

COLLECTIVE BARGAINING AGREEMENT

Between

CITY OF AVON PARK

and

AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL  
EMPLOYEES

LOCAL #3597

~~October 1, 2011 thru September 30, 2014~~2015-2016

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## **ARTICLE I - PREAMBLE**

This agreement is entered into by and between the City of Avon Park, State of Florida, hereinafter referred to as the “City” and Florida Public Employees Council 79, Local #3597, American Federation of State, County and Municipal Employees, hereinafter referred to as “AFSCME” or “Union”, for the purpose of promoting harmonious relations between the City and AFSCME, to the basic and full agreement between the parties concerning rates of pay, hours of work and overtime, and other conditions of employment as provided by law.

Therefore, the parties mutually and in good faith agree to the following:

## **ARTICLE II - RECOGNITION**

### **Section 1 Recognition by City**

The City recognizes AFSCME Florida Public Employees Council 79, Local 3597, as the exclusive representative for the employees in the classifications included in the Bargaining Unit as certified by the Public Employees Relations Commission (PERC) in its certification number 887, issued February 9, 1990, and as it may be subsequently amended by the Commission.

### **Section 2 Recognition by Union**

AFSCME recognizes the Mayor and the City Council as the elected representatives of the citizens of the City of Avon Park and the legally constituted authority responsible for determining the purpose, missions and operation of the City.

### **Section 3 Resolution of Differences without Interruption of Services**

The City and AFSCME subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruptions of the services provided.

## **ARTICLE III - NON-DISCRIMINATION**

### **Section 1 Male/Female References**

All references in this Agreement to employees of the male gender are used for convenience only, and shall be construed to include both male and female employees.

### **Section 2 Non-Discrimination on Account of Union Membership**

The right of the employees to belong to, participate in or refrain from belonging to AFSCME shall not be prohibited, abridged or interfered with.

### **Section 3 Non-Discrimination by Union**

AFSCME will not discriminate with regard to representations of its bargaining unit members, nor with regard to terms and conditions of membership because of race, color, creed, sex, age, physical handicap, national origin, marital status or political affiliation.



## ARTICLE IV - MANAGEMENT RIGHTS

### Section 1 General

The management of the City and the direction of its work force, including but not limited to the exclusive rights to determine whether all or any part of the operations covered by this Agreement shall commence, cease, continue, reduce or increase operations; to remove the operation or any part thereof to any location; to close, combine or eliminate departments, divisions, offices, or other subdivisions or part of City government; to establish new jobs or employees; to implement and establish agreements required as a condition of hire which are not inconsistent with an express provision of this Agreement; to change materials, processes, products, service, equipment, production and work schedules, and methods of operation; to introduce new materials, equipment, service or facilities; to assign work to be performed; to assign or reassign shifts, create or abolish shifts, and rotate shifts; to require employees to work overtime; to establish and change hiring procedures; to determine and change standards of fitness of employees to perform work; to subcontract, sell, franchise out or otherwise dispose of any or all work, operation or part thereof; to set the work schedules; to transfer employees from job to job, either on a permanent or temporary basis; to evaluate and direct the work of the employees covered by this Agreement; to maintain, enforce, rescind or change City and Department policies, procedure, rules of conduct, orders, practices, directives and other operational procedures, policies and guides not inconsistent with this Agreement; to establish the standards of conduct and work of employees; to establish or change operational standards to determine the services to be provided by the City and the functions of all parts of City government and all City employees; to lay off, discipline, and discharge employees; to lay off employees from duty for lack of work or for other operation reasons; to establish requirements for employment; to promote and demote employees; to be the sole judge of applicants for employment; and to have complete authority to exercise those rights and powers incidental thereto, including the right to alter or vary past practices as the City may determine to be necessary for the orderly and efficient operations of the City, shall be vested exclusively in the City, subject only to such restrictions governing the exercise of these rights as are expressly and specifically provided in this Agreement.

The City's failure to exercise any right hereby reserved to it or its exercising any right in a particular way shall not be deemed a waiver of its right to exercise such right nor preclude the City from exercising the same in some other way not in conflict with the express provisions of this Agreement. It is understood that the Union does not waive any right to negotiate concerning the impact of any unilateral decision allowed under this contract by the City affecting pay or job security.

### Section 2 Emergencies

If, in the sole discretion of the City Council or City Manager, it is determined that a civil emergency condition exists, including but not limited to riots, civil disorders, hurricane conditions or other catastrophes, the provisions of this Agreement may be suspended by the City Manager and/or the City Council during the time of the declared emergency, provided that wage rates and monetary fringe benefits shall not be suspended.

### Section 3 Job Duties

It is understood by the parties that every incidental duty connected with operations enumerated in job descriptions is not always specifically described and employees, at the discretion of management, may be required to perform other job-related duties not specifically contained in their job descriptions.

#### **Section 4 Employee Cooperation**

Delivery of municipal services in the most efficient, effective and courteous manner is of paramount importance to the City of Avon Park. Accordingly, AFSCME agrees that it will instruct its members to work diligently in order that the services performed meet the above standards.

#### **Section 5 Inherent Rights**

Those inherent managerial functions, prerogatives and policy-making rights which the City has not expressly modified or restricted by a specific provision of this Agreement are not in any way subject to the grievance and/or arbitration procedure contained herein.

#### **Section 6 Changes in Policies and Rules**

In the spirit of continued harmonious relations between AFSCME and the City, the City agrees to provide a notice to AFSCME of any change in City policies or rules of general application to all employees or departmental policy, new policy or work rules prior to implementation, which would affect members of the bargaining unit. AFSCME will have fifteen (15) calendar days to file any objections to the proposed changes with the City manager, who shall consider said objections before he/she makes his/her final decision provided, however, when there is an important business reason for a change, the City may proceed to make the change immediately in which event, upon request by AFSCME, he will consider any objections to the change filed by AFSCME within fifteen (15) calendar days after the change and make the final decision as to whether the change will be permanent. Disagreements will be arbitrated.

#### **~~Section 7—Civil Service Rules~~**

~~The Civil Service Act of the City of Avon Park shall not apply to bargaining unit employees.~~

#### **~~Section 8 Personnel Rules~~**

AFSCME has received a copy of the City's Personnel Policy as adopted by the City Council on April 13<sup>th</sup>, 2015 through Resolution 15-07 and understands that only the sections that are not in conflict with this Agreement apply to bargaining unit employees.

### **ARTICLE V - AFSCME BUSINESS**

#### **Section 1 Notice**

AFSCME shall notify the City Manager in writing of the names of its representatives. The City agrees that during the terms of this Agreement it will deal only with the authorized representatives of AFSCME in matters requiring mutual consent or other official action called for by this Agreement. Names of AFSCME representatives shall be posted on the bulletin board.

#### **Section 2 Activities**

AFSCME representatives have the right to request approval from the City Manager or his designee to leave their work posts or work stations for the purpose of investigating, handling, or settling grievances. They have the right to request to contact an employee or other person concerning grievance matters of AFSCME business during the working hours of the representative or the working hours of the employee to be contacted. Such requests will be directed to the department head or

assistance department head of the employee(s) to be contacted. Requests to use such leave will not be unreasonably denied.

### **Section 3 Visitation**

The City Manager shall permit an authorized representative of AFSCME to have reasonable access to the departments in which employees regularly work and all relevant City records subject to the Sunshine Law to conduct AFSCME business, provided that such visits do not disrupt routine operations as determined by the City Manager, or the ranking non-bargaining unit employee in the department or area where access is sought. Any authorized representative of AFSCME desiring to have access to the department shall first meet with and obtain written permission from the City Manager, or his/her designee, before going into any working area. AFSCME representative will not in any way interfere with the work of employees or the operations of the department.

### **Section 4 Bulletin Board**

The City shall provide bulletin board space (3'x5') for the exclusive use of AFSCME for the posting of notices of AFSCME meetings and official AFSCME business; however, nothing shall be posted which contains foul or abusive language; political advertisements or endorsements, business advertisements, personal solicitation, or any matter that is detrimental to any individuals or to the City. A copy of any materials to be posted on the bulletin board as specified above shall be sent to the office of the City Manager at the time of such postings. The president of AFSCME or an authorized representative so designated in writing by AFSCME shall sign all notices.

### **Section 5 Copies of Agreement**

The City shall furnish each member of the bargaining unit and AFSCME with a copy of this Agreement. The parties shall share the cost of said copies equally.

### **Section 6 Stewards**

AFSCME shall have the right to appoint one (1) job steward for each department to which bargaining unit employees are assigned. AFSCME will notify the City, in writing, as to the identity of each steward who must be bargaining unit employees of the City on the active payroll. The activities of stewards shall in no way interfere with their duties as employees or the work of other employees. Stewards and alternate stewards will be allowed to take time away from their work with pay to perform duties as a steward or alternate.

All other employees shall not engage in AFSCME business during the hours they are being paid to work without prior approval of the City Manager or his/her designee.

### **Section 7 Payroll Deduction**

Employees covered by this Agreement may authorize payroll deductions for the purposes of paying dues. Requests for payroll deductions must be on a prescribed form approved by the Human Resource Specialist. No authorization shall be allowed for a payment of initiation fees, special assessments, fines, penalties or delinquent dues.

### **Section 8 AFSCME Dues**

AFSCME will notify the Human Resource Specialist as to the amount of dues. This notice must state the weekly amount in dollars and cents for each individual member. Such notification will be certified to the Human Resources Specialist in writing over the signature of an authorized officer of AFSCME

at least thirty (30) calendar days in advance of the effective date of such change. Deductions of dues and uniformed assessments, if any, shall be remitted to a duly authorized representative of AFSCME Council 79, as designated in writing by the Union, along with a list containing names, employee numbers, and amount deducted of the employees for whom the remittance is made. The City will provide the Secretary of Local 3597 with a copy of the aforementioned list.

### **Section 9 Hold Harmless**

AFSCME will indemnify, defend and hold the City harmless against any and all claims, demands, or suits or other forms of liability that shall arise out of, or by reason of, action taken or not taken by the City on account of payroll deductions of AFSCME dues. AFSCME agrees that in case of overpayment, proper adjustment, if any, will be made by AFSCME to the affected employee.

### **Section 10 Withdrawal**

The payroll deduction shall be revocable by the employee by providing thirty (30) days written notice to both AFSCME and the Human Resource Specialist.

### **Section 11 Negotiation Leave**

AFSCME may designate up to two (2) employees within the bargaining unit to serve as its Negotiating Team, and such employees will be granted leave with pay to attend negotiations with the City. AFSCME may designate up to two (2) alternates who will be granted leave with pay to attend negotiations only where necessary due to the unavailability of a member of the primary Negotiating Team.

## **ARTICLE VI - PERSONNEL FILES**

### **Section 1 Official File**

There shall be only one official personnel file maintained on each employee. A copy of a disciplinary notice will be provided to the employee when the discipline is inserted in his or her personnel file.

### **Section 2 Confidentiality**

The personnel record of the employee shall be kept confidential, except those items which are available to the public under Florida Statutes, Chapter 119.

### **Section 3 Inspection and Copying**

Upon reasonable request, any employee shall have the right to inspect his official personnel record wherever kept. Once per year, each employee shall have the right to make an appointment with an HR Specialist to review their official personnel record. The employee shall have the right to have duplicate copies made for his use at his expense during normal business hours.

### **Section 4 Employee Comment**

Employees shall have the right to add to their personnel records written refutation of their annual job performance evaluation within five (5) working days of receipt of the evaluation.

### **Section 5 Removal**

Written reprimands, suspensions and employee evaluations shall be a permanent portion of the employee's personnel file subject to the provisions set forth in Article XXVI; provided, however, that

where a two (2) year period lapses following a written reprimand during which time the employee does not receive a subsequent reprimand of any kind or any other greater form of discipline less than discharge unless the written reprimand involved unsafe work performance, misconduct of an employee, or alcohol or drug abuse the written reprimand shall not be considered in determining the level of discipline in subsequent disciplinary actions. However, when the City is considering discharge of an employee, such action is not progressive but rather is punitive in nature. In such a circumstance, it is therefore appropriate to consider an employee's entire work history in reaching a decision.

## **ARTICLE VII - VEHICLES, EQUIPMENT AND SAFETY**

### **Section 1 City/Private Vehicle**

Employees shall use City vehicles unless approval to use another vehicle, including their own, is first obtained from the City Manager or his/her designee. Whenever an employee is required to use his own vehicle in the performance of his official duties, he will be compensated at the rate provided for in Florida Statutes, Section 112.061(7)(d)(1), and be reimbursed for tolls and parking charges.

### **Section 2 Abuse**

~~Any employee who~~ Employees shall not negligently operate, use or uses or abuses ~~City vehicles or equipment used by or assigned to him or who fails to.~~ Employees must utilize vehicles and equipment as prescribed ~~shall be subject to disciplinary action up to and including discharge. Determination of negligence will be by the employee's Department Head with review by the Safety Committee upon written request by the employee.~~

### **Section 3 Use of Vehicles and Equipment**

Management shall determine what vehicles and equipment will be utilized, by whom and for what functions.

### **Section 4 Loss of Driver's License**

Bargaining unit members who drive/operate City equipment as part of their job duties will be required to hold a current valid Florida Driver's License: either a Commercial Driver's License (CDL), if required by the employee's duties, or Class D or E License, if a CDL is not required. Failure to maintain a current valid Florida Driver's License shall cause the employee to lose his/her job due to his/her inability to legally operate/drive motorized City Equipment. The City Manager may opt to reassign an employee to another job rather than terminate the ~~said~~ employee. If the City requires an employee to have a driver's license above that of a Class D or Class E license, the City will pay the difference between the cost of the Class D or Class E license and the CDL license the City requires. An applicant must have the required license at the time of application and the City will not be responsible for the cost of such license.

### **Section 5 Unsafe Vehicles**

No employee shall be required to operate an unsafe vehicle. If an employee feels that a vehicle is unsafe to operate, the employee will report the unsafe condition in writing to the department head. The department head will investigate the reported unsafe condition and determine if the vehicle is safe for operation. ~~If the employee disagrees with the department head's findings, they may request in writing a review of these findings by the Safety Committee~~ The department head's decision shall be final.

## **Section 6—Safety Committee**

~~Within ninety (90) days of the ratification of this contract the city agrees to establish a workplace safety committee that complies with the requirements set forth at Section 442.012 Florida Statutes (1995), and as further explicated in Chapter 381-74 Florida Administrative Code. AFSCME agrees to cooperate with the City in the establishment of the committee, and to work with the City toward providing a safe work environment for employees, and the public. The committee shall include a minimum of one union member. The Committee shall meet at least twice per year and as necessary upon request by either the City or AFSCME. If the Committee meetings are held during working hours, AFSCME committee members will be granted leave with pay to attend.~~

## **Section 7 Drug Free Workplace Policy**

The City of Avon Park is committed to the policy of providing a work environment that is safe, productive and free from illegal drugs or alcohol. To accomplish this goal, the City has adopted a Drug and Alcohol Policy that is in compliance with the provisions of Sections 440.101 and 440.102 Florida Statutes, as amended by Section 2 of Chapter 96-289, Laws of Florida, and is also in compliance with the requirements of the Federal Omnibus Transportation Employee Testing Act of 1991. Drug and alcohol testing of employees will be conducted in accordance with the requirements of State and Federal law. Classifications that are subject to random testing will be identified in the job classification and on all vacancy announcements.

## **Section 8 Certifications**

Where certifications are required by law in order for an employee to lawfully and properly perform his job duties, the City shall make certification opportunities available to those employees. Where certifications are preferred in an employee's job description, the City will make a reasonable effort to provide certification opportunities to those employees. When certification opportunities become available, employees shall be given consideration according to classification seniority as defined by Article XIX, Section 1, and according to the contents of their official personnel file.

# **ARTICLE VIII - UNIFORMS AND EQUIPMENT**

## **Section 1 Uniforms, Equipment, and Tools**

The City requires that certain personnel wear uniforms on the job. Where the City makes such a determination, then it shall provide eleven (11) sets of uniforms every two (2) ~~weeks~~years. The cost of maintaining said uniforms shall be as follows: 75% cost to be paid by the City and 25% cost to be paid by the employee.

## **Section 2 Replacement**

The City shall replace or repair parts of the uniform that become unserviceable because of (1) normal wear and tear, or (2) damage, if through no fault of the employee while in the line of duty.

## **Section 3 Protective Clothing**

The following and any other safety-related items may be issued to the employee on an as needed basis, as determined by the City Manager: safety shoes, safety glasses, hard hats, safety gloves, safety vests, safety goggles, bump caps, face shields, knee and shin guards, rain gear and rubber boots. Any item so issued shall be worn as directed by the City Manager or his/her designee.

## Section 4 Tools

The City will furnish Employees in those classifications who are required to utilize tools those required tools. Tools that through ordinary and reasonable use are damaged or wear out will be replaced. Employees will not be required to use personal tools or equipment in the performance of City duties.

## Section 5 Safety Shoes

On his/her Anniversary Date, each employee will be entitled to a maximum \$90.00 protective footwear allowance for the purpose of steel-toed work boots or an approved alternative. The City shall provide the \$90.00 protective footwear allowance prior to the employee's Anniversary Date if the shoes become unusable as a result of performing City business; the employee's immediate supervisor shall make the determination as to the need for the protective footwear to be replaced, and will not unreasonably deny replacement.

## Section 6 Return

All uniforms, equipment and other City-issued equipment are the property of the City and shall be returned to the City in good condition upon cessation of employment but prior to the final paycheck being calculated and released. Employees will be responsible for payment for any missing items.

# ARTICLE IX - TYPES OF APPOINTMENTS, TRANSFERS AND DEMOTIONS

## Section 1 ~~Types of Appointment~~

~~When a person is initially employed by Avon Park, he/she shall be given one of the following types of original appointments:~~

~~**Probationary:** The initial six (6) months employment period in which an employee is observed Period for effective job performance. The Department Head, with the concurrence of the City Manager, may elevate New Hires~~

~~Newly-hired employees shall serve a probationary employee period of twelve (12) months, unless the City elects in its sole discretion to permanent status after ninety (90) days, if the employee has demonstrated above average job knowledge and performance. shorten such period. In the event a probationary employee is absent ~~in excess of~~ from work for five (5) working or more days during the probationary period, the employee's probationary period will automatically may be extended by a like amount.~~

- ~~A. **Provisional:** A short term appointment of no longer than six (6) months duration made only in the absence of a qualified applicant. Permanent status may not be attained while serving in this capacity.~~
- ~~A. **Temporary:** Temporary appointments may be made to fill positions which are authorized and established for a specified period of time when the work of an agency requires the services of one or more employees on a seasonal or intermittent basis, or in cases of emergency.~~
- ~~A. **Permanent:** An employee serving a probationary appointment shall be given a permanent appointment upon satisfactory completion of the probationary period of six (6) months.~~

## **Section 2 Temporary Non-training Work Out of Classification**

Any employee required to carry out duties or responsibilities in a classification with an entry level above that which he/she is assigned or in an out of unit position, shall be paid an additional one (\$1.00) dollar per hour for each hour spent working out of his/her classification.

## **Section 3 Request for Transfer**

An employee may request transfer from one work area or department to another if properly qualified. The appropriate department head and the City Manager must approve transfers.

## **Section 4 Mandatory Educational Training Pay**

To assist employees in advancing themselves and at the same time improve the quality of City service, the City may select courses and/or programs which employees will attend. The City shall pay expenses for any courses and/or programs selected by the City. In addition, employees so selected shall be paid their regular salary while attending said courses and/or programs.

## **Section 5 Training**

The City may assign personnel at their regular rate of pay for training purposes to a higher classification for a period of time as determined by the job classification. If the City does assign an employee to the same higher classification, he or she shall be paid in accordance with the provisions of Section 2. The intent of this section is not to prohibit or restrict the City from exercising its rights to train employees for a higher classification nor is this section to be utilized to avoid obligations set forth in Section 2 above.

## **Section 6 Promotions**

All permanent employees of the bargaining unit shall be notified of a promotional opportunity within the bargaining unit by a posted memorandum in the work area. A job description and salary range shall also be included. The notice of promotional opportunity shall be posted at least ten (10) working days prior to publicly advertising the position. All regular full-time members of the bargaining unit, if qualified, may apply. This shall not preclude the City from filling the position on a temporary basis until the position is filled with a regular appointment. The final determination of who is best qualified for the position shall be made by the City Manager; however, AFSCME shall have the right to discuss said appointment with the City Manager if it so desires. If the City Manager determines that, based on job operational or performance-related factors no employee who applied is qualified to fill the vacancy, the City may fill the vacancy in any way it deems appropriate. Such determination shall be final and not subject to arbitration.

## **Section 7 Promotional Probation**

When an employee is promoted, he Promoted employees shall be on probation for serve a probationary period of six (6) twelve (12) months. If, unless the City elects in its sole discretion to shorten such time period. In the event a probationary employee is absent from work for five (5) or more days, the employee's probationary period may be extended by a like amount. When a promoted employee fails to satisfactorily complete his or her probationary period as exclusively determined by the City Manager determines the employee shall not become permanent in the position, he, he or she shall be allowed to return to his or her former or an equivalent position without loss of classification seniority, provided his or her performance during the period was otherwise satisfactory.



## **Section 8 Promotional Probation Job Class Changes**

When the City determines that a revision of a class specification for positions covered by this agreement is needed, and such revision affects the collective bargaining unit designation, it shall notify AFSCME in writing of the proposed change. AFSCME shall notify the City in writing, within fourteen (14) days of receipt of the proposed changes, of any comments it has concerning the proposed changes and/or of its desire to schedule a consultation to discuss the proposed changes.

## **ARTICLE X - GRIEVANCE AND ARBITRATION**

### **Section 1 Definition of Grievance**

A grievance shall be defined as an alleged violation of the interpretation or application of the specific terms of this Agreement.

### **Section 2 Definitions**

- A. The term “employee” includes any individual within the bargaining unit covered by this Agreement.
- B. The term “day” when used in this procedure shall mean those days when City Hall is open for business.
- C. A “grievant” is a person affected by the alleged misapplication or misinterpretation of this Agreement.
- D. The grievant has the right to the presence of an AFSCME representative at all steps of this grievance procedure.
- E. AFSCME will indemnify, defend and hold the City harmless against any and all claims, demands or suits or other forms of liability that shall arise out of, or by reason of action taken or not taken by the City under this Section.

### **Section 3 Withdrawal**

A grievance may be withdrawn by the grievant at any time and at any step of this procedure.

### **Section 4 Grievance Procedure**

Whenever a grievance arises between the City and members of AFSCME, the matter will be handled in accordance with the following procedure:

- Step 1:** The aggrieved employee shall submit the grievance in writing and discuss the grievance with his department head within seven (7) days of the occurrence, which gave rise to the grievance. The written grievance must include:
- 1. A statement of the grievance and the facts involved;
  - 2. The remedy requested; and
  - 3. The Article and Section of the Agreement which grievant claims has been violated.

An AFSCME representative may be present to represent the employee if the employee wishes. The immediate supervisor will respond to the grievance within seven (7) days.

**Step 2:** If the grievance is not settled in Step 1, within seven (7) days of the department head's Step 1 decision, AFSCME may request in writing that the City Manager review the department head's decision. Such request shall state the reasons AFSCME contends the decision violates the Agreement. The City Manager, or his/her designee, shall review the entire grievance file and, if he/she deems it appropriate, interview persons who have knowledge of the facts, after which he/she will render his/her decision. If the City Manager, or his/her designee, decides to interview the grievant, AFSCME will be given an opportunity to have an AFSCME representative present whether or not such presence is requested by the grievant. Said decision will be issued within seven (7) days after receipt of the Request for Review.

Subject to the provisions of Section 9 herein, failure of the parties to meet and/or discuss a grievance or the City to make a decision within the time provided in any of the Steps of the grievance procedure shall be deemed a denial of the grievance by the City, and the employee or AFSCME shall proceed with the next step as if the decision had been made on the last day allowed.

**Step 3:** If the issue presented in the grievance is exclusively an issue of contract interpretation and does not involve the discipline or discharge of any employee, AFSCME may request in writing that the City Manager's Step 32 decision be reviewed by the City Council. Such request must be submitted to the Human Resources Specialist within seven (7) days of the Step 32 response. The City Council shall hear such grievance in a timely fashion, taking into account their status as elected officials. Appeal may thereafter be taken as set forth in Section 5. If the issue presented in the grievance involves the discipline, demotion, or discharge of an employee, the grievant must timely proceed directly from Step 2 to arbitration, if appeal is desired.

## **Section 5 Arbitration**

Except as otherwise stated in this Agreement, grievances as defined in this Article shall ~~be arbitrated in accordance with the following procedures: Arbitration proceedings must~~ be initiated by the serving by AFSCME of a written demand to the City Manager, or his/her designee, for arbitration which shall be made within twenty (20) days of the last response to the written grievance at Step 2 for grievances involving discipline, demotion, or discharge, or at Step 3 of Section 4 above for contract interpretation grievances.

## **Section 6 Selection of Arbitrator**

After the request for arbitration is served, the parties shall meet or confer by telephone in order to select an arbitrator to hear and decide the grievance. If the parties are unable to agree to an arbitrator, AFSCME shall request the Federal Mediation and Conciliation Service to supply the parties with a panel of seven (7) arbitrators. Within seven (7) days after receipt of such panel, the parties will meet or confer by telephone or in person to select an arbitrator. AFSCME and the City shall each have the right to alternatively strike three (3) names from the list. The name remaining shall be the arbitrator. Subject to Section 8, the arbitrator selected shall decide the dispute and such decision shall be final

and binding on the parties and the employees. The fees and expenses of the arbitrator shall be borne by the losing party. Each party agrees to furnish to the other party, upon written request, all non-privileged documents that are public records, as well as all information, including statements of witnesses that will testify at the arbitration hearing. Information not provided after such request will not be offered at the hearing. Each party shall be responsible for its own attorney's fees, any court reporting services it wishes to use, and the wages of employees, whether they be witnesses, potential witnesses, representatives, or grievant, it utilizes in any arbitration proceeding.

### **Section 7 Authority of Arbitrator**

The arbitrator shall in no way alter, amend or modify the terms of this Agreement, ~~but shall in all cases consider the managerial rights and obligations of the City.~~ With regard to any grievance involving disciplinary action, the sole issue to be decided by the arbitrator is whether the City had cause to impose any disciplinary action. If the arbitrator finds that the City had one or more reason to impose ANY disciplinary action against the employee, then the arbitrator is required to deny the grievance as the discretion as to what disciplinary penalty shall be imposed rests exclusively with management and may not be reviewed by the arbitrator. Under no circumstances may the arbitrator vary or mitigate the City's decision as to the appropriate disciplinary penalty. In agreeing to this limitation, the parties recognize, understand and acknowledge that they are rejecting the typical "just cause" standard commonly employed by numerous arbitrators and illustrated by the decision in *Enterprise Wire Co.*, 46 LA 359 (1966). The parties agree that the arbitrator's failure to abide by these limitations shall be grounds for vacating the arbitrator's decision pursuant to Section 682.13(1)(d) of the Florida Arbitration Code. Under no circumstances shall any back pay, wages or monetary relief of any types be awarded to any employee for any period more than thirty (30) calendar days before the grievance was signed and reduced to writing in Section 4, Step 1, above; provided, however, when an employee has been suspended without pay, back pay may be awarded for no more than the periods set forth above before the suspension without pay grievance was reduced to writing in Step 1 above.

### **Section 8 Decision**

The decision of the arbitrator on any arbitrated issue shall be supported by substantial evidence on the record as a whole and shall be final and binding on the employee, City and AFSCME.

### **Section 9 Time Limits**

The time limits set forth in Sections 4 and 5 are to be considered of the essence of the grievance and arbitration procedure, and failure of the employee or AFSCME to meet any time limit set forth therein shall, unless the parties by mutual agreement have extended a time limit, constitute waiver of the grievance and acceptance of the City's position.

### **Section 10 Time Off/Pay**

Step 1 of the grievance procedure shall be carried out during the employee's work hours at a time and place designated by the supervisor based on operational needs, and neither the employee nor the employee AFSCME representative, if any, shall lose pay. The City shall determine when Steps 1 and 2 shall be processed, and if the Step or Steps are processed during their scheduled working hours, neither the employee AFSCME representative, if any, nor the grievant shall lose pay. Employee witnesses, other than grievant, whom the City Manager may at his/her option choose to interview under Step 2 shall lose no pay if interviewed during their working hours, and if interviewed after or before such hours, shall be paid for such time as if they were performing other work for the City. Otherwise, the City shall not be responsible to pay any AFSCME employee representative, officer,

agent or employee for any time spent processing grievances or arbitration matters, but will allow one such person per grievance reasonable time off without pay for said activities upon reasonable prior notice if in management's opinion work requirements will allow such absence.

### **Section 11 Burden of Proof**

The person filing the grievance shall have the burden of proving his grievance by a preponderance of the evidence; however, in cases of discipline subject to the grievance procedure of this contract, the City shall have the burden of proof.

### **Section 12 Precedent**

In order to encourage prompt resolution of grievances, agreements and compromises of grievances made under Sections 1, either party, as precedent in any subsequent arbitration proceeding or lawsuit without the consent of the other party, shall not cite ~~Sections 2 and~~ Section 3.

### **Section 13 Grievances by Non-AFSCME Members**

When AFSCME refuses to process a grievance for an employee because of the employee's non-membership in AFSCME, the employee shall have all the rights and assume all the burden, limitations and obligations, including financial obligations, of AFSCME under this Article and any other Article that may apply to his grievance.

### **Section 14 General**

- A. All grievances shall be processed during times which do not interfere with or cause interruption of an employee's work responsibilities.
- B. The filing of a grievance shall in no way interfere with the right of the City to proceed to carry out its management responsibilities, subject to the final resolution of the grievance. The employee shall abide by the management decision involved in any grievance prior to and during the time the grievance has been filed, and shall not discontinue his duties prior to or during the time a grievance is being processed, unless the employee has been terminated.
- C. The date of disposition shall be the date on which the immediate supervisor or other management official delivers the disposition to AFSCME or grievant, whichever is appropriate, or the date of postmark in those instances where delivery is by U.S. mail.
- D. The grievant or, in the case of multiple grievants, one grievant selected by AFSCME will be allowed to attend each arbitration hearing without loss of pay. Subject to operational needs, bargaining unit employees shall be given time off solely to testify in arbitration hearings without loss of pay. Subject to the City's operational needs, up to one employee AFSCME representative will be allowed time off without pay to attend arbitration hearings. The City and AFSCME will cooperate so as to minimize their time off the job. The witnesses shall not leave work without prior permission of the department head or his designee and shall return to work immediately upon completion of his testimony.

## **ARTICLE XI - HOLIDAYS**

### **Section 1 Holidays Recognized**

The following shall be considered paid holidays for regular full, part-time and probationary employees:

- A. New Year's Day
- B. Martin Luther King's Birthday
- C. Good Friday
- D. Memorial Day
- E. Independence Day
- F. Labor Day
- G. Veteran's Day
- H. Thanksgiving Day
- I. Day after Thanksgiving
- J. Christmas Eve (Last regular workday before Christmas Day)
- K. Christmas Day
- L. Employee's Birthday (Must be taken within thirty (30) calendar days before or after the birthday)

Personal Leave Days: All permanent employees shall be granted two (2) personal leave days per calendar year. One day must be requested and scheduled during the calendar year. The second shall be granted and charged as a personal day against sick leave.

Personal leave days shall not be taken in conjunction with holidays or vacations.

### **Section 2 Eligibility**

To be eligible for holiday pay, the employee must work his scheduled day or shift before and after the holiday unless the absence is due to an approved compensable leave or the employee is on approved vacation.

### **Section 3 Holiday Pay**

Pay for a holiday shall be eight (8) times the employee's straight-time hourly rate except that for part-time employees it will be four (4) times his straight-time hourly rate.

### **Section 4 Payment for Work on holidays**

All forty (40) hour employees required to work on a recognized holiday who would otherwise be eligible for holiday pay will receive two and one-half (2-1/2) times his normal hourly rate of pay for all hours actually worked in lieu of holiday pay, or one and one-half (1-1/2) times his normal hourly rate and another day off with holiday pay at the City's option. Employees required to work a holiday, who are not eligible for holiday pay, shall receive one time their regular rate for all hours actually

worked. Under this Section, the recognized holiday will be the day on which the holiday falls for shift employees, while for non-shift employees it will be the day observed by the City under Section 6.

**Section 5 Normal Days Off**

When a holiday is celebrated by the City on an employee’s normal day off, the employee who meets eligibility requirements will receive holiday pay as provided in Section 3.

**Section 6 Day Observed**

The City shall observe those City holidays recognized by the federal government on the same day as observed by the federal government. The City shall observe those city holidays not recognized by the federal government, on the actual day of the holiday. If Christmas Eve falls on a Saturday or Sunday, it will be observed the previous Friday.

**ARTICLE XII - SICK LEAVE**

**Section 1 Entitlement**

Regular full-time employees who have satisfactorily completed six (6) months of continuous service shall earn eight (8) hours of sick leave for each month of continuous service, commencing with the first month following the six (6) months with no maximum.

**Section 2 Accumulation and Use**

Paid sick leave may be accumulated up to a maximum of 1920 hours and may be used for:

- A. Absence of an hour or more due to non-job-related bona fide sickness or injury of the employee, the employee’s spouse, child or dependent as defined by the FMLA, when it is necessary for an employee to be absent to care for them.
- B. For medical, dental or eye examination for which arrangements cannot be made during his off-duty hours.

**Section 3 Payout**

Accumulated but unused sick leave is not earned until actually taken and, therefore, shall only be paid upon separation from employment after ten (10) years of service. The City will pay to the employee or his estate, in the event of death, one half (1/2) of the accumulated but unused sick leave standing in his account up to a maximum of four hundred eighty (480) hours.

**Section 4 Sick Pay**

Sick pay will be paid on whole hours or days at the employee’s straight-time rate at the time the paid sick leave is taken.

**Section 5 Job-Related Injuries**

Paid sick leave will not be paid to an employee who is on worker’s compensation or is otherwise compensated because of an on-the-job or job-related sickness or injury.

**Section 6 Verification Required**

A medical certificate signed by a licensed physician may be required by the department head to substantiate sick leave or a request for sick leave for the following reasons:

- A. An absence under Section 2 above.
- B. To support a request for sick leave during a period of time when the employee is on vacation leave; however, the employee must notify the City Manager or his/her designee of his illness while on vacation in order to have those vacation days on which he is ill changed to sick days.
- C. To support a request for sick leave on the first day of return following vacation leave.
- D. Leave of any duration if absence from duty recurs frequently or habitually, provided the employee has been notified or warned in writing that a certificate will be required.
- E. Whenever, in the judgment of the City Manager or his designee sick leave may appear to be abused, or where a regular full-time employee regularly uses his sick leave as it is accrued, the employee requesting such sick leave may be required to furnish competent medical proof for such absence prior to sick leave pay being granted. Such competent medical proof may include a physician's statement attesting to his inability to perform work on the day(s) of absence. Any employee on paid leave shall continue to accrue all benefits as if on actual duty.
- F. To return from an extended sick leave under Section 10. Such competent medical proof shall include a physician's statement attesting to his inability to perform work on the day(s) of absence. Any employee on paid sick leave shall continue to accrue all benefits as if on actual duty.

**Section 7 Notice**

Employees who are absent from work for sickness or injury shall notify their immediate supervisor of such absence as promptly as possible, but in any event no later than thirty (30) minutes prior to the commencement of his schedules shift.

**Section 8 Restriction**

The regular full-time employee off duty due to his illness shall remain at his residence, except that the employee may depart his residence to receive medical treatment, to secure drugs from a pharmacy or for other reason deemed appropriate by the department head or his/her designee.

**Section 9 Employee Cooperation**

Failure on the part of the employee to timely, as per Section 7, notify the department of any absence for which sick leave is claimed, departure from his home without authorization and/or notification on any day for which sick leave is claimed, and/or the failure to provide medical documentation in a form and manner acceptable to the department head shall result in the denial of sick leave or other disciplinary action as determined by the City Manager or his/her designee.

**Section 10 FMLA**

~~Employees will be granted sick leave for their own serious health conditions as provided under FMLA.~~

Eligible employees, as defined by the FMLA and its implementing regulations, will be granted FMLA leave to the extent required by the FMLA. Employees will be required to use any accrued paid leave during an FMLA leave of absence to the extent permitted by applicable regulations. Once accrued

paid leave is exhausted or is otherwise unavailable, any leave of absence required by the FMLA will be unpaid. Nothing in this Agreement or in the City's policies or practices shall provide an employee with any entitlement to FMLA leave, or other rights afforded by the FMLA, where such leave and/or rights are not otherwise required by statute.

## **ARTICLE XIII - BEREAVEMENT LEAVE**

### **Section 1 Benefit**

When a death occurs in the immediate family, that regular full-time employee shall be granted up to five (5) days off without loss of pay or benefits. Up to an additional two (2) days of bereavement leave shall be granted to employees who have to attend a funeral out of state.

### **Section 2 No Charge**

Bereavement leave will not be charged against sick leave, vacation or holiday pay or accumulated over time. The City may require verification of the need for such leave before payment is approved.

### **Section 3 Immediate Family**

“Immediate family” as cited above shall be defined as: father, mother, spouse, children, father-in-law or mother-in-law, brother, sister, grandparents, grandchildren, brother- or sister-in-law, son- or daughter-in-law, stepmother or father, stepchildren, stepfather or mother-in-law, stepbrother or step grandparents, step grandchildren, stepbrother or sister-in-law, stepson or daughter-in-law.

### **Section 4 Others**

Whenever operationally feasible, a permanent employee may be given time off without pay to attend local funerals of relatives not covered by Section 3 or close friends.

### **Section 5 Additional Days**

At the option of the City, employees may be given an additional three (3) days off without pay in the event of death of a spouse, parent or child.

## **ARTICLE XIV - LEAVE OF ABSENCE – CIVIL**

### **Section 1 General Leave**

Leave of absence without pay for a period of up to but not exceeding six (6) months may be granted to a permanent employee at the discretion of the City Manager.

### **Section 2 Insurance Premiums and Coverage**

Any permanent employee on an approved non-paid leave of absence will have their life and health insurance premiums paid by the City for up to thirty (30) days maximum. For employees on qualifying FMLA leave, insurance will be maintained as provided by law.

### **Section 3 Other Benefits**

While on general leave, the employee shall receive no other wage or benefit (such as holidays). Nor shall the employee continue to accrue benefits during a general leave in excess of thirty (30) days; provided, however, he will continue to accumulate City seniority for the purpose of calculating years of continuing service.



#### **Section 4 Return from General Leave**

Provided he is physically and mentally qualified to perform, a regular full-time employee shall return from leave without pay to the same step of his previous salary grade and in the same or equivalent class in which he was employed when leave began; provided, in the case of leaves beyond thirty (30) days (12 weeks for FMLA qualifying leave), the employee may be permanently replaced if the business needs of the City require, in which event the employee shall be placed in another vacancy for which he is qualified or in the event no such vacancy exists, laid off with the right of first consideration for twelve (12) months for any vacancy for which he is qualified.

#### **Section 5 Early Return**

A permanent employee granted leave of absence who wishes to return before the leave period has expired shall be required to give his department head at least a one-week written notice of such intent. Upon receipt of such notice, the employee may be permitted to return to work.

#### **Section 6 Jury Duty**

Permanent employees who are summoned during their regularly scheduled workday to jury duty by a court of competent jurisdiction will be granted time off for jury duty. Any employee who is released from duty shall report to work as soon after release as possible unless the release is two (2) hours or less from the end of the employee's regularly scheduled workday. The City will make up the difference between pay received for jury duty and the employee's regular straight-time pay for his normal schedule.

#### **Section 7 Court Attendance**

Permanent employees shall be granted leave with pay for appearance before a court, legislative committee or other body as a witness in a proceeding involving the federal government, State of Florida, or a political subdivision thereof in response to a subpoena or he is directed to appear by the City. The employee shall give the supervisor notice his attendance is required as soon as he is aware of it.

#### **Section 8 Military Leave**

~~Permanent employees who are members of the U.S. Armed Forces, Reserves or the National Guard will be granted up to eighteen (18) consecutive days, including travel time, for the purpose of attending the regular annual duty for training commonly known as "Summer Camp". A copy of the employee's Reserve Orders shall be provided to the City Manager at the time of such request. The City will grant leave and pay employees in accordance with the provisions of Sections 115.07 and 250.48 Florida Statutes. Employees will be granted military leave and benefits in accordance with applicable law, including Chapter 115 of the Florida Statutes, Section 285.48 of the Florida Statutes, and the Uniformed Services Employment and Reemployment Rights Act (USERRA).~~

### **ARTICLE XV - VACATIONS**

#### **Section 1 Vacation Time**

Vacations shall be granted to permanent employees in the following manner:

- A. After one year, but less than ten years, of continuous service: ten (10) working days for employees hired October 1, 1989 or later, but twelve (12) working days for employees hired before October 1, 1989.

- B. More than ten, but less than fifteen years, of continuous service: fifteen (15) working days.
- C. More than fifteen, but less than twenty, years of continuous service: twenty (20) working days.
- D. More than twenty years of continuous service: twenty-five (25) working days.

## **Section 2 Holidays/Days Off**

In computing vacation time, holidays or regular days off immediately preceding the commencement of, falling within or following the termination of a permanent employee's vacation, holiday or regular days off shall not reduce the employee's vacation time.

## **Section 3 Termination of Employment**

If a permanent employee voluntarily resigns or is terminated during the course of his employment or in the event of death, he or his heirs shall be entitled to an immediate lump sum payment for all vacation time earned but not taken at the employee's last rate of pay, up to a maximum of twice the employee's annual accrual.

## **Section 4 Advance Payment**

A permanent employee may request his vacation paycheck by submitting the request in writing to the City's payroll office at least two weeks prior to the start of his vacation period. Said request must be signed by the department head and City Manager prior to its submission to the payroll office. In the event an employee has direct deposit, advanced payment shall not be authorized.

## **Section 5 Scheduling**

Vacations must be requested or scheduled by management not less than two (2) weeks in advance. Requests may be considered with less notice if there are circumstances which arise that were unforeseen by the employee. All requests are to be submitted to the department head, or his/her designee, in writing, for approval. If the request is denied, the employee shall be provided the reason in writing. Conflicting requests will be decided on the basis of City seniority; provided, however, if a junior employee's vacation has already been approved by the department head, it would take precedence over the senior employee's request. In the event a civil emergency is declared by City Council, all personnel may be subject to cancellation of leave and/or recall. The City shall notify the Local 3597 President upon the declaration and termination of said emergencies.

## **Section 6 Unused Vacation Time**

Employees may accrue up to a maximum twice the employee's annual accrual, after which no leave shall be carried forward from year to year.

## **Section 7 Periods of Leave of Absence**

Vacation time will not be earned during periods when employees are on unpaid leave of absence for more than thirty (30) calendar days regardless of the reason for the leave.

## ARTICLE XVI - INSURANCE BENEFITS

### Section 1 Coverage/Contribution

The City will continue to pay full cost of individual health insurance coverage. If the City desires to change the current health insurance program for all employees of the City, it will notify AFSCME and upon request bargain over it. If the parties cannot agree, the dispute shall be resolved pursuant to the statutory impasse procedure prior to any change. If requested by AFSCME, the City agrees to meet with AFSCME representatives, within 21 days of notifying it of contemplated changes, for purposes of allowing them the opportunity to provide recommendations, suggestions, input and discussion on the contemplated changes. After considering any input offered by AFSCME, the City Manager will make the final decision regarding any insurance changes, subject only to the requirement that the changes be based on a legitimate business or governmental interest, not be arbitrary and capricious, and be consistent in their application to bargaining unit employees as compared to other City rank and file employees.

### Section 2 Group Life

The City shall provide Ten Thousand Dollars (\$10,000.00) of group life insurance for each member of the bargaining unit. Each member of the bargaining unit who wishes may take out a policy for a larger amount subject to the approval of the insurance company; provided, the employee shall pay for the extra coverage.

### Section 3 Use of Tobacco

Employees hired on or after June 1, 2014 and who utilize tobacco-based products shall be required to pay \$100 per month toward the cost of the employee's health insurance premiums.

## ARTICLE XVII - WORKERS COMPENSATION/REINSTATEMENT

### Section 1 Full-Pay After On-the-Job Injury

In the event of an on-the-job injury to a regular full-time employee not resulting from the employee's own carelessness, said employee will be carried at full pay up to twenty (20) working days per year less any workers compensation benefits. ~~Daily benefits and time lost as a Committee shall review all Workers' Compensation injury claims to determine any degree of carelessness or utter disregard for safety by an employee. The Safety Committee will report their findings to the City Manager for his consideration.~~

### Section 2 Criteria for Full-Pay Benefit

In order to be considered for this injury-in-line-of-duty benefit, the following conditions must be met:

- A. The employee must provide written testimony or evidence that his injury was received in the line of duty.
- B. The employee must file a written claim as outlined below:

An employee who has a claim for compensation while absent because of injury on-the-job as described in Section 1 shall file a claim with his department head on the form provided by the City.

### **Section 3 Reinstatement**

Any employee who is able to work after a job-related injury shall be reinstated to his former job or a substantially equivalent job for which he is qualified, provided he is physically qualified to perform all of the duties and responsibilities of such position. Certification by a medical doctor that he is able to return shall be required prior to the employee returning to work. If he is unable to assume his former responsibilities, the employee shall have first preference to fill another City position if a vacancy occurs and the employee is qualified for such position. Re-employment or reinstatement rights under this Section shall continue for twenty-four (24) months after the injury. Thereafter, if the employee is rehired, it will be as a new employee.

## **ARTICLE XVIII - POLITICAL ACTIVITY**

Except when on duty or acting in his official capacity, no employee shall be prohibited from engaging in any political activity. When employees of the City of Avon Park engage in off-duty political activity, clothing and/or accessories shall not be worn that identify them as an employee of the City.

## **ARTICLE XIX - SENIORITY AND LAYOFF**

### **Section 1 Definition**

City seniority shall be defined as the total length of continuous service in the city of Avon Park. Classification seniority is defined as length of continuous service in the job classification in the Department. Seniority shall continue to accrue during all types of compensable leave approved by the City. Approved leaves of absence without pay shall not count toward the accrual of classification seniority.

### **Section 2 Loss of Seniority**

Employees shall lose their seniority as a result of the following:

- A. Termination
- B. Retirement
- C. Voluntary resignation
- D. Layoff exceeding twelve (12) months
- E. Failure to report to the City Manager intention of returning to work, within five (5) days of mailing of a recall notice as verified by certified mail, return receipt
- F. Failure to report form military leave within the time limits prescribed by law

### **Section 3 Layoff Selection**

In the event the City decides to lay off employees within the Department, the City will first lay off employees who have not yet completed their initial one (1) year probationary period, unless special licensure or skills are possessed by an employee. If further layoffs are necessary, selection among employees shall be based on:

- A. Ability to perform all work available.
- B. Special skills essential to the performance of the available work.

- C. Job performance as reflected by the job evaluations for the past three (3) years or the most recent evaluations available.
- D. Job classification seniority.

Where, in the opinion of management, factors A, B, and C are relatively equal among employees, factor D shall be determinative.

**Section 4 Bumping**

A senior employee in good standing who is laid off in one classification may bump the junior employee if he is qualified to hold that position, which determination shall be made by management and shall not be grievable. The City agrees to notify AFSCME prior to laying off the senior employee attempting to bump to consider any objections raised.

If the position from which the most senior person was laid off reopens during twelve (12) months from the date of layoff, that laid off employee shall have the right to fill that position. Probationary employees shall not have recall rights.

**Section 5 Equal Seniority**

In the event that two (2) or more employees affected have the same exact amount of seniority, the City Manager will use the last four digits of the employee’s social security number to determine seniority, with the lowest number being the more senior.

**Section 6 Recall**

- A. Regular full-time permanent employees on layoff status will retain rights for twelve (12) months. Recall will be made by certified mail to the last known address in the employee’s personnel record. Employees are required to advise the city of any change of address.
- B. Within five (5) work days of mailing of a recall notice by certified mail, laid off employees must signify, in writing to the City Manager’s office, their intention of returning to work. Failure to respond to this notice within the prescribed time limits shall constitute a voluntary resignation by the employee.
- C. Recall will be offered to laid off employees in good standing other than those employees who were on probationary status at the time of layoff, provided they are physically qualified and able to perform all the duties of the job, before new employee are hired or promotional opportunities are posted. The City reserves the right to require the laid off employee to submit a doctor’s statement indicating that the employee is in fact physically qualified and able to perform all the duties of the job.
- D. Recall will be in inverse order of layoff as jobs become vacant in the Department.

**ARTICLE XX - HOURS OF WORK AND OVERTIME**

**Section 1 Basic Work Week or Work Period**

The basic work week shall consist of forty (40) hours within a seven (7) day period beginning on Monday~~Wednesday~~ and ending on Sunday~~Tuesday~~.

## **Section 2 Pay/Comp Time**

All hours worked in excess of forty (40) hours in a seven (7) day period shall be considered overtime for which the employees shall be paid a one and one-half (1-1/2) his straight-time hourly rate or placed in the employee's comp time bank at one and one-half (1-1/2) the overtime hours worked.

## **Section 3 Banking**

The City shall determine how much overtime will be allowed to be banked as comp time subject to a maximum accrual of 120 hours. Overtime worked in excess of the maximums allowed under the FLSA shall be paid at time and one-half.

## **Section 4 Use**

Comp time shall be taken as directed or allowed by the department head. In addition, comp time shall be utilized for approved unpaid leaves of absence at the option of the employee.

## **Section 5 Payoff**

In the event of termination of employment, regardless of the reason, the employee's comp time bank shall be settled as provided under the FLSA.

## **Section 6 Schedule**

Except in extenuating circumstances, the City will notify the employee within forty-eight (48) hours of any change in the employee's regular scheduled work time; provided further, an employee's schedule will not be altered on a day-to-day basis for the sole purpose of avoiding the payment of overtime.

## **Section 7 Call-Out/Standby Pay**

Employees who are called out to perform work shall receive a minimum of two (2) hours pay or actual hours worked. Employees who are placed in "standby status" on their normal day or days off will receive one (1) hour pay whether called out or not. On Saturdays and Sundays, "standby status" will be a minimum of two (2) hours pay whether called out or not. Any employee who received a call-out and reports to work will receive minimum call out pay.

# **ARTICLE XXI - WAGES AND LONGEVITY**

## **Section 1 Wage Scale**

Current Employees are grandfathered and shall be paid in accordance with the rates set forth in the City of Avon Park Wage Scale. Compensation Table for new employees and those promoted to higher class is attached.

## **Section 2 Change in Pay on Promotion, Permanent Transfer or Demotion**

When an employee is promoted or permanently transferred or demoted, he shall be paid at the next highest rate for the job to the rate he was making in the job he formerly held without regard to his pay longevity. In the case of disciplinary demotion, the employee will be paid the rate for the new job consistent with his pay longevity. In either event, the employee's City seniority for the purpose of calculating the right to other benefits shall not be affected.

### **Section 3 Pay for Required State Licenses**

When an employee is required by the City to obtain a state license and is assigned to work in a capacity requiring such license they shall be paid an additional Two hundred Dollars (\$200.00) per year, per license, or a proportionate amount, if their assignment is less than a year. The payment will be made the first pay period following the employee's anniversary date of their permanent assignment. The City shall determine the number, if any, of other employees it wishes to hold such state certification as backup. Employees obtaining such certification with prior City approval will receive the same annual pay as a permanently assigned water treatment or waste water treatment operator. Except in the case of any employee previously receiving extra compensation for different classes of a license, effective with this Agreement, different classes of a license shall be treated as a single license for compensation purposes.

### **Section 4 Wage Increase**

- ~~A. Fiscal Year 2011 All bargaining unit employees shall receive a one time bonus as listed Effective upon Council's ratification of this agreement.~~
- ~~B.A. Fiscal Year 2012 The City and Agreement by both parties, the Union will have parties agree to increase the last pay step of both wage reopener scales by 1.5%.~~
- ~~C.B. For Fiscal Year 2013 The City and 2015-2016, the Union will have parties agree to a wage reopener.~~

## **ARTICLE XXII - PREVAILING RIGHTS**

### **Section 1 General**

There shall be no benefits implied or otherwise accruing to the benefit of the bargaining unit or members thereof, except benefits as herein expressly provided.

### **Section 2 Damaged Personal Equipment**

Any employee who, during the course of their employment shall incur any damage to their clothing or personal property, shall be reimbursed up to 100% unless it is established that the loss or notification of the loss or damage was caused by neglect of the employee. The City Manager, or his/her designee, will investigate the incident and make final determination as to the City being involved or if the loss or damage is the fault of the employee.

### **Section 3 Outside Employment**

Employees shall not work at any other job, either part of full time, without first seeking permission from the City Manager or his/her designee. No City vehicle or equipment shall be used in outside employment or for transportation to or from outside employment. Such permission will not be denied if the employee may legally perform the job and the nature and hours of the job will not, in the City Manager's opinion, interfere with the efficient operation of the Department. The City shall not have the responsibility to make any accommodations for other jobs and if another job held by an employee in any way interferes with the performance of an employee or the efficiency of the Department, the employee must, at the City Manager's request, give up the other job or jobs. Failure to do so will result in discharge.

## **ARTICLE XXIII - SEVERABILITY CLAUSE**

### **Section 1 Laws**

If this Agreement or any provision, section, subsection, sentence, clause, phrase or word of this Agreement is in conflict with any law as finally determined by a court of competent jurisdiction, that portion of this Agreement in conflict with said law or court interpretation of the law shall be null and void, but the remainder of this Agreement shall remain in full force and effect with it being presumed that the intent was to enter into this Agreement without such invalid portion or portions.

### **Section 2 Negotiation**

Should any Article of this Agreement be rendered invalid as described above, it shall be renegotiated under Chapter 447 of the Florida Statutes provided that a request of such renegotiations be made within fourteen (14) days of a final decision of invalidity.

## **ARTICLE XXIV - NO STRIKE**

### **Section 1 No Strike**

AFSCME agrees that during the term of this Agreement it shall not participate in, authorize, condone, excuse, ratify, instigate, or support in any manner any concerted failure to report for duty, concerted absence of employees from their positions, concerted stoppage of work, concerted submissions of resignations, concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer, for the purpose of inducing, influencing, condoning or coercing a change in the terms and conditions of employment or the rights, privileges, or obligations of public employment, or deliberate and concerted course of conduct which adversely affects the services of the public employer, including but not limited to the concerted failure to report for work after the expiration of a collective bargaining agreement and picketing in furtherance of a work stoppage.

### **Section 2 City's Right to Relief**

Should AFSCME breach this Article, AFSCME agrees that the City may proceed to the appropriate court and, without notice, obtain an injunction against such breach, that the City may recover from AFSCME or its successor in interest such damages as may be incurred and that the City Manager or his/her designee has determine the employee's involvement.

### **Section 3 Employee Participation**

Any employee who participates in, or promotes a strike, work stoppage, slowdown or other form of interference with the operation and mission of the City administration shall be subject to discipline up to and including discharge only after hearing with the City Manager or his/her designee has determined the employee's involvement.

### **Section 4 AFSCME Assistance**

In the event of a strike, work stoppage or interference, as defined presently in the Public Employees Relations Act, with the operation and accomplishment of the mission of the City administration, the president of AFSCME, or his/her designee, shall promptly and publicly disavow such strike or work stoppage and order the employees to return to work and attempt to bring about prompt resumption of normal operations. An authorized AFSCME representative shall notify the City within twenty-four



(24) hours after the commencement of such strike, work stoppage or other forms of interference what measures it has taken to comply with the provision or the provisions of this Article.

### **Section 5 Suspension of Agreement**

Failure to abide by the terms set forth in this Article shall allow the City Council to unilaterally suspend this Agreement.

## **ARTICLE XXV - MISCELLANEOUS**

### **Section 1 Changes**

The terms and conditions of this Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary mutual written consent of the parties during the term of this Agreement and ratification as provided by law.

### **Section 2 Priority**

This Agreement shall supersede any regulations, policies or practices of the City promulgated and adopted by the City Council ~~or the Civil Service Board~~ which expressly conflict with a specific provision of this Agreement.

## **ARTICLE XXVI - DISCIPLINE AND DISCHARGE**

### **Section 1 Probationary Employees**

Probationary employees serve at the will and pleasure of the City during their initial probationary period and may be disciplined or discharged for any reason or no reason unless prohibited by law. During the initial probationary ~~six (6) months~~ period, the employee shall not be entitled to submit disciplinary grievances under Article X nor may AFSCME file disciplinary grievances under Article X in their behalf, except for the limited purpose of name clearing in the event of separation.

### **Section 2 Types of Discipline**

The City recognizes the following types of disciplinary actions:

- A. Counseling
- B. Oral Reprimand
- C. Written reprimand
- D. Suspension without pay
- E. Probation
- F. Demotion
- G. Discharge

Counselings and oral reprimands shall be sealed and marked “Invalid” if no other discipline for the same offense has occurred within the past twelve (12) months.

Written reprimands shall be sealed and marked “Invalid” if no other discipline for the same offense has occurred within the past twenty-four (24) months.

It is recognized that the type of discipline utilized may vary in each case depending on the employee's past work record, seniority, the severity of the conduct and other operational factors, and nothing shall require the City to utilize one or more forms of discipline as a condition precedent to utilization of another form of discipline. However, for the purposes of evaluating an employee's prior disciplinary record in determining what type of discipline to issue, only the types of discipline set forth in this Section will be considered.

### **Section 3 Discipline Other Than Discharge**

All employees may be disciplined by counseling, oral reprimand, written reprimand, suspension without pay, probation, demotion for any action or failure to act which adversely affects the ability of the employee and/or fellow employees to efficiently perform their job responsibilities and/or adversely affects the efficient operation of City government or any department, division, or area of City government.

### **Section 4 Discharge**

- A. Probationary, provisional and temporary employees serve at the will of the City and may be disciplined or discharged for any reason not prohibited by law.
- B. Employees who have successfully completed their initial probationary period may be disciplined or discharged for any of the following reasons or for any other just cause.
  - 1. Incompetence or inefficiency in the performance of duties.
  - 2. Possession, use, sale, attempt to sell or procure illegal controlled substances either on or off duty or alcoholic beverages while on duty, on City property or while operating or riding in or on City equipment.
  - 3. Reporting to work under or while on duty being under the influence of illegal controlled substances or alcoholic beverages.
  - 4. Insubordination.
  - 5. Refusal to fully and truthfully cooperate in an investigation related to the operation of the City conducted by or at the direction of the City.
  - 6. Interfering with the work of other employees or refusal to perform assigned work.
  - 7. Excessive absenteeism or tardiness.
  - 8. Political campaigning in writing, orally, or telephonically on the job or during duty hours of other employees, whether the campaigning employee is on or off duty.
  - 9. Carelessness and/or negligence in the handling or control of City property, or the misappropriation of City property.
  - 10. Discourteous, insulting, abusive or inflammatory language or conduct toward the public, a fellow employee or employees.
  - 11. Absence from duty without authority, including refusal to report to duty at any time.

12. Acceptance of a gift under circumstances from which it could reasonably be inferred that the giver expected or hoped for preferred or favored treatment in an official or departmental/agency matter.
13. On or off the job ~~contract~~conduct which adversely affects the ability of the employee to perform his/her duties and/or the duties of other employees and/or adversely affects the efficient operation of the City government or any department, division or area of City government.
14. Lying or falsification of any document or any other dishonesty connected with the employee's employment or in any way related to the operation of City government or any department, division or area of City government.
15. Unauthorized personal possession of firearms or possession of explosives while on duty or while on City property.
16. Horseplay, fighting, unsafe conduct or other misconduct while on duty or on city property.
17. Violation of a posted or otherwise known City departmental rule, procedure, order, regulations or state or City statute or ordinance which is related to the employee's employment.
18. Any fraudulent, criminal or dishonest act(s) committed acting alone or in collusion with others, including but not limited to stealing, embezzlement, extortion, assault or vandalism, whether committed on or off the job.
19. Improper racial or sexual comments, harassment or acts.
20. Violations of Florida Statute 447.505, prohibiting public employees from participating in any strike against a public employer.
21. Conviction of any crime where the conduct involved could reasonably be expected to impact the performance of the employee or the efficient operation of government, or conviction of any felony.
22. Loss of a state or federal license or certificate required or essential to the performance of the employee's job.
23. Accumulative disciplinary action, not one of which standing alone warrants discharge.
24. Abuse of sick leave, or false claim of eligibility for such leave.
25. Threatening, intimidating, coercing or interfering with fellow employees or supervision at any time, including abusive language.
26. Reporting to work or working while unfit for duty, either medically, mentally or physically.
27. Performing unauthorized work outside of the City right-a-way or property
28. Failure to work overtime, special hours or special shifts after being scheduled according to overtime and standby duty policies.

- 29. Leaving his/her post at the end of the scheduled shift without being relieved by the supervisor or the relieving employee on the incoming shift, for those units operating on a 24-hour basis.
- 30. Refusing to submit to a drug or breathalyzer test under departmental rules and regulations.
- 31. Inability to perform one's duties.

**Section 5 Right to Respond**

Where an employee has been disciplined by oral warning, written warning and the employee disagrees with the discipline, he shall have the right to submit a written statement of position to the department head, or his/her designee, which if submitted within ten (10) calendar days of the discipline shall be included in the employee's official and Department's personnel files; however, such discipline may not be subject to grievance or arbitration at that time.

If an employee is disciplined by probation, demotion or a combination of one or more of them with a lesser form of discipline, the employee may file a grievance under Article X, but only in the event such action results in a reduction of his hourly rate of pay may the grievance be subject to arbitration.

In the event an employee is terminated, he may raise as a defense prior discipline, but only as to a specific incident of prior discipline for which he exhausted the response rights of this Section or the grievance procedure in Article X, Section 4.

**Section 6 Notice**

Employees shall, be given copies of all disciplinary actions taken against them except for oral warnings.

**Section 7 Pre-action Conference**

An employee shall be notified in writing of management's intention to take disciplinary action under Section 2 ~~(b)(c)(d)(e)(f), (D), (E), (F), (G)~~ (or a combination of any of them ~~with (a) or (b)~~) and the reasons for such action in advance and given an opportunity, upon his request, to explain his position orally or in writing to the management person making the disciplinary decision within seven (7) days; however, where management is considering suspension without pay or discharge, the employee may be immediately suspended without pay. In which a case, if the disciplinary action is not taken or is taken and later reversed the employee shall receive back pay for the period suspended without pay prior to the disciplinary decision.

**ARTICLE XXVII - DURATION AND TERMINATION**

This Agreement shall be effective ~~as of the 1<sup>st</sup> day of October, 2011, upon ratification by both parties~~ and ~~terminates shall expire~~ on September 30, ~~2014~~2016.

SIGNATURES,

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Hector R. Ramos  
AFSCME Council 79, Region 3

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Julian Deleon, City Manager  
City of Avon Park



**APPENDIX A**  
**JOB CLASSIFICATIONS PER PERC CERTIFICATION NO. 887**

| <b>Listed as Issued February 9, 1990</b>   | <b>Classes Listed Alphabetically</b>   |
|--|--|
| <p style="text-align: center;">Laborer<br/> Sewer Plant Operator Helper<br/> Equipment Operator III<br/> Garbage Handler<br/> Meter Reader<br/> Assistant Meter Reader<br/> Semi-Skilled Laborer<br/> Water Clerk<br/> Equipment Operator II<br/> Pipe Fitter<br/> Supply And Records Clerk<br/> Water Plant Operator<br/> Accounting And Payroll Clerk<br/> Water Plant Operator<br/> Sewer Maintenance Supervisor<br/> Equipment Operator I<br/> Sewer Plant Operator II<br/> Sewer Plant Operator I<br/> School Crossing Guard<br/> Library Aide<br/> Secretary<br/> Secretary/Receptionist<br/> Billing Clerk<br/> Equipment Operator/Mechanic<br/> Police Communications Dispatcher</p> | <p style="text-align: center;">Accounting And Payroll Clerk<br/> Assistant Meter Reader<br/> Billing Clerk<br/> Equipment Operator I<br/> Equipment Operator II<br/> Equipment Operator III<br/> Equipment Operator/Mechanic<br/> Janitor<br/> Laborer<br/> Laborer, Semi-Skilled<br/> Laborer, Skilled<br/> Library Aide<br/> Meter Reader<br/> Pipe Fitter<br/> Police Communications Dispatcher<br/> School Crossing Guard<br/> Secretary<br/> Secretary/Receptionist<br/> Sewer Plant Operator I<br/> Sewer Plant Operator II<br/> Secretary Plant Operator Helper<br/> Supply And Records Clerk<br/> Water Clerk<br/> Water Plant Operator<br/> Water Plant Operator Helper</p> |

Signature Page

30. Refusing to submit to a drug or breathalyzer test under departmental rules and regulations.

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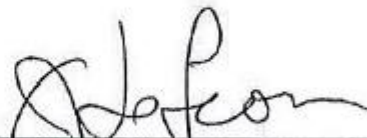
**ARTICLE XXVII - DURATION AND TERMINATION**

This Agreement shall be effective upon ratification by both parties and shall expire on September 30, 2016.

SIGNATURES,



Hector R. Ramos  
AFSCME Council 79, Region 3



Julian Deleon, City Manager  
City of Avon Park

AFSCME Local 3597