards are changed that new clothing may be phased in over time The City will provide one Class A uniform to new firefighters at the end of their probationary period of employment.

- D. **LODGING:** The City agrees to provide beds, bedding, linens, blankets, and towels for each firefighter from 10:00 p.m. to 7:00 a.m.

SECTION VI.

- A. **HOURS OF DUTY:** The present hours of duty will remain in force. The 42-hour (average) workweek shall consist of 14, ten (10) hour day shifts and 14, fourteen (14) hour night shifts over an eight (8) week cycle per schedule in effect. The starting times being 7:30 a.m. and 5:30 p.m. Chart of shifts and cycle attached (Appendix A).
- B. **EMERGENCIES:** All members of the Fire Department shall be subject to recall for emergencies at the discretion of the Chief of the Department or his assistant and the members of Unions shall be paid the rate of pay equal to one and one-half (1 1/2) times their usual hourly rate for all hours worked under such emergency conditions. In the event that a firefighter covered by this Agreement works less than four (4) hours in response to such emergency, he/she shall be paid for four (4) hours at such overtime rate. Effective February 18, 2014, firefighters who work less than two (2) hours in response to emergencies, shall be paid for two (2) hours at such overtime rate. Call-back will not be compounded, pyramided or added to compensation for any purpose.

An employee who is recalled for non-emergency reasons after hours shall be paid a minimum of four (4) hours at one and one-half (1 1/2) times their rate of pay providing that if such employee's regular duty commences within for four (4) hour block, he/she will be paid at the overtime rate for only the time before regular duty. Once on regular duty, his/her normal rate of pay shall apply. Effective February 18, 2014 firefighters who work less than two (2) hours in response to non-emergencies, shall be paid for two (2) hours at such overtime rate. Call-back pay will not be compounded, pyramided or added to compensation for any purpose.

- C. **EXCHANGE OF DAYS OFF:** The Fire Chief may grant the request of any two members of the Department to exchange hours of duty of days off. All exchanges must take place within the calendar year. Applicable request forms will be completed, signed by the shift officer and approved by the Fire Chief prior to the exchange of hours of duty, whenever possible.

D. **HOLIDAYS AND HOLIDAY PAY:** All employees covered by this Agreement shall be compensated for all holidays listed below at a rate of pay established by the annual base salary divided by 260.

- New Year's Day
- Dr. Martin Luther King, Jr. Holiday
- Washington's Birthday
- Memorial Day
- Veteran's Day
- 1/2 Day on Good Friday
- Independence Day
- Labor Day
- Columbus Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day
- 1/2 Day the day preceding Christmas Day when Christmas Day comes between Tuesday through Friday.

SECTION VII.

A. **VACATIONS:** Through December 31, 2003, employees shall be entitled to earn and use vacation in accordance with the provisions of this paragraph. Effective January 1, 2004, any accrued but unused vacation days within applicable limits shall be converted to Earned Time days on a one to one basis and thereafter shall be governed by the Earned Time provisions of this Agreement.

During the first year in which a firefighter is entitled to a vacation, his/her vacation pay shall be computed to the nearest half-month period by multiplying the months worked by a factor of .833. The vacation shall be as follows:

LENGTH OF EMPLOYMENT

1-5 years inclusive	10 days (.833 days/month)
6 years inclusive	11 days (.917 days/month)
7 years inclusive	12 days (1 day/month)
8 years inclusive	13 days (1.083 days/month)
9 years inclusive	14 days (1.167days/month)
10 years inclusive	15 days (1.25 days/month)
11 years inclusive	16 days (1.33 days/month)
12 years inclusive	16 days (1.33 days/month)
13 years inclusive	17 days (1.417 days/month)
14 years inclusive	17 days (1.417 days/month)
15 years inclusive	18 days (1.5 days/month)
16 years inclusive	18 days (1.5 days/month)
17 years inclusive	19 days (1.583 days/month)
18 years inclusive	19 days (1.583 days/month)
19 years inclusive	20 days (1.667 days/month)
20 years inclusive	20 days (1.667 days/month)

All employees with more than twenty (20) years of service shall be able to schedule a vacation period without regard to the ten (10) working day restriction

and may have twenty (20) working days paid vacation which may be taken at any time during the calendar year.

All of the days which are not taken up during the firefighters vacation selection may be scheduled at any time throughout the year if wanted, as long as ample notice is given and the manning strength is sufficient.

Employees will be allowed to accumulate vacation leave to a maximum of 40 days as of January 1st of any calendar year.

At the beginning of each year, firefighters will schedule vacation at any time for that calendar year as long as six days notice is given and manning strength is sufficient. Applicable request forms will be completed, signed by the shift officer and approved by the Fire Chief prior to the use of annual leave.

Any deviation on notice procedure shall be only on written approval of the Chief for each occurrence.

Swap shifts will be allowed for these purposes if existing conditions will reduce manning below the minimum unless there is sufficient reason to deny the same.

B. SICK LEAVE: Through December 31, 2003, employees shall be entitled to earn and use sick leave in accordance with the provisions of this section. Effective January 1, 2004, any accrued but unused sick leave within applicable limits shall be converted to Disability Bank days on a one to one basis and thereafter shall be governed by the Earned Time provisions of this Agreement.

An employee may utilize his/her sick leave allowance for absences due to illness, injury or exposure to contagious diseases endangering the health of other employees when requested and documented by the attending physician, medical and dental appointments or to provide in home care to an ill or injured spouse or children living in the employee's home.

Sick leave without loss of pay shall be computed at the rate of 14 days per year (or 1.167 days per month) and may be accumulated without limitation. Firefighters hired after January 1, 1991 shall have sick leave accumulation limited to 150 days. Upon death of an employee while in the employment of the City, the City shall pay to his/her spouse or next of kin an amount equal to 100% of the value of his/her accumulated sick leave. Upon retirement from employment, upon voluntary termination of his/her employment, the City shall pay to the employee an amount equal to 90% of the value of his/her accumulated sick leave. To be entitled to payment as set forth above, the employee must give the City notice by April 1 prior to the fiscal year in which payment is to be made. If such notice is not given and an employee retires or voluntarily terminates employment, the employee will not be entitled to be paid for his or her accumulated sick leave until the first pay period of July following his or her retirement, or voluntary termination or seventy-five (75) days after his/her retirement whichever is later. If an employee retires under one of the following exceptions notice will be waived

and then the employee will be paid for his or her accumulated sick leave within seventy-five (75) days of his or her retirement.

Exceptions:

1. Disability retirement.
2. Retirement caused by serious illness or injury which otherwise does not qualify for disability retirement.
3. Retirement caused by a serious family illness where the employee is needed to attend to the family member in need.
4. Other circumstances which arise precipitously which make it impossible for the employee to meet the notice requirements of this section, only if the Fire Commission approves in advance the payment for accumulated sick leave without the required notice.

If an employee wants his or her accumulated sick leave to be paid out over more than one year, he or she may give up to three years of notice. However, it is understood that once payment begins the employee may not withdraw his or her notice of retirement or voluntary termination.

If sufficient funds remain in the Fire Department's overtime budget at the end of a fiscal year, firefighters hired before July 1, 1996, may cash in up to seven (7) accrued sick days at eight (8) hours straight time for each day.

Firefighters hired after January 1, 1996 shall receive no pay out at all for accumulated sick leave either for retirement or termination.

C. EARNED TIME. It is the intent of this policy to explain the provisions and conditions of the Earned Time Program. The program has been created to provide, as equitably as possible, paid time off, to be used at the employee's discretion, while protecting an allotment of time for disability, hospitalization or injury.

Earned time is a combination of vacation and personal absence days. A separate account per year is accumulated for disability time (seven days per year).

Earned Time is an alternative approach to the traditional manner of converting absences for vacation, sick leave, interim disability, maternity leave, by combining all these plans into one program. Instead of dividing benefits into a specific number of days for each benefit, Earned Time puts these days together into a single benefit. The exact amount of Earned Time accrued each year will depend on the years of service with the Portsmouth Fire Department.

Effective the date of this policy, employee's vacation time will be converted to earned time. Employee's sick time balance will be converted to the Disability Bank.

Effective on the date of this policy, employees will begin accruing earned time based on the following schedule:

<u>Years of Service</u>	<u>Vacation</u>	<u>Sick</u>	<u>Accrual Rate</u>	
			<u>Total Earned Time</u>	<u>Disability Bank</u>
1 - 5 yrs. Incl.	10	7	17(1.417 days/month)	7
6 years incl.	11	7	18(1.5 days/month)	7
7 years incl.	12	7	19(1.583 days/month)	7
8 years incl.	13	7	20(1.667 days/month)	7
9 years incl.	14	7	21(1.75 days/month)	7
10 years incl.	15	7	22(1.833 days/month)	7
11 years incl.	16	7	23(1.917 days/month)	7
12 years incl.	16	7	23(1.917 days/month)	7
13 years incl.	17	7	24(2 days/month)	7
14 years incl.	17	7	24(2 days/month)	7
15 years incl.	18	7	25(2.083 days/month)	7
16 years incl.	18	7	25(2.083 days/month)	7
17 years incl.	19	7	26(2.167 days/month)	7
18 years incl.	19	7	26(2.167 days/month)	7
19 years incl.	20	7	27(2.25 days/month)	7
20 years incl.	21	7	28(2.333 days/month)	7
25 years incl.	22	7	29(2.416 days/month)	7

All absences from regularly scheduled work will be charged to an employee's Earned Time. Exceptions are:

1. Administrative Leave
2. Unpaid leaves of absence
3. After absence due to personal illness/injury for more than three consecutive working days an employee may use his/her Disability Bank, if available.
4. Emergency Leave
5. Military Leave
6. Worker's Compensation
7. Disciplinary Suspension

Applicable request forms will be completed, signed by the Shift Officer and approved by the Fire Chief prior to the use of earned time, whenever possible.

Earned Time begins accruing on the 15th of the month after the date of hire. Employees may use their earned time as soon as it earned once they have completed their probationary period.

Accumulated Earned Time may be used for personal illness or accident, immediate family illness or accident, or compelling personal reasons.

Earned Time must be taken in one-half or full shift increments.

All Earned Time payments are computed at the employee's current base rate.

Employees are responsible for the Earned Time balance reflected on their pay stubs. Any errors should be reported immediately.

At separation, any unused earned time days will be cashed out at full value.

Unused Earned Time Carryover

Employees are allowed to accumulate up to a maximum of 60 earned time days as of January 1st of any calendar year. Any days over the 60 day limit but no more than ten (10) in a year may be cashed out at fifty percent (50.0%) or deposited to the Disability Bank. Any days over the 60 day limit but no more than 10 in a year may be cashed out by an employee hired after January 1, 1996 at ninety percent (90.0%) or deposited to the Disability Bank.

Disability Bank

In addition to the original sick leave balance that was transferred to the Disability Bank at the time this program was implemented, days will accumulate at the rate of seven (7) days per year (or .583 per month).

The Disability Bank hours are to be used for extended illness, injury, disability related to pregnancy, or hospitalization only. Usage of the Disability Bank commences with the 4th consecutive day of absence from work due to illness or injury. A physician's report must accompany the request to use the Disability Bank Days. Periodic updates from the employee's physician may be required. In the event that an employee is hospitalized or has surgery (this includes day surgery procedures) for something other than a work-related problem, the Disability Bank may be used starting with the first day of hospitalization. Any disability related to pregnancy will be treated like any other medical condition.

An exception to the policy that requires the usage of three (3) Earned Time days before being permitted to access the Disability Bank when the disability is certified by a physician to be the same as for the original use or from the same cause as the original Disability Bank usage.

Disability days must be taken in one-half or full day shift increments.

Return to Work: Following a period of absence due to illness/injury, medical documentation supporting the employee's ability to perform the essential functions of the job is required prior to returning to work.

The use of the Disability Bank for extended illness or injury requires medical documentation and may indicate the need for use of the Family Medical Leave Act and the need to contact the Human Resource Department concerning long-term disability.

Employees hired prior to January 1, 1991 may accumulate Disability Bank days without limitation. Firefighters hired after January 1, 1991 shall have disability leave bank accumulation limited to 150 days. Upon death of an employee while in the employment of the City, the City shall pay to his/her spouse or next of kin an amount equal to 100% of the value of his/her accumulated disability bank. Upon retirement from employment, upon voluntary termination of his/her employment, the City shall pay to the employee an amount equal to 90% of the value of his/her accumulated disability bank. Firefighters hired after January 1, 1996 shall receive no pay out at all for accumulated disability bank either for retirement or termination.

Exhaustion of Earned Time/Disability Bank. An employee on an approved absence who has used all Earned Time and Disability Bank days will be placed on leave without pay. If the illness/injury qualifies for FMLA leave benefits will continue for the period of the Family Medical leave. Employees will not accrue earned time while they are on a leave without pay status.

D. **ACCIDENTAL INJURIES:** The City shall provide and maintain workers' compensation insurance coverage on each employee covered by this Agreement.

1. In case of accidental personal injury to any employee covered by this Agreement arising out of and/or in the course of his/her employment, the City shall adjust the employee's pay so that he/she nets the same amount as if he/she had actually worked. This shall be accomplished by either paying the difference to the employee, or if the workers' compensation benefit is more than the net pay, the City shall deduct the amount of the difference made until the employee is able to return to work, but in no event shall such payments by the City exceed 52 weeks.
2. If, during the incapacitation of any employee due to the injury arising out of the course of his/her employment, the employee shall be entitled to earned time in accordance with this Section VII, Paragraph A, then said employee shall be indemnified in pay or awarded earned time at a later date equal to the earned time lost because of said injury at the discretion of the Fire Chief.

E. **TEMPORARY ALTERNATIVE DUTY**

(1). In compliance with RSA 281-A:23-b, the Commission may provide temporary alternate duty assignments (light duty) for injured employees.

(2). Employees covered by this working agreement who have been on authorized leave due to illness or injury, may request a light duty assignment. The employee must provide management with a release from his or her physician utilizing the State forms outlining the duties that can and can not be performed. The employee will return to a light duty assignment within the Fire Department. Said assignments shall be in accordance with the following:

- a) Employees who request light duty in accordance with this section will have the same work schedule, subject to authorization from his/her physician and the availability of a light duty assignment. The Department will make a reasonable attempt to insure that the

employee's days off and hours of light duty will coincide, to the extent possible, with the firefighters selected shift. If a firefighter can not be assigned to his/her previously selected shift due to the lack of light duty work, the Department shall consider the firefighters individual circumstances in making a light duty assignment.

(3). Nothing in this agreement shall be construed as conflicting with the injured leave section of the contract.

(4). It shall be entirely optional for employees with non-work related injuries or illnesses to accept a light duty assignment. It is the sole discretion of the Fire Chief whether or not to offer a light duty assignment to firefighters who are injured off-duty. Employees who return to a light duty position due to an off duty injury will receive compensation for the hours worked. Employees with work related injuries shall have priority for light duty assignments.

(5). It is understood by the parties that light duty is not intended to be used as a means of punishment. The Fire Chief will not require a firefighter to report for light duty if there is no light duty work available.

(6). Light duty assignments shall not affect the shift assignments or shift bid possibilities, of other employees. Firefighters assigned to light duty shall be assigned to the same shift as their assignment before the injury, subject to the limitations in Paragraph 2 (a) above.

(7). The Fire Chief may require a firefighter to be examined by the Work Performance Center anytime after four weeks if the Chief has a concern that the firefighter is fit for regular duty. The firefighter may request a mutually acceptable neutral physician to render an opinion if he/she contests the Fire Department's ruling. The neutral physician shall be designated jointly by the City's physician and the employee's physician as soon as practicable under the circumstances. The two (2) physicians shall endeavor to designate a neutral physician capable of examining the employee within seven (7) calendar days of his/her designation as neutral physician. The costs of the neutral physician shall be borne by the City. If the report of the neutral physician supports the assignment of full duty, the employee shall forthwith report for appropriate duty. If the report does not support the assignment of full duty, the employee shall remain on light duty status. Each physician who administers an examination under this procedure shall be provided, by the City a detailed analysis of the physical requirements of the task(s) to which the employee shall be assigned if returned to limited duty, and shall be asked to make his/her determination of the fitness of the examined employee to perform limited duty based on the specific physical requirements of each limited duty task. Each physician who determines that an examined employee is capable of being assigned to limited duty shall be required to specify in his/her report which, if any, limited duty task(s) the examined employee is capable of performing, and the recommended number of hours per day and per week that the employee may be assigned to limited duty.

(8). Firefighters assigned to light duty are not eligible to work any overtime.

(9). An employee whose physician has approved him/her for a light duty assignment and who loses any workers compensation benefits for refusal to accept

temporary alternate duty offered by the Fire Department shall not be eligible for injured leave.

F. HEALTH INSURANCE:

1. ~~Effective July 1, 2004 the employee's cost will be seventeen percent (17%) of the premium and the City will pay eighty three percent (83%). Effective July 1, 2005 the employee's cost will be eighteen percent (18%) of the premium and the City will pay eighty two percent (82%). On July 1 of 2004, 2005, 2006, and 2007, the dollar amount of the increase in the health insurance premium paid by any employee shall not exceed the dollar increase generated by the COLA adjustment at Step 2 of the Fire Fighters' wage scale. If this agreement expires on June 30, 2008 without a successor agreement in place, the employees' contribution to the health insurance premium shall be the same percentage as applied during 2007-08. For example, if an employee contributed 18% or \$2000 to his/her health insurance premium in 2007-08 and this agreement expires on June 30, 2008 without a successor agreement in place, the employee's contribution starting on July 1, 2008 shall be 18% regardless of the dollar amount and regardless of any limitations relative to step 2 of the wage scale that were applicable during the term of this agreement.~~
2. Health Insurance: Should the parties agree in writing to establish a cafeteria style plan dealing in insurance issues during the course of this five (5) year agreement - such plan would only become effective if ratified by the Association, approved by the Fire Commission and approved by the City Council.

Each fire fighter shall have the option of choosing between Blue Cross/Blue Shield Comp 100 with a Managed Care rider, Blue Choice One, or Matthew Thorton. Firefighters covered under one of the three plans may choose to switch between plans prior to the start of each plan year which is July 1. Firefighters wishing to switch plans shall provide notice on appropriate forms for filing with the Trust by April 1 prior to the proposed effective date of the switch on July 1. The City may as its option provide equal and comparable coverage to Blue Cross/Blue Shield Comp 100 with a Managed Care rider, Blue Choice or Matthew Thorton plans. In lieu of the above, the City shall, at the discretion of said employee, pay an equivalent amount of money to whatever other hospitalization plan of insurance said employee indicated in writing. New employees will be eligible for health insurance under these provisions on the first of the month after the first day of work.

Effective March 1, 2014, the City will pay up to a maximum of 84.5% of the premium of the cost of a Matthew Thornton Plan. If an employee chooses to enroll in BlueChoice or Comp 100, the City will pay only 84.5% of the Matthew Thornton Premium towards the higher premium plans.

Local #1313 will serve on the City-wide committee to study health insurance options

SchoolCare will be added as a coverage option if the unit in its entirety, decides to make a change in coverage.

If the cost of any of the health insurance plans offered to employees results in the imposition of a 'Cadillac Tax,' the parties will attempt to agree on an alternative plan that does not implicate the tax. If the parties are not able to agree on an alternative plan, in addition to their share of the premium contribution toward health insurance coverage, employees will pay \$300 annually toward any 'Cadillac Tax' imposed under the ACA on a single-person plan, and \$600 annually toward any 'Cadillac Tax' imposed under the ACA on a two-person or family plan.

Effective as soon as practicable after City Council approval of this Agreement, the City shall offer to bargaining unit members health insurance for same-sex domestic partners. Eligibility for coverage under this provision shall be governed by the rules in place for employees of the University of New Hampshire as of November 1, 2003. (Appendix II).

- G. **EMERGENCY LEAVE:** In addition to sick leave, all persons covered by this Agreement shall be entitled to emergency leave up to three (3) calendar days, with pay, if needed, if death in the family. An additional two (2) days may be granted by the Chief or his designee at his discretion for a death in the immediate family. Immediate family shall be defined as follows: spouse, child (including adopted children and stepchildren), parent (including parent by adoption), brother, sister, grandparent, grandchild, aunt, uncle and only the following in-laws--the grandmother, grandfather, mother, father, brother or sister of the employee's current spouse.
- H. **MILITARY LEAVE:** Any employee covered by this Agreement who is called to active military service as a member of the Armed Forces of the United States, or who is engaged in activities in the reserve forces of the National Guard shall be granted a leave of absence to perform such military duties and the City shall pay to said employee the difference in salary between the pay which he/she receives from the United States and his/her base pay as a firefighter. Said employee shall not suffer any loss of leave time or other benefits because of said military duty. Such leave shall be considered "Military Leave". Said military leave shall not exceed fourteen (14) days per year.
- I. **INSURANCE DENTAL PLAN:** The City agrees to provide the single (employee), two-person or family membership in the Delta Dental Plan V.
- J. **LIFE INSURANCE:** Within sixty (60) days after this Agreement is approved, the City shall provide a group life insurance policy for eligible members of the bargaining unit in the amount of the employee's annual base salary, in accordance with the conditions set forth in the insurance policy.
- K. **LONG TERM DISABILITY:** Within sixty (60) days after this Agreement is approved, the City shall obtain disability Income Insurance for eligible members of the bargaining unit equal to 66 2/3% of the base monthly salary not to exceed five thousand dollars (\$5,000) per month. Said insurance shall be effective after

the 61st day of disability. Said insurance shall continue as long as the member remains disabled or until age sixty-five and shall be coordinated with Social Security.

- L. **DEFERRED TAX SAVINGS PLAN:** Employees shall have the option to participate in the Professional Firefighters of NH Deferred Tax Savings Plan through payroll deduction.

SECTION VIII. DEFENSE OF LAW SUITS:

The City shall undertake to defend and pay any judgment issued against any employee covered by this Agreement arising out of an act or omission of the employee for personal injury, including death or damage to property while the employee was engaged in the performance of his/her duties as a firefighter.

SECTION IX. UNION BUSINESS:

- A. Officers of the Union and their representatives shall be entitled to leave with pay for official union business and conventions provided 48 hours notice is provided to the Chief. The leave will be limited to a total of seven (7) days per year and may be taken in whole or half day increments.
- B. The above listed Union leave is in addition to leave which is granted for fire fighters acting in official capacities in grievance hearings, arbitration hearings, negotiation sessions and state legislative business. It is understood that the number of fire fighters eligible to receive leave with pay during negotiations shall not exceed two.

SECTION X. GRIEVANCE PROCEDURE:

The purpose of the grievance procedure is to settle employee grievances on as early a basis as possible and as quickly as possible to maintain efficiency and employee morale. It is the responsibility of all parties to this contract to come to a quick and amicable solution to the employee grievances. If any difference arises between the Management and an employee or employees as to the application of any of the provisions of this Agreement or if there is any grievance by an employee or employees with respect thereto, notice must be given to the Fire Chief or his designee within two (2) days of the employee's knowledge of its occurrence and an earnest effort shall be made to adjust such difference, complaint, or grievance otherwise the grievance shall be waived by negotiations pursuant to the following procedures:

- A. First, an effort shall be made to resolve said differences by a meeting between the employee or employees, the Union Steward, and the Fire Chief or his designee;
- B. If such grievance is not resolved within two (2) calendar days thereafter, the employee or employees shall present his/her grievance to the Executive Board of the Union in writing within two (2) calendar days. The Executive Board of the Union shall then discuss the grievance in accordance with the Constitution and Bylaws of the Union and handle all grievances so presented to them within two (2) calendar days, and report their action to the subsequent meeting of the Union.

- C. In the event the Executive Board decides that the grievance is justified it shall notify the Chief of its decision in writing with a request to meet for the propose of resolving said grievance within two (2) calendar days. Said meeting shall take place within seven (7) calendar days of receipt by the Chief of the written request of the Executive Board and an earnest effort will be made to resolve said grievance. The Chief shall, thereafter, render his decision in writing within five (5) days of said meeting.
- D. In the event the Executive Board does not accept the decision of the Fire Chief then it shall request a hearing within two (2) calendar days with the Board of Fire Commissioners in writing which shall take place within seven (7) calendar days of receipt by the Board of Fire Commissioners of said request. The parties shall meet in an effort to resolve said dispute and the Board of Fire Commissioners shall render this decision in writing within five (5) calendar days of said meeting
- E. Should the Board of Fire Commissioners decision be unsatisfactory to the Executive Board of the Union, then it shall submit the grievance to arbitration under the Voluntary Labor Arbitration Rules of the PELRB. The parties further agree to accept the arbitrators award as final and binding upon them. Cost of said arbitration shall be paid as follows: 50% by the losing party and 50% by the successful party to the complaint. To be timely under this section, the Union must request arbitration in writing both to the PELRB and the Commission within twenty-one (21) days of its receipt of the Commission's written decisioF. TIME LIMIT: A decision on the grievance shall be rendered within the time limit set forth or the grievance shall be deemed favorable to the grievant. Failure at any step of this procedure to appeal a grievance to the next step within the time limits shall be deemed to be acceptance of the decision rendered at that step.
- G. No arbitrator shall have the authority to alter or amend, add to or delete from this contract or any of its provisions. Appealability of arbitration awards under this contract shall be subject to RSA 542.

SECTION XI.

- A. **SAFETY AND HEALTH:** The City and the Union shall fully cooperate in matters of safety, health and sanitation affecting the employees. This shall include provision for proper working facilities, equipment tools, safety devices, protective clothing and other modern implements of firefighting so as to provide the City with an efficient and safety minded firefighting organization. If an employee has followed the procedures set forth in the New Hampshire Workers compensation Statute and has been advised under RSA 141-6 (regarding notification of Firefighters, etc. after exposure to infectious diseases) and the firefighter then becomes infected with said disease or disability within its normal incubation period, said disease or disability shall be considered a work related injury as defined by the New Hampshire Workers Compensation Statute whether or not the firefighter is still in the employ of the City unless there is clear and convincing evidence that the disease was contracted otherwise.
- B. **BUILDING MAINTENANCE AND OTHER DUTIES:** No employee shall be required to perform major structural alterations, repairs or renovations to existing facilities or vehicles, or to construct or assist in the construction of new facilities

during his/her regular work cycle. The Union agrees that normal, routine housekeeping and maintenance is exempt under this Section.

- C. **PENSION AND RETIREMENT PLAN:** The members of the bargaining unit shall be covered by the New Hampshire Permanent Fireman Retirement System and any amendments thereto and the City shall make such payments as may be required to provide such coverage for each employee. If any amendment requires approval, such amendment is not incorporated into this Agreement until voted by the City Council.
- D. **PROTECTION OF PROPERTY AND EQUIPMENT:** It shall be the responsibility of any employee having custody of any equipment and property to see to it that it is properly cared for, kept clean and returned to its place for storage.

SECTION XII.

- A. **WORKING RULES:** The Board of Fire Commissioners shall have the right to make such reasonable rules and regulations, not in conflict with this Agreement as it may from time to time deem best for the purposes of maintaining order, safety, and/or effective operation of the Fire Department, and to require compliance therewith by the employees after advance notice of the promulgation of any new or modified rule has been given to the Union and by posting the same on the bulletin boards for both the Central and Sub-stations. Union reserves the right to question the reasonableness of such rules or regulations through grievance and arbitration procedure up to three (3) week days after posting.

Infractions of the rules and regulations established by the City and/or the Commission as appropriate, may constitute just cause for disciplinary action, and willful violations may constitute just cause for discharge. Union will not encourage violation of any rules by its representatives or by the employees, and will assist the City and the Fire Commission in the enforcement of the rules. The Chief or his designee shall notify the Union of any claimed infraction of a rule or regulation within ten (10) working days after the department has knowledge of its occurrence, otherwise the infraction shall be waived. It is agreed that any employee may be discharged for reporting to work under the influence of intoxicating liquor while on the job, theft, or other offenses involving moral turpitude. Any employee discharged or disciplined shall be entitled to the provisions of the grievance procedure set forth herein and may be allowed a representative of his/her choosing. If it is determined or agreed at any step in the grievance procedure or decided by the arbitrator that any employee has been disciplined or discharged unjustly, the Fire Commission shall put them back on his/her job and pay the employee the amount he/she would have earned had he/she been working, without offset of outside earnings.

- B. **ABSENTEEISM:** Employees not expecting to work because of emergency or because of other justifiable causes, must notify the superior officer on duty as soon as such emergency or other just cause is known to the employee.

SECTION XIII. TRAINING

It is the goal of the department and the Union to insure that the personnel covered by this

Agreement are properly trained to operate the fire equipment and apparatus of this Department. In this regard, it shall be the duty of the Department to maintain a regular training schedule covering all phases of the suggested voluntary standards for firefighting published by the New Hampshire Fire Standards and Training Commission or other curriculum approved by the Fire Chief.

The Department and the Union agree that once a proper training program has been initiated and conducted that the parties will implement the suggested voluntary standards for firefighters.

A. Certification and degree stipends: Each firefighter who has earned and maintains the certifications or degree set forth below shall be entitled to an annual stipend based on the highest certification or degree achieved and maintained. The stipends are not cumulative.

Associate's Degree	2%
Associates Degree With Fire Protection Certificate	3.5%
Bachelors Degree Either Arts or Science	3.75%
Bachelor Degree with Fire Protected Certification or Business Administration	4.0%
EMT-I	3.0% of base pay Delete February 18, 2014
EMT-Paramedic	8.0% of base pay Change to 5% effective February 18, 2014.

B. The following annual stipends will be paid. Certification must be obtained and written notification provided to the Fire Chief at least six (6) months prior to the beginning of the fiscal year in which the stipend will be paid.

Specialty Team	Stipend
Boat Operator (28' & over)	2.0%
Hazardous Materials Technician (START or PFD)	2.0%
Shipboard Firefighter Technician	2.0%

C. It shall be the sole responsibility of the department to provide all training necessary for re-certification at the EMT-I or EMT-P level of certification at no cost to the firefighter. A thirty (30) day notice will be given for scheduled training. Should a firefighter miss a class for any reason, other than approved Worker's Compensation, extended sick leave with doctor's note, or funeral leave, he/she must make it up on his/her own time. All training necessary to obtain and maintain certification in the areas listed in Paragraph B above shall be the sole responsibility of the firefighter. The City will not reimburse firefighters for the cost or expenses of the training or compensate firefighters for time spent in

obtaining or maintaining such certification.

¹This stipend is also available to employees who obtain EMT-B certification and who did not possess it as of 7/1/98. The stipend is payable after 7/1/98, but no employee shall receive stipends for both EMT-B and EMT-I. Effective 7/1/03, employees who currently receive a stipend for an EMT-B certification shall continue to receive said stipend. Otherwise, this stipend is only available to employees holding an EMT-I certification. No employee shall receive both the EMT-I and EMT-P stipends.

- D. Engineers. Firefighter Engineers, in addition to their normal firefighter duties, shall be responsible for having knowledge of fireground operations and procedures, and perform the position of an officer in charge within the incident command structure in the absence of a senior fire officer. Firefighter Engineers shall also oversee the restocking and returning to service of all apparatus after an incident. A Firefighter will become eligible to receive the Engineer's stipend based on Department Policy which shall require fourteen (14) years of full-time service as a Fire Fighter in the Portsmouth Fire Department and certifications acceptable to the Chief as Driver/Operator — All Vehicles, Driver/Operator — Pumps, and Driver/Operator — Aerial Devices. The stipend shall be 3.5% of base pay.

SECTION XIV. EQUAL EMPLOYMENT OPPORTUNITY

The Fire Commission agrees that all personnel actions and employment practices will be based solely on merit and fitness in a manner that will demonstrate equal employment opportunity to all persons without regard to race, sex, color, religion or national origin, qualified handicapped or Viet Nam era veterans. It is agreed between the parties that in the policies and practices of the Union that there shall be no discrimination against any employee because of race, sex, marital status, sexual orientation, color, religion, national origin, disability, age or veterans status.

Each party agrees to advise the other of equal employment opportunity problems of which they are aware. The Commission and the Union will jointly seek solutions to such problems through personnel management procedures and programs provided in this Agreement and in the Department Regulations.

SECTION XV.

- A. The signing of this Agreement by the authorized representatives of the Union and the City shall constitute the effective date of this Agreement.
- B. This Agreement will remain effective until July 1, 2014~~6~~ or until superseded by a new Agreement.
- C. Should neither party to this Agreement initiate negotiations as required by State Law, this Agreement will be considered to have been automatically renewed for another year.

SECTION XVI. DRUG AND ALCOHOL TESTING

All members will be subject to drug and alcohol testing as outlined in the policy attached as Appendix 1.

SIGNATURES

In Witness Whereof, the Parties have executed this Agreement at Portsmouth, New Hampshire, this ____ day of _____ 2014~~5~~

IAFF Local #1313

The Portsmouth Board of Portsmouth, NH
of Fire Commissioners

Richard Gamester, Fire Commissioner

Russell Osgood, President
IAFF Local #1313

Michael Hughes Fire Commissioner

Jennifer J .Mosher-Matthes,
Fire Commissioner

Brain Ryll, Vice President
IAFF Local #1313

Steve Achilles, Fire Chief

Richard E. Molan, Attorney
For IAFF Local #1313

Thomas J Closson, City Negotiator

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APPENDIX I

AGREEMENT REGARDING PAYMENT OF SALARY

AND GRANTING OF LEAVE TO

ALLOW SUBSTANCE ABUSE REHABILITATION

THIS AGREEMENT is made on the date written below by the Portsmouth Fire Department and _____, member of the Fire Department.

WHEREAS, the member is employed by the City of Portsmouth Fire Department, an important public safety position, and as a condition of this employment the member shall obey the Rules and Regulations of the Department which requires the member to be alert and not under the influence of alcohol, drugs or controlled substances when on duty, not to possess or use controlled substances on Department premises, and not to engage in conduct which is violative of any criminal law, is unbecoming a member of the Department or tends to lower the service in the estimation of the public;

WHEREAS, the member has elected to undergo a rehabilitation program for substance abuse which will require him/her to be away from duty for up to thirty (30) days;

WHEREAS, the member requests that he/she be granted earned time and disability bank leave for up to thirty (30) days, (if all earned time and disability bank has been exhausted, the leave will be unpaid).

WHEREAS, the Department is committed to providing a safe substance free workplace and also is committed to assisting members of the Department who are working to overcome problems caused by substance abuse; and

WHEREAS, above all else, the Department is dedicated to providing fire protection service in a manner that enhances the safety of the public and the members of the Department.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for the good and valuable consideration, the receipt of which is hereby acknowledged, the Department and the member AGREE as follows:

1. The member shall be granted leave from all assigned duties a period of up to thirty (30) days in order to undergo treatment for substance abuse.
2. The member is hereby ordered upon completion of this leave to attend meetings of the Employees Assistance Program (EAP) sponsored by the Portsmouth Fire Department and to follow the guidelines established by the coordinator of this program for a period of one year following the date

this AGREEMENT is signed. Attendance at such meetings shall be on the members own time.

3. If the member fails to follow the guidelines of the coordinator of the program, the coordinator shall notify the Fire Chief. The Fire Chief shall impose discipline upon the member if the Chief finds that the member has not followed the guidelines established by the EAP coordinator. If the coordinator notifies the Fire Chief a second time within twelve (12) months of the date of this AGREEMENT that the member has failed to abide by the guidelines of the EAP coordinator, the Fire Chief shall order charges to be preferred against the member for failure to abide by the terms of this AGREEMENT with the Department. The member specifically agrees that his/her failing to follow the orders of the Fire Chief to attend the EAP and to abide by the guidelines of the EAP coordinator shall constitute just cause for the imposition of discipline, suspension or discharge.
4. The member agrees to submit to a physical examination and/or substance testing to determine his/her fitness for duty upon order of the Fire Chief at any time within one year of the signing of this AGREEMENT. If the member appears unfit at the time of the examination, or if the substance testing indicates the presence of alcohol or a controlled substance, the member shall be considered to be unfit for duty. Charges shall be preferred against the member by the Fire Chief for violation of the Rules and Regulations of the Department and for violation of the guidelines of the coordinator of the EAP. The member acknowledges and agrees that his/her history with the Department and the circumstances which have preceded the signing of this AGREEMENT constitutes probable cause for requiring the member to submit to such physical examination and substances testing.
5. The member acknowledges that he/she has read this AGREEMENT and that he/she understands this AGREEMENT.

Signed as a sealed instrument on this _____ day of _____.

PORTSMOUTH FIRE DEPARTMENT:

MEMBER:

Witness

SUBSTANCE ABUSE TESTING

I. The Parties recognize that illegal drug use and the abuse of alcohol by members of this Department pose serious threats to the public welfare and to the employees of the Department. It is the goal of this Policy to detect and to prevent substance abuse when ever possible and to assist in the rehabilitation of employees rather than to terminate the employment of members who are abusing drugs and alcohol. No member of the Portsmouth Fire Department will be discharged for problems caused by the use of illegal drugs or the abuse of alcohol without first having been offered the opportunity to discontinue use by treatment and enrollment in the Department Employee Assistance Program.

II. EDUCATION

The Department and Local #1313 will cooperate on an educational program that addresses all current related substance issues.

This educational program will be scheduled at reasonable intervals to ensure that not only are the goals of this rule met, but that all members are familiar with the issues, problems and current trends of thought concerning substance abuse.

III. TESTING FOR PRESENCE OF SUBSTANCES OF ABUSE

A. STANDARD FOR TESTING

The Fire Chief, or his designee, based upon reasonable suspicion, may require that a member submit to substances screening by urinalysis which shall be administered by a competent testing laboratory. Such testing laboratory to be a member of the National Institute for Drug Abuse.

"Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a prudent member to suspect that an employee is using, is in possession or control of, or is under the influence of drugs or alcohol while on duty. For purposes of this policy, "possession" shall included concealing drugs or alcohol in any place accessible to the employee while on duty, including, but not limited to a locker, bag, or clothing.

Circumstances which may constitute a basis for reasonable suspicion include but are not limited to:

Examples:

1. Direct observation of drug/alcohol use while on duty;
2. Member found to be in possession of alcohol/drugs while on duty;

3. Spontaneous unusual, abnormal, erratic, or unacceptable behavior, or behavior which otherwise indicates that the member is under the influence of an intoxicating substance (e.g.) the presence of bloodshot eyes, glassy eyes, slurred speech, lack of coordination or other indications of intoxication or substance use.
4. Documented pattern of unusual, erratic or unacceptable behavior;
5. Extended or patterned sick leave use which indicates that the member is unable to work due to substance abuse;
6. A major on duty accident or injury in which safety precautions were violated or careless acts were preformed;
7. Reporting for work unfit to duty.

B. PROCEDURES FOR TESTING

All Department members initiating testing action on the basis of reasonable suspicion will be required to detail in writing the specific facts, symptoms or observations which formed the basis for their conclusion that reasonable suspicion existed to warrant testing of the member.

The initial report will be reviewed by the Fire Chief or chief officer on call who shall determine whether the request for testing is appropriate, and if so, shall order that the test be performed. The results of the test shall be provided by the laboratory only to the Fire Chief or chief officer on call, who shall provide a copy to the member and the Fire Commission.

A member who fails to undergo a test as ordered or to provide a test sample as directed by the testing laboratory will be subject to disciplinary action including possible termination.

Members returning from suspension will be tested if such is required by the Fire Chief in the order imposing the suspension.

Applicants seeking reinstatement to the Portsmouth Fire Department after resignation or termination will be subject to testing as condition of re-employment.

A drug/alcohol test shall be conducted as a component of pre-employment physical. The presence of illegal drugs shall constitute a basis for the applicant to be by-passed.

IV. COLLECTION AND TESTING PROCEDURES

THE City will follow drug and alcohol procedures contained in 49 CFR 40, entitled "Procedures for Transportation Workplace Drug Testing Programs" and 49 CFR 382 which includes preparation for testing specimen collection procedures, laboratory requirements, retention of samples and Medical Review Officer (MRO) qualifications and functions. Selection of a laboratory to implement the drug testing procedures described in this Policy shall be by mutual agreement of the parties, neither of whom shall unreasonably withhold their consent.

The collection site procedures shall provide for the collection of split sample urine specimens.

Chain of custody and quality control of samples shall follow at a minimum U.S. DOT Guidelines to assure the accuracy of collection and testing procedures. A quality control program for drug testing will be maintained including the submission of blind samples in accordance with U.S. DOT regulations to assure the accuracy of collection and testing procedures.

An employee shall, upon request, be provided a split sample at the time of testing.

If the initial test proves positive, the MRO will require a second confirmatory test. If the confirmatory test proves negative, a negative result will be reported to the employee first and then to the Fire Chief.

If the confirmatory test is positive, the MRO shall consider the test results and review the individual's medical history and/or any other relevant biomedical factors. The MRO shall interview the employee and discuss the test result at which time the employee will have the opportunity to present any relevant medical information that would provide legitimate medical explanation for a positive test result. If the MRO verifies a positive result, the MRO shall refer the employee's case to the Fire Chief, after notifying the employee of the result, for further action as provided under this policy.

If the MRO determines after the appropriate review that there is a legitimate medical explanation for the confirmed positive test result other than the authorized use of all unauthorized controlled substances, the MRO shall report this as a negative test result and so inform the employee regarding his finding which shall remain confidential.

The MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO shall cancel the test result and record it as a negative result.

Should any questions arise as to the accuracy or validity of a positive drug test, the employee may request within 72 hours of the employee's having actual notice of the positive test result, a request that the MRO direct that the split sample be tested. If the re-analysis fails to reconfirm the positive results, the MRO shall cancel the test and report the cancellation as a negative test result both to the fire Chief and the employee.

V. CONFIDENTIALITY

The MRO shall not disclose to any third party, medical information provided by the employee to the MRO as part of the testing verification process. All records pertaining to this testing shall be required to be confidential.

Any employee who is tested under these provision shall, upon written request, have access to any records relating to their test and any records relating to the results of any relevant certification review or revocation of certification proceedings.

The City shall maintain confidentiality of all records and information it has in its possession with respect to drug testing and shall not disclose this information to any third party without the written consent of the employee.

VI. EMPLOYEE ASSISTANCE PROGRAM

The Portsmouth Fire Department maintains an Employee Assistance Program (EAP) which is available twenty-four hours a day, seven days a week. This program is for the benefit of all members. Voluntary participation, which is participation because a member believes he or she may benefit by attending meetings of the EAP, is confidential and is at the option of the member.

A. REHABILITATIVE ABSENCE

Members of the Department who will benefit from treatment on an inpatient basis in a rehabilitative substance abuse program may be entitled to be carried on an earned time or disability bank leave for a maximum of thirty (30) days provided the member agrees to and signs the substance abuse agreement included in the Appendix to this rule. If all earned time and disability bank leave have been exhausted, the leave shall be unpaid. The member will participate in the EAP program, as directed by the Program Coordinator, for a period of one year from the date of entrance into the rehabilitative substance abuse program.

If the member fails to follow the guidelines of the Coordinator of the program, the Coordinator shall notify the Fire Chief. The Fire Chief may impose a suspension of five (5) days upon the member if the Fire Chief finds that the member has not followed the guidelines established by the EAP.

If the Coordinator notifies the Fire Chief a second time within twelve (12) months of the date of leave that the member has failed to abide by the guidelines of the EAP Coordinator, the Fire Chief shall order charges to be preferred against the member for failure to abide by the agreement.

Members who received leave with pay to participate in a rehabilitative absence may be tested for the presence of drugs/alcohol at any time within one year of the leave. Charges will be preferred against the member if the test indicates the member reported for duty under the influence of drugs or alcohol.

If the member returns for rehabilitative treatment at any later time the member may utilize disability bank leave or earned time in order to receive compensation, otherwise the member will be carried with loss of pay.

B. MANDATORY PARTICIPATION

There may be occasions when the Fire Chief shall require that a member participate in the EAP program, such as, for example, when a member has received a paid leave for the purpose of entering an inpatient rehabilitative program or when a member has been ordered to participate due to a violation of the Rules and Regulations of the Department. In such circumstances, the requirements for mandatory participation in the Employee Assistance Program areas follows:

PHASE 1

- 1) The member must attend a minimum of three substance abuse meetings per week for the first three months;
- 2) Two visits per week to the EAP office for three months. If a member attends the substance abuse meeting that is held at EAP quarters, it will constitute one meeting per month.

PHASE 2

- 1) The member must attend a minimum of three substance abuse meetings per week for three months; and
- 2) One visit per week to the EAP office for three months.

PHASE 3

- 1) The member must attend a minimum of three substance abuse meetings per week for three months; and
- 2) One visit biweekly to the EAP office.

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PHASE 4

- 1) The member must attend a minimum of three substance abuse meetings per week for three months; and
- 2) One visit per month to the EAP office.

Attendance at substance abuse or EAP meetings shall be on off-duty time when ever possible.

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