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## **BARGAINING AGREEMENT**

*BY AND BETWEEN THE*

**CITY OF LEBANON, OHIO**

*AND THE*

**INTERNATIONAL ASSOCIATION OF**

**FIREFIGHTERS LOCAL 4796**

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## **PREAMBLE**

AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between THE CITY OF LEBANON, Warren County, Ohio (hereinafter referred to as the "Fire Division" or "Employer" or "Municipality") and the LEBANON PROFESSIONAL FIREFIGHTERS, LOCAL 4796 of the INTERNATIONAL ASSOCIATION OF FIREFIGHTERS (hereinafter referred to as "IAFF" or "Union") acting herein on behalf of the Employees of the Fire Division, as hereinafter defined, now employed, and hereafter to be employed and collectively designated as the "Employees" or "Firefighters."

### **WITNESSETH:**

WHEREAS, the Employer, hereby recognizes the Union as the exclusive collective bargaining representative for the Employees covered by this Agreement as hereinafter provided; and

WHEREAS, it is the intent and purpose of the Parties hereto that this Agreement set forth herein is the Parties' agreement covering wages, hours of work, and other terms and conditions of employment;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE 1**

### **RECOGNITION**

**Section 1.1** The Employer recognizes the IAFF as the sole and exclusive representative for all full-time Captains and Lieutenants of the Lebanon Fire Division, as certified by SERB on May 6, 2010 (Case No. 10-REP-03-0057) as the bargaining unit and further defined as follows:

**Included:** All full-time Captains and Lieutenants.

**Excluded:** The Fire Chief, and all part-time, seasonal and causal employees.

**Section 1.2** Whenever the word "Employee" or "Bargaining Unit Member" is used in this Agreement, it shall be deemed to mean the Employees in the bargaining unit covered by this Agreement, as defined in Article 1, Section 1 hereof.

**Section 1.3** For the purpose of this Agreement, the words "he", "him" and "his" shall refer to both male and female.

**Section 1.4** The Employer recognizes the IAFF's exclusive right to manage its affairs and the Union retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and constitutions of the State of Ohio and of the United States. Further, all rights which ordinarily vest in and are exercised by employee organizations except such as are specifically relinquished herein are reserved to and remain vested in the Union. The Employer agrees to manage its affairs in regards to employee rights within the scope of Ohio Revised Code Chapter 4117 and in a manner that does not interfere, restrain or coerce Employees in the exercise of their protected activities, as guaranteed by statute.

## **ARTICLE 2**

### **NON-DISCRIMINATION**

**Section 2.1** The City and the Union agree there shall be no discrimination against any Employee relating to employment on the basis of race, color, national origin, ancestry, religion, sex, age, disability, veteran status, genetic information, and/or any other classification protected by law.

**Section 2.2** Within the meaning of ORC 4117, there shall be no discrimination, interference, restraint, coercion, or reprisal against any Employee because of Union

membership or non-membership or participation or non-participation in any lawful activity on behalf of the Union.

### **ARTICLE 3**

#### **BINDING AGREEMENT**

Section 3.1 This Agreement shall be binding upon the successor and assigns of the Parties hereto.

Section 3.2 In the event the Employer decides to contract out or transfer services normally provided by the bargaining unit Employees, it agrees to notify the Union in advance and, upon demand, negotiate the effects of the decision upon affected Employees' wages, hours, and conditions of employment.

### **ARTICLE 4**

#### **MANAGEMENT RIGHTS**

Section 4.1 The Union and Employer agree that all matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification or deletion of an existing provision of this agreement are subject to collective bargaining between the Employer and Union, except where otherwise herein specified.

Section 4.2 Unless otherwise memorialized in this collective bargaining agreement by and between the Union and Employer, nothing shall impair the right and responsibility of the Employer to:

- 1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and

programs of the public Employer, standards of service, its overall budget, utilization of technology, and organizational structure;

- 2) Direct, supervise, evaluate, or hire employees;
- 3) Maintain and improve the efficiency and effectiveness of governmental operations;
- 4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- 5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- 6) Determine the adequacy of the work force;
- 7) Determine the overall mission of the Employer as a unit of government;
- 8) Effectively manage the work force;
- 9) Take actions to carry out the mission of the public Employer as a governmental unit;

Section 4.3 The Employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of this agreement.

## **ARTICLE 5**

### **IAFF REPRESENTATION**

Section 5.1 A representative of the IAFF shall be admitted to the Employer's facilities at a mutually agreed upon time between the hours of 7:00 a.m. and 9:00 p.m. for the purpose of (1) processing grievances or (2) attending meetings as permitted herein. Upon arrival, the IAFF representative shall identify him/herself to the Employer or the Employer's designee. Admission to the facilities shall not be unreasonably denied.

Section 5.2 The Employer shall recognize three (3) Employees, designated by the IAFF, to act as IAFF officers/associates. The IAFF shall provide to the Employer an official roster of its Local Union Officers which is to be kept current by the IAFF at all times and shall include the following:

- A. Name
- B. Address
- C. Home telephone number
- D. IAFF office held

No Employee shall be recognized by the Employer as an IAFF Representative until the IAFF has presented the Employer with written certification of that person's selection.

Section 5.3 The IAFF agrees that no Representative of the IAFF, either Employee or non-employee of the Employer, shall interfere, interrupt, or disrupt the normal work duties of any Employees nor the functioning of the Division. Further, the IAFF agrees not to conduct meetings involving on-duty Employees except to the extent specifically authorized by the Employer and as provided below in Section 5.5.

Section 5.4 IAFF Officers as identified in Section 5.2 of this Article shall be permitted to conduct official IAFF business (including the right to post on bulletin boards and distribute literature, to utilize the in-house mail service including electronic, to participate

in employee orientation and solicit for membership) on behalf of the IAFF or any IAFF Local, during the work time. Such authorized Union business will be without loss of pay or benefits. The Union agrees and understands that the Employer's electronic mail service and all emails are City property and that the electronic mail is routinely monitored by the City. Furthermore the Union has no expectation of privacy in its use of that system.

Any unauthorized activities shall cease upon the demand of the Employer. The matter at hand which compelled the Employer to issue a cease order of the activity shall be subject to the Grievance Procedure set forth in this agreement. Any failure to cease unauthorized activities may subject the offending Employee(s) to disciplinary action.

Section 5.5 The Union may conduct one (1) meeting, up to two (2) hours in length, per calendar month, concerning bonafide IAFF business, at the Lebanon Fire Division for all bargaining unit members. The Union shall submit all such meeting requests in writing (including the requested date and time) to the Fire Chief or his Designee for review of scheduling conflicts of the declared meeting location. Meetings may be conducted during the work day at or after 6:00 p.m. Such meetings, even if scheduled and/or in-progress, shall not interfere with responding to any emergency calls so dispatched. Only Employees who are on regularly scheduled work hours will be compensated for meeting time.

Section 5.6 Employees who travel to or attend IAFF-sponsored training courses for professional development purposes may be reimbursed by the Employer in an amount to be determined by the Fire Chief or his Designee, if deemed in the best interest of the Lebanon Fire Division.

Section 5.7 The Employer agrees to provide an IAFF bulletin board. All IAFF notices of any kind posted on the bulletin board shall be signed, posted, and removed by an IAFF Representative. It is understood that all notices shall be IAFF-related, and no material may be posted on the IAFF bulletin board, at any time, which contains the following:

- A. Scandalous, scurrilous, or derogatory statements or writings about any other member or any other City employee, the Employer or any other governmental unit or official.

Upon the request of the Employer or its Designee, the IAFF shall cause the immediate removal of any material posted in violation of this Article. In the event that the IAFF and the Employer disagree as to whether the posted material violates this Article, the IAFF shall remove the posting in question until an agreement is reached with the Employer or the Grievance process has operated.

Section 5.8 The privileges listed above do not authorize Representatives or other Union officials to be absent other than as authorized by this Agreement.

## **ARTICLE 6**

### **UNION SECURITY AND DUES**

Section 6.1 During the term of this Agreement, the Employer shall deduct regularly monthly Union dues and any authorized fees and/or assessments from the wages of those Employees who have voluntarily signed deduction authorization forms permitting said deductions. The dues deductions shall be made from equal parts of the first two (2) pay checks of each month. If the Employee's pay for that period is insufficient to cover the amount to be deducted, the Employer will make the deductions from the next paycheck, providing the Employee's check is sufficient to cover the deduction.

Section 6.2 The Employer agrees to supply the Union with a list of those Employees for whom dues deductions have been made. A check or notice of electronic deposit or transfer in the amount of the total dues withheld from those Employees authorizing a dues deduction shall be tendered to the Treasurer of the Union within seven (7) business days from the date of making said deductions.

Section 6.3 The Employer shall be relieved from making such individual dues deductions upon an Employee's (1) termination of employment; (2) layoff from work; (3) unpaid leave of absence; (4) written revocation of the check-off authorization by an Employee not earlier than sixty (60) days nor later than thirty (30) days prior to the expiration of the Agreement.

Section 6.4 The Parties agree that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article regarding the deduction of Union dues. The Union hereby agrees that it will indemnify and hold Employer harmless from any claims, actions, or proceedings by any Employee arising from deductions made by the Employer pursuant to this Article. Once the funds are remitted to the Treasurer of the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union. The Employer shall promptly notify the Union of any claims relating to this Article and shall permit the Union to participate in the defense of such claims at a cost born by the Union.

## **ARTICLE 7**

### **SENIORITY, LAYOFF, AND RECALL**

Section 7.1 Definition:

The Fire Division agrees to establish and maintain a list which will show the order of seniority of all Bargaining Unit Members. Seniority shall be defined as the length of continuous service measured in years, months, and days that an Employee has accumulated as a full-time Employee in the service of the Lebanon Fire Division. In the event two or more employees have the same seniority following the application of the above listed process, the seniority ranking will be based upon the affected employee's date of birth, with the older employee being the most senior.

Section 7.2      Accrual:

- A. An Employee's seniority shall commence after the completion of the probationary period and shall be retroactive to the Employee's date of hire.
  
- B. Seniority shall continue to accrue during the following events:
  - 1. leave of absence without pay up to twelve (12) months;
  - 2. while on approved sick leave, injury leave or FMLA;
  - 3. military leave;
  - 4. a lay-off of less than twenty-four (24) months.

Section 7.3      Loss of Seniority:

- A. An Employee's seniority shall be lost when he or she:
  - 1. terminates voluntarily;
  - 2. is discharged for just cause;
  - 3. retires,
  - 4. exceeds an approved leave of absence; and/or
  - 5. fails to return to work within fourteen (14) days on a recall from layoff.

Section 7.4      Application:

Seniority shall apply in layoffs and recalls, for the scheduling of vacations and as a method to decide a tie score between employees in any of the general orders, rules, regulations, and procedures of the Employer.

Section 7.5      Layoff:

In the event the Employer determines that a layoff of Lebanon Fire Division Employees is necessary due to lack of funds, lack of work or the abolishment of a position, the following procedures shall be followed:

- A. The Employer shall send notification to the Union indicating the need for the reduction of personnel. The Parties shall meet within 72 hours to negotiate the effects of a lay-off, to consider alternative proposals or plans. Should the Employer determine that need for a reduction in personnel still exists following the effects bargaining, the Employer shall send notice to the employees giving a thirty (30) day notification of the impending lay-off. If a 30-day notice is not possible or practical under the circumstances, the City shall notify Employees of impending lay-off as soon as practicable.
- B. Lebanon Fire Division employees will be laid off in the inverse order of their seniority (i.e., least senior Employees being laid off first). Any lay-off shall proceed in the following order:
  - 1. Seasonal, temporary and casual employees;
  - 2. all part-time employees;
  - 3. full-time employees.
- C. In the event a bargaining unit member is laid off, he may, solely at the employee's discretion, receive full payment or partial payment, all accrued vacation and/or compensatory time, as provided in this Agreement in their final check.

Section 7.6    Recall:

In the event of a layoff, the Employer shall maintain an active "recall list" for a period not to exceed twenty-four (24) months. Whenever a vacancy occurs in a position for which laid off Employees are qualified, such Employees shall be recalled in accordance with their seniority in the reverse order that they were laid off, in accordance with the following provisions;

- A. Notice of recall shall be sent to the employees by certified or registered mail with a copy to the Union. The Employer shall be deemed to have fulfilled its

obligations by mailing the recall notice by certified mail, return receipt requested, to the last mailing address provided by the employee.

- B. The recalled employee shall have five (5) calendar days following the date of the receipt of the recall notice to notify the Employer of his intention to return to work and shall return to work on the date and time specified in the notice unless a different date and/or time is agreed to by the Employer.
- C. No new employees shall be hired in the Division until all employees who are laid off have been given the opportunity to return to work.

## **ARTICLE 8**

### **MODIFICATION, SEPARABILITY, AND CONFLICT OF LAWS**

Section 8.1 Unless otherwise specifically provided herein, the provisions of this Agreement shall be conclusive as to all bargainable matters relating to wages, hours of work, and working conditions. Therefore, the Employer and the Union, for the term of this Agreement, each agree that the other shall not be obligated to bargain collectively with respect to any subject matter referred to by the Agreement unless the Employer and the Union mutually agree to alter, amend, supplement, expand, or modify any of its provisions.

Section 8.2 The Parties hereby recognize that the ability to memorialize all of the “terms and conditions of employment” including those which have been established over a extended period of time, which are known and accepted by both Parties, is not a reasonable expectation. Therefore, past practices which are subject to and recognized by state law as a mandatory subject of bargaining, shall continue.

Section 8.3 If any provision of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

Section 8.4 In the event of invalidation of any Article or Section, as described in this Agreement, the Parties agree to meet, if requested in writing, within thirty (30) days of such request for the purpose of renegotiating said Article or Section.

Section 8.5 The Parties agree that this Agreement will be the sole and exclusive recourse available to Employees and the Parties hereto, and where provisions of this Agreement conflict in any manner with otherwise applicable provisions of Ohio law, this Agreement shall prevail pursuant to Ohio Revised Code Section 4117.10 (A).

## **ARTICLE 9**

### **GRIEVANCE PROCEDURE**

Section 9.1 The term “grievance” shall mean an allegation by either party to this Agreement that there has been a breach, misinterpretation, or improper application of this Agreement. The grievance procedure may not be used to effect changes in the Articles of this Agreement or those matters which are controlled by the charter and ordinances of the City of Lebanon, the provisions of the federal and/or state laws, and/or the United States or Ohio State constitution.

Section 9.2 All grievances must be presented at the proper step and time in progression in order to be considered at the next step. Grievances involving lost pay discipline (suspension, reduction in pay, removal, or discharge) shall be initiated at Step 2 of the grievance procedure.

Section 9.3 The aggrieved employee may withdraw a grievance at any point by submitting, in writing, a statement to that effect, or by permitting the time requirements at any step to lapse without further appeal.

Section 9.4 Any grievance not answered by the Employer's representatives within the stipulated time limits may be advanced by the Employee to the next step in the grievance procedure. Time limits set forth herein may only be extended upon mutual agreement.

Section 9.5 A grievance may be brought by any member of the bargaining unit. Where a group of bargaining unit Employees desire to file a grievance involving a situation affecting more than one (1) member of the bargaining unit in a similar manner, one (1) member selected by such group will process the grievance, and shall indicate that the grievance is a "group grievance."

Section 9.6 Wherever used in this procedure, the word "day" shall mean calendar day. Whenever a time limit ends on a Saturday, Sunday, or a holiday, the end of the time limit shall run until the end of the next day which is not a Saturday, Sunday, or holiday.

Section 9.7 A grievance must be submitted to the Employer within seven (7) calendar days after an Employee knows or should have known the facts giving rise to the grievance. Otherwise, it will be considered that the affected employee(s) "relinquished their right" to move the immediate matter forward. An Employee serving an initial probationary period shall not be permitted or entitled to use the grievance arbitration procedure for any purpose.

Section 9.8 All grievances must be submitted on a form that shall be provided by the Union and must contain the following information:

- A. Aggrieved Employee's name and signature;
- B. Date, time, and location of grievance;
- C. Description of incident giving rise to the grievance;

- D. Date grievance was first discussed;
- E. Name of supervisor with whom grievance was first discussed;
- F. Date grievance was filed in writing;
- G. Article(s) and Section(s) of the Agreement alleged to have been violated; and
- H. Desired remedy to resolve grievance.

Section 9.9 Any grievant may, if he/she so desires, have an IAFF Representative or any representative of his choice accompany the grievant at any step or meeting provided for in this Article.

Section 9.10 It is the mutual desire of the Employer and the IAFF to promptly adjust grievances, with minimum interruptions of work schedules. The following procedures apply:

Step 1: Within the established time limits, the aggrieved Employee shall submit his written grievance to the Fire Chief or his Designee. The Fire Chief or his Designee will provide a written response to the aggrieved Employee within seven (7) calendar days following his receipt of the grievance.

Step 2: If the grievance is not resolved in Step 1, the Employee may, within seven (7) calendar days following the receipt of the Step 1 reply, refer the grievance to the City Manager or his Designee. The City Manager or his Designee shall have seven (7) calendar days to schedule a meeting with the aggrieved Employee. The City Manager or his Designee shall respond in writing to the grievance within seven (7) calendar days following the meeting date or seven (7) calendar days following receipt of the grievance, whichever is later.

Step 3: A grievance unresolved at Step 2 may be submitted to arbitration only upon request of the IAFF in accordance with the Arbitration provisions of this Article.

Section 9.11 Within thirty (30) calendar days from the date of the receipt of the final answer on a grievance from Step 3, the Union shall notify the Employer and the Arbitration and Mediation Service (“AMS”) or the American Arbitration Association (“AAA”) in writing of its intent to seek arbitration over an unresolved grievance. A request to arbitrate may be withdrawn at any time before the actual hearing. Any cancellation fee due the arbitrator shall be paid by the Party or Parties canceling the arbitration. Any grievance not submitted within the thirty (30) calendar day period described above shall be deemed settled on the basis of the last answer by the Employer or its Designee. The selection, authority, remuneration of and time limits for the Arbitrator are as follows:

- A. The Arbitrator shall be a mutually-agreed upon neutral third-party selected according to AMS or AAA rule, requiring appointment from a panel. The arbitrator shall reside within the State of Ohio or within one hundred fifty (150) miles of City of Lebanon Fire Division Headquarters. The arbitration shall be conducted in accordance with AMS or AAA Labor Arbitration rules.
- B. The Arbitrator shall limit his/her decision strictly to the interpretation, application, or enforcement of specific Articles of this Agreement. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Agreement.
- C. The decision of the Arbitrator shall be final and binding on the grievant, the Union, and the Employer except under such circumstances as are recognized by Ohio Rev. Code 2711.10 *et seq.* for vacation of an Arbitrators award. The arbitrator shall be requested to issue his/her

decision within thirty (30) calendar days after the conclusion of testimony and arguments and submission of final briefs.

- D. The fees and other costs of the arbitrator, and the cost of the hearing room, if any, shall be split equally between the Parties.
- E. The fees and costs of any non-employee witnesses shall be borne by the party calling them. The fees of the court reporter shall be split equally by the Parties, provided that each party requests a transcript of proceedings or a copy thereof.
- F. Any bargaining unit member whose attendance is required by the City for such hearing shall not lose pay or benefits to the extent such hearing hours are during his/her normally-scheduled working hours on the day of the hearing. Otherwise, the time required to attend the hearing shall be treated as normal working hours.

Section 9.12 Disciplinary actions of verbal warnings (written record), written reprimands, and suspension with pay may be appealed to Steps 1 and 2 of the grievance procedure, but such disciplinary actions may not be appealed to Step 3.

Section 9.13 Disciplinary actions involving suspensions without pay, reductions in classification or rank, and/or terminations from employment may be appealed to arbitration. All other issues alleging a breach, misinterpretation, or improper application of this Agreement may be appealed through the arbitration process, solely at the discretion of the Union.

Section 9.14 The timelines contained in this Article may be extended by mutual consent of the Parties. Such extension must be in writing and clearly identify when the extension expires for purposes of appeal. The extension must be signed by the Grievant and the Employer or their respective representatives.

## **ARTICLE 10**

### **PROBATIONARY PERIODS**

Section 10.1 Any Employee promoted into a higher-level position in this bargaining unit shall be required to successfully complete a promotional probationary period of one hundred eighty (180) days. An Employee serving a promotional probationary period whose performance is judged unsatisfactory shall be returned to his/her former rank and pay level. This Section does not strictly limit the Employer from taking other corrective action based upon job performance. The return of an Employee to his/her former classification and pay level is subject to the grievance procedure.

Section 10.2 During the first one hundred eighty (180) days of employment, a newly-hired Employee shall be considered a probationary Employee. In lieu of termination, the probationary period may be extended in the sole discretion of the Fire Chief.

## **ARTICLE 11**

### **PERSONNEL FILES**

Section 11.1 Each Employee may request to inspect his/her official personnel file maintained by the Employer. Inspection of the individual's personnel file shall be by scheduled appointment requested in writing to the Employer and the inspection must be in the presence of the Employer. Appointments shall be scheduled during the regular working hours of the City's administrative staff. An Employee shall be entitled to have a representative of his/her choice accompany him/her during such review. Any Employee may request, and will be given, copies of any documents in his/her official personnel file.

Section 11.2 The IAFF shall be afforded access to personnel files and records for the purpose of representation, grievance processing or other Union business. Such access shall be by scheduled appointment.

Section 11.3 If an unfavorable statement or notation is in the official personnel file, the Employee shall have the right to place a statement of rebuttal or explanation in the file. The Employer shall notify, and provide copies of all documents that are added to the Employees file. No anonymous material of any type shall be included in the Employee's official personnel file. The Employer shall maintain only one (1) personnel file for each Employee which shall be managed by, and under the control of, the City of Lebanon Personnel Department.

Section 11.4 Any record of discipline filed as a verbal warnings (written record), written reprimands, and suspensions with pay, shall cease to have force and effect for disciplinary purposes one (1) year from the date of issuance and shall, upon written request of the Employee, be removed from the personnel file, providing no intervening discipline has occurred during the twelve month period following the disciplinary action. Any record of disciplinary actions involving suspensions without pay or reductions in classification or rank shall cease to have force and effect for disciplinary purposes two (2) years from the date of issuance and shall, upon written request of the Employee, be removed from the personnel file, providing no intervening discipline has occurred during the twenty-four (24) month period following the disciplinary action.

The retention periods established above may be extended by a period equal to the Employees leaves of fourteen consecutive days or longer, except for approved periods of vacation.

Section 11.5 Any Record of disciplinary action must contain the signature of the Employer representative and of the affected Employee indicating only that he/she has seen the document.

## **ARTICLE 12**

### **HOURS OF WORK AND OVERTIME**

Section 12.1 The standard work period for all bargaining unit Employees shall consist of an average during a calendar year of two hundred twelve (212) hours per twenty-eight (28) day work period.

Section 12.2 So long as the overtime provisions of the Fair Labor Standards Act (“FLSA”), as amended, are applicable to state and local government fire department employees, the Employer shall pay overtime in accordance with the provisions of the Act, this Article and the existing rules and regulations of the Lebanon Fire Division. There shall be no pyramiding of overtime rates.

Section 12.3 For purposes of this Agreement, a standard workday or tour-of-duty for a two hundred twelve (212) hour Employee shall be defined as a twenty-four (24) continuous hour period, beginning with a starting time of 0700 hours (7:00 a.m.), followed by a forty-eight (48) continuous hour period off-time. A work period or cycle of twenty-eight (28) days is herewith adopted pursuant to section 207(k) of the FLSA.

Section 12.4 The normal work schedule for those not working a 24/48 schedule is a forty (40) hour workweek, which will usually consist of eight (8) continuous hours per day. The seven (7) day work period shall consist of five (5) eight (8) hour days followed by two (2) days off or four (4) ten (10) hour days followed by three (3) days off. Working hours do not include time allowed for meals.

Section 12.5 When there is a change from Eastern Standard Time to daylight savings time, or vice-versa, the starting and stopping times of the shifts shall not change, and the resultant change in hours worked by the regular duty shift shall not result in a reduction of paid hours nor the addition of overtime hours.

Section 12.6 Changes in an individual Employee's work cycle or days worked caused by a permanent or temporary shift reassignment and/or duty reassignment shall not be considered a schedule change as provided for in this Article.

Section 12.7 Miscellaneous:

- A. An Employee assigned on twenty-four (24) hour shifts is to be paid an equal amount of base pay each pay period based on the Employee's annual projected compensation. The Parties recognize that hours of work under the normal tours-of-duty will fluctuate from week-to-week, and the fixed amount paid each two weeks represents straight-pay for whatever hours the Employee is called upon to work in a two-week period. The fixed pay is compensation for the normally-scheduled hours worked each two weeks, whatever their number. Since straight-time is already compensated in the bi-weekly pay, the half-time (1/2) method of calculating overtime compensation, for each twenty-eight (28) day work period, shall be utilized in accordance with 29 C.F.R. 778.114.
- B. Hours worked outside of the employees normally scheduled shift shall be compensated at one and one half times (1.5x) their normal rate of pay. The assignment, approval, documentation, compensation, and other matters regarding overtime, or hours worked beyond the regular work schedule, except as specifically provided in this Agreement, will be subject to rules and regulations, general orders, procedures, and regulations as determined by the Employer, except as otherwise required by federal wage and hour law, rules, and regulations.
- C. Call-Back Pay: notwithstanding the provisions of any other paragraph in this Article, an Employee who works call-back time shall be paid for actual hours worked at the applicable overtime rate from the time of reporting but shall receive no less than two (2) hours pay as set forth in this Article.

- D. For purposes of scheduling and appointing overtime the City will make best efforts to maintain one (1) full-time officer on duty. When scheduling overtime Bargaining Unit Members shall have first right of refusal before offering overtime to Non-Bargaining Unit personnel.
- E. Employees may trade shifts with another Employee during scheduled hours if prior approval is received from the Fire Chief or his Designee. The substituting Employee shall be excluded from receiving any overtime payments under the FLSA for hours of work. Only for bona-fide operational purposes shall a requested trade be denied.

Section 12.8 Employees may elect to take all or any part of overtime hours in the form of compensatory time or cash payment according to the FLSA. Employees may accrue up to a maximum of seventy-two (72) hours of compensatory time. Compensatory time shall not accrue from year to year. Any balance of compensatory time earned in excess of seventy-two hours shall be paid to the employee in the next regular paycheck. Utilization of compensatory time off must be scheduled in advance with the chief.

Section 12.9 Nothing in this Article shall preclude the Employer from implementing any emergency schedule changes or assignments as determined in the sole discretion of the Department, in accordance with the "Waiver in Case of Emergency" Article.

Section 12.10 In an effort to reduce the FLSA overtime liability to the Employer and to reduce the hourly work week to a more manageable level, the adoption of a Kelly Day shall be implemented as follows:

- A. Pursuant to 29 CFR 553.23, the Parties agree that a Compensatory Time Off policy for "FLSA Overtime" is adopted in lieu of overtime payments in cash for normally scheduled tours. This policy is established to address the maximum of two hundred twelve (212) hours to be worked in a

twenty-eight (28) day work period. It is the objective of the Parties that each Employee will work an average of fifty-two (52) hours per week, which equates to two hundred and eight (208) hours in a twenty-eight (28) day work period. Because the number of tours-of-duty in each twenty-eight (28) day work period will vary, Employees will often actually work in excess of two hundred and eight (208) hours in a work period. To address this situation, each Employee on a twenty-four (24) hour workday shall be entitled to compensatory time off on a regularly scheduled workday every one and one-half (1.5) twenty-eight (28) day work periods. This compensatory time off shall be in the form of a twenty-four (24) hour work reduction day, and for purposes of convenience only shall be called a Kelly Day Off.

- B. Each Employee on a twenty-four (24) hour workday shall be entitled to a Kelly Day on a regularly scheduled workday every one and one-half (1.5) twenty-eight (28) day work periods. A Kelly Day shall consist of twenty-four contiguous hours of time off.
- C. All Kelly Days will be chosen by the Employee in the month prior to the beginning of each year, subject to the approval of the Fire Chief, in the order of seniority before the time of vacation selections, greatest seniority first, throughout the Kelly Day selection process. Each Employee shall select one (1) Kelly Day per round. As an alternative to the above Kelly Day selection process, the Parties hereto may mutually agree to a standard recurring scheduled twenty-four (24) hour Kelly Day shift off, for the convenience of the Fire Division and Bargaining Unit Employees.
- D. Kelly Days shall only be taken in twenty-four (24) hour increments.
- E. An Employee transferred from one shift to another shall meet with the Fire Chief once the transfer has been announced to select his or her Kelly

Days, subject to the approval of the Chief. Kelly Day selection shall be based on available open days only.

- F. Employees who are sick on their Kelly Day may only utilize sick leave for that day by presenting documentation of a physician's evaluation, including a release to return to duty.
- G. There will be no reimbursement for Kelly Days not taken, nor may Kelly Days be carried over to the following year. Kelly Day time not taken is lost as of December 31st of each year.

## **ARTICLE 13**

### **PROMOTIONS**

Section 13.1 Bargaining Unit Members shall not be eligible for promotion during their initial period of probation.

Section 13.2 Promotional opportunities within the City of Lebanon Fire Division shall be competitive and open to all Fulltime Bargaining Unit Members who have continuously held a position at the Lebanon Fire Division in the next lower classification or an equivalent position as specified by the Fire Chief for three (3) years or more or has at least five (5) years full-time service with any public, private, or federal fire department. Additionally, candidates must have completed, prior to participating in any portion of the promotional testing process, the following minimum training requirements: State of Ohio Certified Paramedic and Full-Time Fire Fighters Course as required by 4765.55 of the Ohio Revised Code.

Section 13.3 Should there be a vacancy at the rank of captain, every lieutenant, other than those disqualified by Section 13.1 above, will be given the opportunity to apply and

to compete for the position. If, in the sole discretion of the City Manager, all other factors are equal as to the best candidate for the captain position(s), preference will be given to the in-house candidate. The City Manager's judgement under this section is not subject to grievance.

## **ARTICLE 14**

### **ALLOWANCES**

Section 14.1 Employees who travel on authorized Fire Division business for training or professional development purposes, approved by the Employer as being in the best interests of the Fire Division, shall be reimbursed for reasonable travel purposes, including air, rail or bus fares, parking, lodging, and meals. The Employer may establish maximum reimbursable limits for travel expenses.

Section 14.2 Registration fees for conferences, seminars, or other such events deemed to be in the best interest of the Fire Division, when approved by the Fire Chief, shall be paid for the Employee, either by direct payment, advancement, or reimbursement.

Section 14.3 In the event that an Employee receives prior approval by the Fire Chief or his/her Designee to use his/her personal vehicle for the purpose of Fire Division business, such Employee will be reimbursed at the government travel rate for reasonable travel expenses, meals and lodging.

## **ARTICLE 15**

### **WAGES AND COMPENSATION**

Section 15.1 Effective on the 1st day of the first full pay period of each year of this Agreement, the wage levels for all bargaining unit Employees shall be as indicated in Appendix A to this Agreement.

Section 15.2 The term “length of service” shall be defined as completed months of uninterrupted continuous service as a full-time employee with the Lebanon Fire Division in the rank of career Firefighter or above.

Section 15.3 The Fire Chief may assign Employees to serve as “Acting” Officer in the next higher rank from which they currently hold. Employees assigned as “acting” will receive pay equitable to the rank of the position they are filling on an hour for hour basis for the time that they are functioning in the capacity of the higher position only when the officer is “acting” to fill a position vacant because of termination or retirement or a long term disability (greater than 30 days in any of these three situations) of the incumbent. The selection and duration of “Acting” assignments are made in the sole discretion of the Fire Chief.

Section 15.4 Maintaining Certification Employees who are certified as an EMT-B, EMT-I, EMT-P, Firefighter II, and Fire Safety Inspector, must maintain these certifications.

Section 15.5 Training Pay Continuing Educational opportunities to meet re-certification requirements for each of the certifications listed in Section 15.4 shall be made available to employees to maintain said certifications. Employees assigned or approved by the Fire Chief or his Designee to attend training during working hours will be released from duty without loss of pay. Employees required to attend training during off-time shall be compensated at their overtime rate.

Section 15.6 Eligible Employees of the City of Lebanon Fire Division shall participate in the Ohio Police & Fire Pension Fund. The mandatory employee contributions required to be paid under Section 742.31 of the Ohio Revised Code shall be withheld by the Employer through a payroll deduction and forwarded on behalf of the employee to the Ohio Police & Fire Pension Fund.

Section 15.7 Annual Service Credit Each full-time employee who has at least five years or more of continuous service with the City shall be paid based on the following schedule:

5 Years	\$220.00
10 years	\$345.00
15 years	\$470.00
20 years	\$600.00
25 years	\$725.00
30 years	\$850.00

This payment shall be made in December of each year, with December 1<sup>st</sup> being the date used for determining the number of years of service in active pay status.

Employees on unpaid leave shall not receive credit for such time for purposes of computing any benefit that is determined by longevity. To implement this provision, the anniversary date of any employee who has taken an unpaid leave shall be advanced forward the same number of days as the leave continued.

Employees who retire shall receive a prorated portion of their longevity pay based on the number of years of service to the City at the date of retirement.

## **ARTICLE 16**

### **DEFERRED COMPENSATION**

Section 16.1 The Employer shall make available during the term of this Agreement the opportunity for all Employees to participate through payroll deduction in a “deferred compensation plan” (Section 401K, Section 457, or other federally-approved deferred-savings plan).

Section 16.2 In addition, two (2) plans available for participation are the IAFF Financial Corporation and the OAPFF 457 Plan. Nothing in this Article shall prevent the Employer from offering additional plans for the Employees’ investment option.

Section 16.3 Any fees and/or other charges associated with the administration of the plan(s) will be the responsibility of the participating Employee. The Parties agree that there will be no fee and/or charge from the Employer for the deduction and transfer of Employee funds to the participating plan.

## **ARTICLE 17**

### **TUITION REIMBURSEMENT**

Section 17.1 Subject to budgetary constraints, any Bargaining Unit Member who has completed the probationary period is eligible for participation in the Tuition Reimbursement Program. Courses shall not interfere with the employee’s job responsibilities.

Section 17.2 The courses of study must be taken from an accredited institution. Regular courses that result in a certification, degree, etc. that are not specifically identified as required training in the employee’s job description shall be classified as falling under the tuition reimbursement program. Any uncertainty as to what constitutes training and what constitutes a tuition reimbursement-eligible program shall be clarified and authorized in

writing by the Personnel Department and/or the City Manager prior to the employee entering the program.

Section 17.3 Employee requests for future Tuition Reimbursement assistance must be made during the previous budget cycle to assist the division in developing their annual budget.

Section 17.4 The course of study must be reasonably related to the employee's job, and the employee must seek approval for participation in the reimbursement program from the City Manager prior to the start of actual course work. Reimbursement will be made at the conclusion of the course work, and after submission by the employee of documents showing completion and passing grades. Reimbursement covers actual tuition and general lab fees, as well as necessary books. Reimbursement will be based on the following schedule:

<u>Grade Received</u>	<u>Reimbursement Amount</u>
A	90%
B	80%
C	60%
P (for Pass/Fail Courses)	50%
Lower than C	0%

Section 17.5 An employee who resigns or whose services are terminated by the City while the course is in progress will not be compensated for any courses he or she is currently enrolled in.

Section 17.6 Employees who work for the City less than three years after being reimbursed for course work, must repay a portion of the money he or she received for the course(s). Repayment will be based on the following schedule:

<u>Date of Termination</u>	<u>Repayment Percent</u>
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0-12	months following course completion	100%
13-36	months following course completion	50%

Section 17.7 Repayment due for course work shall be withheld from the employee's last paycheck.

Section 17.8 The annual cap of tuition reimbursement per employee is \$3,500.00.

## **ARTICLE 18**

### **INSURANCE**

Section 18.1 Fulltime bargaining unit members are eligible for the same group medical and dental insurance coverage under the same terms and conditions (which may be changed from time to time by the City) that the City provides to other classified, non-exempt employees. The City shall select the insurance carrier or carriers and may change carriers from time to time in the City's sole discretion.

Section 18.2 All full-time bargaining unit members are authorized to participate on a voluntary basis in any and all Wellness Inducement Programs that may be offered by the City and receive incentives as applicable. Any insurance premium discounts offered by the City to other classified, non-exempt employees as part of any wellness inducement program will be provided to all bargaining unit members while on duty.

Bargaining Unit Members shall be provided the opportunity to reduce their health insurance premiums through participation in all Wellness Inducement Programs offered by the City. The intent of the Wellness Inducement Program is to place emphasis on the importance of achieving and maintaining a healthy lifestyle by linking Bargaining Unit Member participation to reduced health insurance premiums.

Bargaining Unit Member's shall be provided the opportunity to reduce their health insurance premiums with the ability to earn five (5%) percent of the total points earned by substituting health related EMS continuing education for City sponsored Health Education seminars. Additionally Bargaining Unit Member's shall be provided the opportunity to reduce their health insurance premiums with the ability to earn five (5%) percent of the total points earned by Maintaining a valid Basic Life Support Certification.

Section 18.3 A difference between any Employee (or his beneficiary) and the insurance carrier(s) or the processor of claims shall not be subject to the grievance procedure provided for in the Agreement between the City and the Union.

Section 18.4 The Employer shall provide term life insurance and accidental death and dismemberment coverage on each Employee in an amount of \$50,000, payable to the spouse of the Employee, the designated beneficiary, or the Employee's estate.

Section 18.5 The failure of any insurance carrier(s) to provide any benefit for which it has contracted shall result in no liability to the City, or to the Union; nor shall such failure be considered a breach by the City or the Union of any obligation undertaken under this or any other agreement. Nothing in this Agreement, however, shall be construed to relieve any insurance carrier from any liability it may have to the City, Union, Employee, or beneficiary of any Employee.

Section 18.6 The terms of any contract or policy issued by an insurance carrier shall be controlling in all matters pertaining to benefits there under.

Section 18.7 Group coverage will become available to new members of the bargaining unit upon their application after they have completed thirty (30) days of employment with the City. After application, the coverage will begin as soon as practicable.

## **ARTICLE 19**

### **HOLIDAYS**

Section 19.1 The following are recognized as holidays under this Agreement:

1. New Year's Day – January 1st
2. Martin Luther King's Birthday – 3<sup>rd</sup> Monday in January
3. President's Day – 3<sup>rd</sup> Monday in February
4. Memorial Day – Last Monday in May
5. Independence Day - July 4th
6. Labor Day – 1<sup>st</sup> Monday in September
7. Columbus Day – 2<sup>nd</sup> Monday in October
8. Thanksgiving Day – 4<sup>th</sup> Thursday in November
9. Day after Thanksgiving Day
10. Day preceding Christmas Day – December 24th
11. Christmas Day – December 25<sup>th</sup>
12. Career Fire Division Personal Emergency Day

Section 19.2 Forty (40) hour Career Fire Division Employees shall be entitled to be absent from duty without loss of compensation on the holidays identified as set forth in this policy. Should a forty hour Career Fire Division Employee be called in to work on a listed holiday, the forty hour Career Fire Division Employee shall be compensated at one and one half (1 ½) his regularly scheduled rate of pay for each hour worked. Holidays that fall on Saturday will be observed on the previous Friday. Holidays that fall on Sunday will be observed the following Monday.

Section 19.3 Three Platoon Career Employees who are required to work holidays on a regular basis shall be compensated by crediting each employee with one hundred forty-four (144) hours of holiday leave at the beginning of each calendar year. For a career employee hired during a calendar year, the number of leave time hours will be prorated on the basis of the number of holidays occurring after the employees first scheduled day of work. Holiday leave may be taken in minimums of four (4) hour increments to a

maximum of one-half of the three platoon employee's annual accumulation. Any balance of unused or unscheduled time remaining as of December 1 shall be paid in an additional check in the first pay period of December.

Section 19.4 Three Platoon Career Employees covered by this Policy who are scheduled and required to work on the above Holidays as observed by Fire Division Management, will be paid their current regular pay plus Holiday pay of one-half ( $\frac{1}{2}$ ) times their hourly rate for actual hours worked on the Holiday, payable the next regular pay following the Holiday.

In order to receive holiday pay, an Employee must work their scheduled shift the day before and their scheduled shift after the holiday, unless their absence from work is due to illness or injury, in which event a physician's statement will be required, or the Employee is granted time off by the Fire Chief or his designee for vacation, Kelly day, or other approved leave.

Section 19.5 Should a Career fire division Employee resign, retire, or be separated from employment prior to the end of the calendar year, the City shall withhold from the last pay due said Employee pay for any holiday for which the member was compensated but that occurs after his resignation, retirement, or separation. Employees on unpaid leave of absence, or other non-pay status, are not eligible for holiday pay during their leave period.

In addition to the above listed holidays, any official special holiday of mourning proclaimed by the City of Lebanon or the City Manager, and when affected Governmental Offices are to be closed, shall be designated as a paid holiday and an appropriate proportional increase in holiday leave shall be made.

## **ARTICLE 20**

### **VACATIONS**

Section 20.1 Eligibility and Accrual: The following provisions shall apply to the accrual of vacation leave for all Career Fire Division Employees.

Section 20.2 Vacation Accrual for Career Fire Division Employees Working Forty (40) Hour Work Weeks.

<u>Uninterrupted Service</u>	<u>Vacation</u>	
From date of hire but less than 5 years	96 hours/year	12 days/year
After 5 years but less than 10 years	104 hours/year	13 days/year
After 10 years but less than 15 years	120 hours/year	15 days/year
After 15 years	160 hours/year	20 days/year

Section 20.3 Vacation Accrual for Career Three-Platoon Members.

All three platoon members of the Lebanon Fire Division are considered firefighters for FLSA purposes and are certified as firefighters under Ohio State Law and all applicable rules. The Fire Division vacation accrual rates identified below only apply to Career employees working a three platoon 24/48 hour work schedule. These Fire Division employees will be considered full-time employees.

<u>Uninterrupted Service</u>	<u>Vacation</u>	<u>Days</u>
From date of hire but less than 1 year	48 hours/year	2 days/year
After 1 year but less than 5 years	120 hours/year	5 days/year
After 5 years but less than 10 years	144 hours/year	6 days/year
After 10 years but less than 15 years	168 hours/year	7 days/year
After 15 years	216 hours/year	9 days/year

Section 20.4 An employee of the City, who was formerly employed by the State of Ohio, a political subdivision thereof, or another public employer, is entitled to use such prior service for the exclusive purpose of computing an employee's rate of vacation accrual based upon such prior service. Upon employment, each such full-time City employee requesting consideration under this section shall furnish the Personnel Department with certification of the period of time of such previous employment.

Section 20.5 Vacation Scheduling and Approval:

- A. Vacation scheduling is subject to the Fire chief and the operational needs of the department/division.
- B. Vacation requests shall initially be submitted in writing to the Fire Chief during the month of December of the preceding calendar year. During this time frame submitted leave requests shall be awarded based on unit seniority and availability.
- C. Leave requests submitted in writing to the Fire chief after the month of December of the preceding calendar year shall be awarded based upon the date and time the request was received (First come first serve basis).
- D. The Fire chief shall make every attempt to grant all requested vacation, however, vacation requests may be denied where such requests may result in inadequate staffing levels.
- E. Vacation leave is to be taken in minimum units of 1 hour increments for 40 hour career employees, and minimum units of 4 hour increments, which may be increased by hourly increments after the initial 4 hour unit, for three platoon career employees.
- F. A Fire Division member shall only use vacation time which he or she has already earned.

- G. Employees may incorporate Kelly days and Holiday Leave time in conjunction with vacation leave requests.
- H. Any holidays that occur during a vacation period are not counted as vacation time for forty (40) hour employees.
- I. Sick leave will not be approved for illnesses occurring while on vacation status. Unused sick leave accumulations may not be converted to vacation leave.

Section 20.6 Maximum Vacation Accrual:

Staff members may accrue vacation up to 2 times their annual accrual rate. Staff members may not carry a vacation balance in excess of 2 times their annual accrual rate beyond December 31 of each year. If a staff member has accrued vacation in excess of 2 times their annual rate, the staff member's vacation balance will be revised effective January 1 of each year to reflect a balance not to exceed 2 times the annual accrual rate.

Staff members may submit an Excess Vacation Time Carryover Request Form to the Personnel Department no later than October 1 of each year to request permission to carryover vacation hours in excess of 2 times the annual rate. The request will include the following information 1) amount of vacation hours to be carried over, 2) the amount of vacation hours used in the current year, and 3) the specific reason why the staff member is unable to consume the excess vacation.

Upon receipt of the Excess Vacation Time Carryover Request Form, the staff member's supervisory chain will take the following actions; 1) validate the request based on operational reasons, or 2) jointly develop a vacation use plan with the staff member to ensure that the excess vacation is consumed prior to December 31. Any excess vacation carryover must be approved by the City Manager.

For existing staff members who have in excess of the maximum accrual amount, year-end vacation balances may not exceed the balance accrued at the time this policy is adopted.

Payment for Unused Vacation Leave:

An employee who has been employed by the City for a period of at least one (1) year and who resigns, retires, goes on disability, or dies is entitled to compensation at his or her current rate of pay for any earned but unused vacation leave to his or her credit at the time of separation, provided that the following has occurred:

1. The employee has successfully passed the probationary period.
2. The employee is not dismissed for cause.
3. The employee gave at least 2 weeks' notice of resignation.
4. The employee has returned all City property and completed an exit interview.
5. The employee will be compensated for:
  - a.) Unused vacation accrued at their monthly rate for the months worked during the calendar year that the employee terminates employment. Employee will not be reimbursed for vacation time that was credited the first pay period of that year in advance of what would have been accrued monthly for the months actually worked. Unused vacation time that was carried over from previous years in accordance with this policy.

Section 20.7 Vacation Leave Buy Back:

An employee may request additional vacation pay in lieu of taking vacation leave. Approval of vacation buy back is subject to the following conditions:

1. Employee shall have completed at least 10 years of service.
2. Employee shall have already taken a minimum of 50% of their annual vacation accrual for the calendar year, and all personal days.
3. Employee may apply for a maximum of 7 days of vacation pay each year in lieu of taking vacation. Fire Department full-time personnel who are assigned to a 24/48 hour work schedule may apply for a maximum of 72 hours of vacation pay each year in lieu of taking vacation.

## **ARTICLE 21**

### **SICK LEAVE**

**Section 21.1 Accrual:** Full-time bargaining unit Employees who work on average a 40-hour work week shall accrue sick leave at the rate of 4.6 hours for each eighty (80) regularly-scheduled hours worked. Full-time Bargaining Unit Members who work a three platoon system shall accrue 6.47 hours of sick leave per pay period. Sick leave shall accrue while an Employee is on duty and on vacation leave, but shall only accrue during the first one hundred twenty (120) consecutive hours while an Employee is on sick leave. Sick leave accrual shall cease for any sick leave exceeding one hundred twenty (120) hours. Sick leave shall not accrue while an Employee is on any unpaid leave, on layoff, on disciplinary suspension, or in overtime status.

**Section 21.2 Utilization:**

- A. An employee may request sick leave for absences resulting from illness as described below, provided they follow the policy herein. Sick leave may be requested for the following reasons:

1. Illness or injury of the employee, a member of his or her immediate family, or a member of the employee's household, where his or her attendance is reasonably necessary.
2. Exposure of employee, a member of his or her immediate family, or a member of the employee's household to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others.
3. Medical, dental, or optical examinations or treatment of an employee, a member of his or her immediate family, or a member of the employee's household.
4. Pregnancy, childbirth, and/or related medical conditions.
5. Any other reason that would fulfill the requirements of the Family and Medical Leave Act.

For the purposes of this policy, "immediate family" is defined as only: mother, father, brother, sister, child, spouse, grandparent, grandchild, stepchild, foster child, legal guardian or other person who stands in the place of a parent with the approval of the City Manager.

- B. The City maintains the right to investigate any employee's absence. Employees may be required to furnish proof of illness as evidenced by a physician's statement, or other satisfactory written statements of the employee as required by the City Manager or designee. All absences of three or more days may require a physician's excuse.
- C. All Bargaining Unit Members who work on average a 40-hour work week shall accrue 4.6 hours of sick leave per pay period. Bargaining

Unit Members who work a three platoon system shall accrue 6.47 hours of sick leave per pay period.

- D. Any employee requesting sick leave must inform his or her supervisor within the prescribed time frame established by the department/division rules and regulations. The employee must give a satisfactory reason for his or her sick leave and location of convalescence, if different than the home address.
- E. Vacation leave and compensatory time (if applicable) may be used for sick leave purposes at the employee's request and with the approval of the City Manager. Employees who are unable to return to work after exhausting all paid leave may apply for an unpaid leave of absence or may be eligible for unpaid Family Medical Leave.
- F. Medical/dental appointments are excusable absences and are valid reasons for use of earned sick leave. Employees are expected to schedule medical and dental appointments to minimize interference with office hours. To keep lost production time to a minimum, the employee should schedule appointments for early or late in the day. Employees are expected to request only as much time as is needed to attend the scheduled appointment, including reasonable travel time.
- G. Any employee returning from sick leave may be required, prior to returning to work, to submit a physician's certification of the employee's ability to perform the essential functions of the position. The City reserves the right to require an employee to remain on sick leave until such time as the employee is fully released to perform all of his/her essential functions. Return to limited or light duty will be permitted only upon the recommendation from the Department/Division Head and approval by the City Manager.

- H. Employees absent on sick leave shall be paid at their regular hourly, daily, or bi-weekly rate as when they were working.
- I. If sick leave is denied and as a result the employee has been overpaid, such overpayment shall be deducted from the employee's next pay check, and the employee's sick leave balance shall be restored.
- J. An employee fraudulently obtaining sick leave, abusing sick leave, or falsifying sick leave records, shall be subject to disciplinary action or discharge in accordance with policies outlined in the City's Employee Handbook.

Section 21.3 Payment Upon Separation:

An employee who retires from employment with the City of Lebanon shall be entitled to receive payment for accumulated sick leave of 50% of such accumulated sick leave for up to 1040 hours accumulated and 10% for over 1040 accumulated sick leave hours. The employee shall also receive payment for all accumulated vacation. In the event an employee dies while being employed by the City of Lebanon and said employee qualifies for his respective retirement/pension fund, said employee's estate shall be paid for such accumulated time. Payment of accumulated leave shall be paid at the employee's rate of pay at the time of death or retirement.

**ARTICLE 22**  
**OCCUPATIONAL INJURY LEAVE (O.I.L.)**

Section 22.1 Unless otherwise provided for herein, no bargaining unit member shall be charged for sick leave or time off against his or her accumulated sick leave as a result of an injury or illness incurred in the lawful performance of his or her duty.

Section 22.2 An Employee who suffers an injury or illness in the performance of his or her duties shall be granted paid injury leave, if approved by the Fire Chief and by the City Manager, for a period of up-to a maximum one hundred and eighty (180) working days per injury or illness. Injury or illness is a service connected disability as defined in R.C. 4123.01(C) which interferes with an Employee's ability to perform normal duty.

Section 22.3 Injury leave shall not be charged against sick leave. However, at the expiration of one hundred and eighty (180) working days of injury leave, if continued absence is necessary, sick leave or other approved leave time may be used.

Section 22.4 Simultaneous with the request for injury leave, the Employee shall also make application and actively prosecute a claim for benefits under the Worker's Compensation Law of Ohio to commence upon expiration of the injury leave. The Employee shall execute an agreement assigning any and all money received as compensation for lost wages during the period of paid injury leave, from the Bureau of Worker's Compensation to the City of Lebanon. After approval of the injury leave by the City, the City will issue a check to the Employee each pay period equivalent to Employee's base pay for the relevant period.

Section 22.5 The City Manager, or his designee, has the right to review the physical and/or mental/emotional status of an injured Employee every thirty (30) calendar days of absence in order to determine the Employee's ability to return to work. In the event of a difference of opinion, as to the Employee's physical and/or mental/emotional status, between a City-appointed physician and the Employee's treating physician, the issue will be submitted to a third physician specializing in occupational medicine, whose decision regarding the ability of the Employee to perform his or her regular duties shall be final and binding on both Parties. The service of this physician specializing in occupational medicine shall be paid for by the City. If the City and the Employee cannot agree upon an occupational medicine specialist, said specialist shall be chosen by agreement of both the City designated physician and the Employee's treating physician.

Section 22.6 In cases where injury leave is necessary, the Fire Chief may provide for a light duty work policy, which will attempt to place divisional personnel, who are unable to perform in their normal capacity, in positions with light or reduced duties. Employees shall accept assignment to a light duty position if released by the Employee's treating physician to perform light duties.

Section 22.7 If an Employee re-injures a previous injury, he or she will be granted the balance, if any, of the one hundred and eighty (180) work day injury leave taken when the injury originally occurred. An Employee who uses no injury leave for a particular injury or illness for at least one (1) year shall be entitled to an additional one hundred and eighty (180) days injury leave for any re-injury or reoccurrence of the same injury or illness. The Employee's treating physician must certify in writing that the injury complained of is a re-injury. Said re-injury need not occur during the course of Employee's official duties as long as the initial injury was sustained as a result of the Employee's official duties. If Employee sustains a new work-related injury during the course of his official duties, or a re-injury more than a year after the first injury occurs, such injury constitutes another work-related injury under the terms of Section 22.2, and the Employee would be eligible for paid injury leave up to one hundred and eighty (180) working days for the new work-related injury. If the new injury is not work-related and was not sustained during the course of the Employee's official duties, the provisions of this section do not apply. If an Employee is granted the balance of his or her paid injury leave under this section; he or she shall also seek to reopen the workers' compensation claim.

## **ARTICLE 23**

### **LEAVES OF ABSENCE**

Section 23.1 Leave Without Pay. Employees may be granted the following types of unpaid leaves of absence upon completing and submitting a Fire Division leave form:

- A. Disability Leave

A physically or mentally incapacitated Employee may request a disability leave. A disability leave for a period not to exceed one (1) year may be granted when the disability continues beyond the accumulated sick leave rights provided the Employee furnishes satisfactory medical proof of such a disability along with his/her written request and is:

1. Hospitalized or institutionalized; or
2. On a period of convalescence following hospitalization or institutionalization authorized by a physician at the hospital or institution; or
3. Declared temporarily incapacitated for the performance of the duties of his/her position by a licensed physician. It is the Employee's responsibility to request a disability leave since such disability leave is not granted automatically when the Employee's sick leave has expired.
4. Disability leave under this section will run concurrently with Family and Medical Leave act leaves and Occupational Injury Leaves under Article 22.

In order to maintain re-employment rights, the Employee must request to return prior to the conclusion of the disability leave. When an Employee is ready to return to work, he/she shall furnish a statement by a physician releasing the Employee as able to return to duty. Replacements for workers on disability leave are employed pursuant to C (3) of this Section.

**B. Employer Required Disability Leave**

The Employer may require an Employee to be examined by a licensed physician specializing in the field of potential disability (or an occupational physician), selected by the Employee from a list of three (3) submitted by the Employer, at the Employer's expense. The examination criteria utilized for the Employees' Disability evaluation shall

be in compliance with the U.S. Department of Labor standards for firefighting and the Disability requirement threshold for the Ohio Police & Fire Pension Fund. An Employee found to be unable to physically perform the substantial duties of his/her position may be placed on Disability Leave as described in Paragraph A above. Should the Disability be found to have a causal relationship, due to and arising out of the Employees employment with the Municipality, the Employee shall be placed immediately on Occupational Injury Leave in accordance with Article 22 of this Agreement.

C. Leave of Absence

The Employer may grant a leave of absence to any Employee for personal reasons of the Employee. Such a leave may not be renewed or extended beyond six (6) months. Failure of the Employer to grant an unpaid leave of absence shall not be subject to the grievance procedure.

1. The authorization of a leave of absence without pay is a matter of administrative discretion. The Employer will decide in each individual case if a leave of absence is to be granted.
2. Except for emergencies, Employees will advise the Employer sixty (60) days prior to commencement of the desired leave so that the various departmental functions may proceed properly.
3. Upon completion of a leave of absence, the Employee is to be returned to the position formally occupied, or to the next available similar position if the Employee's former position no longer exists.
4. An Employee may return to work before the scheduled expiration of leave if requested by the Employee and agreed to by the Employer. Failure of the Employer to grant a request for early termination of an approved leave of absence shall not be subject to the grievance procedure. If an Employee fails to return to work at the expiration of an approved leave of absence,

such Employee, absent extenuating circumstances, shall be removed from his/her position and shall not receive seniority time for the period of leave.

D. No benefits shall be accrued by an Employee granted an unpaid leave of absence, except that health insurance may continue to be available at the Employee's option pursuant to the terms and conditions of COBRA, except in the case of Sections A, B, and E hereof, in which those cases Health Insurance shall continue as currently provided for as in Article 18 of this Agreement.

E. Family and Medical Leave

Family and Medical Leave will be administered pursuant to the Family and Medical Leave Act, as amended. The Employee must provide the Employer with thirty (30) days advance notice of leave or such notice as is practicable if thirty (30) days notice is not possible, their desire to utilize FMLA. The Employee who exhausts Family Medical Leave may apply for disability leave or personal leave pursuant to the provisions of this Agreement.

Section 23.2 Leaves With Pay. Employees may be granted the following types of paid leaves of absence:

A. Court Leave

The Employer shall grant full leave without loss of pay or benefit where an Employee is summoned for any jury duty or subpoenaed as a witness if the Employee is subpoenaed for work related reasons (within the scope of his/her employment) by any court or other adjudicatory body as listed in this Article. All compensation paid by the court for such duty shall be reimbursed to the Employer. Such duty that is performed totally outside of normal working hours shall be compensated in accordance with the provisions of Article 12 of this Agreement. An Employee released from jury or witness duty prior to the end of his/her scheduled work day shall report to work for the remaining hours. Employees will honor any subpoena issued to them by any court or other adjudicatory body, including those from Workers' Compensation, Unemployment Compensation, and State

Employment Relations Board hearings or Grievance Arbitration hearings. The Employer will not pay Employees who appear in court for criminal or civil cases when the case is being heard in connection with the Employee's personal matters, such as traffic court, divorce proceedings, custody, appearing as directed with juvenile, etc. Employees who are absent because of a court appearance regarding a personal matter may use personal time, vacation or other approved leave.

B. Military Leave

1. Any full time permanent public employee who is a member of the Ohio organized militia, or a member of other reserve components of the armed forces of the United States, including the Ohio National Guard, is entitled to a leave of absence from his/her respective position without loss of pay for such time as he/she are performing service in the uniformed services, as defined in section 5903.01 of the Ohio Revised Code, for periods not to exceed 17 twenty-four-hour work days or 408 hours in any one calendar year, for each year in which he/she is performing service in the uniformed services. Calendar year means the year beginning on the first day of January and ending on the last day of December.

Except as otherwise provided herein, all full time permanent public employees who are entitled to leave under section (1) of this section and are called or ordered to active military duty for a period in excess of 17 twenty-four-hour work days or 408 hours in any one calendar year in which the employee performed service in the uniformed services, as a result of an executive order issued by the President of the United States, an act of Congress, and/or executive order from the Governor of Ohio, during the period so called to act, to a leave of absence, and to be paid, during each monthly pay period of that absence, the following:

(a) 100 percent of the difference between his or her gross monthly pay as an employee of the City and the sum of his or her gross monthly military pay and allowances for a period of up 12 months of active duty military service;

(b) 70 percent of the difference between his or her gross monthly pay as an employee of the City and the sum of his or her gross monthly military pay and allowances for an additional 12 month period of active duty military service which is performed consecutively to the initial 12 months of service.

However, no employee shall receive such payments if the sum of his or her gross military pay and allowances received in a month exceeds his or her gross monthly wage or salary as a City employee or if the employee is receiving pay pursuant to division (1). Health insurance benefits as specified in the city's employment provisions will be maintained for a period of up 12 months of active duty military service, and these benefits may be extended for an additional 12 months of active duty service at the discretion of the City Manager. The accrual of sick and vacation time as specified in the City's employment provisions will not take place during periods of active duty service in excess of that outlined in division (1).

2. Each employee who is entitled to military leave under this section shall submit to the City the published order calling the employee to active military service, prior to being granted leave, and provide the City with a copy of all military pay statements for each month of active duty service prior to receiving the pay and benefits outlined in division (1).

3. Failure of any employee to report for duty with the City at the completion of any leave of absence, or period of active duty military service, without the consent of the City Manager, shall be sufficient grounds for dismissal from the City service.

4. Any full time permanent public employee of the City whose employment is governed by a collective bargaining agreement with the provision for the performance of service in the uniformed services shall abide by the terms of the collective bargaining agreement with respect to the performance of such service, except that no collective bargaining agreement may afford fewer rights and benefits than are conferred under this chapter.

C. Personal Leave

Employees are eligible for up to forty-eight (48) hours personal leave from duty with pay (annually) for the transaction of personal business upon approval by the Fire Chief or his Designee. The denial of such personal leave shall be based solely on a bona-fide operational need. (i.e. no other paramedics on duty, etc.) Personal Leave balances shall not accumulate or carry over from year to year.

D. Funeral Leave

1. Any Bargaining Unit Member assigned on the forty (40) hour work week may be granted up to three days of paid funeral leave in the event of a death of an employee's immediate family. For the purpose of this section, immediate family is defined as the spouse, parent, son or daughter, brother or sister, grandparent, grandchild, stepchild, stepparent, legal guardian, mother or father in law, or other person who stands in place of the employee's parent.
2. Funeral leave of one day may be granted when a death occurs to any other relative or friend of an employee upon prior written approval of the Department Head and the City Manager. Funeral leave shall not be charged to the sick leave balance of the employee.
3. Bargaining Unit Members assigned on twenty-four (24) hour shifts shall be paid his or her regular pay for one (1) twenty-four (24) hour work shift absence with seventy-two (72) continuous hours off of which twenty-four (24) hours are paid in the event of the death of his or her immediate family as described in section (1) above.
4. In the event of a death of a relative other than those in the immediate family as described above, the Bargaining Unit Member shall be entitled one (1) day of funeral leave in order that the Bargaining Unit Member may attend the funeral.

5. In circumstances of unusual distance of travel or extreme weather conditions the Fire Chief may at his or her sole discretion, grant up to an additional one (1) day of funeral leave with pay for the Employee to travel to the funeral of a relative in the immediate family as listed in section (3) above.

## **ARTICLE 24**

### **DONATED TIME**

**Section 24.1** All members of the bargaining unit shall be eligible for donated vacation time benefits, subject to the terms of this Article, to relieve hardship resulting from extended illness.

**Section 24.2** A Bargaining Unit Member may be paid donated leave at a rate not to exceed the maximum number of hours the employee is scheduled to work each pay period, provided that the Bargaining Unit Member:

- a. Has a serious illness or injury, or has an immediate family member who has such an illness or injury;
- b. All individual donor forms, available in the personnel department, have been submitted and approved by the City;
- c. The Bargaining Unit Member has exhausted all other available paid leave (sick, vacation, personal days, comp-time);
- d. Maximum donated vacation leave for forty (40) hour members may not exceed twenty-four (24) weeks or 60 shifts for members working a 24/48 hour rotation.

Section 24.3 Employees may donate vacation leave provided the donating employee:

- a. Voluntarily elects to donate leave and does so with the understanding that the donated leave may not be returned;
- b. Donates the vacation leave in 4-hour increments.

Section 24.4 Employee recipients are considered to be in active status while using donated leave and accrue their own paid leave at the applicable rates. Such accrued leave must be used in the following pay period before additional donated leave is credited.

Section 24.5 Donated leave shall never be converted into a cash benefit under any circumstances.

## **ARTICLE 25** **NO STRIKE / NO LOCKOUT**

Section 25.1 The Employer and the IAFF recognize that a work stoppage of any kind would create a clear and present danger to the health and safety of the public. This Agreement provides the machinery for the orderly resolution of grievances. Therefore the Parties agree that:

- A. During the term of this Agreement, the Union shall not, for any reason, authorize, cause, engage in, sanction, condone, or assist in any strike, sit down, sit in, cessation, stoppage, refusal to work, or any other concerted activity that would interrupt the operation or services of the Employer.
- B. During the life of this Agreement, the Employer shall not for any reason, authorize, cause, engage in, sanction, condone or permit any lockout of the bargaining unit Employees.

Section 25.2 In addition to any other remedies available to the Employer, any Employee or Employees, either individually or collectively, who violate Section A above is/are subject to disciplinary action up to and including discharge or removal by the Employer.

Section 25.3 In addition to any other liability, remedy, or right provided by applicable law or statute, should a strike, sit down, sit in, cessation, stoppage, or refusal to perform work occur, the Union, within twenty-four (24) hours of receipt of a written request by the Employer, shall:

- A. Publicly disavow such action by the Employees; and
- B. Advise the Employer in writing that such action by Employees has not been caused or sanctioned by the Union; and
- C. Notify Employees of its disapproval of such action and instruct such Employees to cease action and return to work immediately; and
- D. Post notices on the Union Bulletin Boards advising that it disapproves of such action and instructing Employees to return to work immediately.

Section 25.4 Nothing in this Article shall be construed to limit or abridge the Employer's right to seek other available remedies provided by law to deal with any unauthorized or unlawful work stoppages.

Section 25.5 In the event any Employee or group of Employees of the City of Lebanon, other than Employees covered by this Agreement, engage in any interruption of the Employer's business by way of strike or work stoppage of any kind, Employees hereunder shall continue to perform emergency services, as long as they can reasonably do so without being at risk to injury.

Section 25.6 The Employer agrees that neither it, its officers, agents, nor representatives, individually or collectively, will authorize, instigate, cause, aid, or condone any lockout of any Employee or group of Employees covered hereunder.

Section 25.7 In the event a dispute arises between the Parties alleging a violation of Section(s) 25.1, subsection B and 25.6 of this Article, the Parties hereby agree to notify the State Employment Relations Board (SERB) to conduct a discretionary appointment from their current list of Neutrals authorized for selection in conciliation hearings. The SERB appointed Arbitrator shall hold a hearing within fourteen (14) days to determine if a violation of Article 25 has occurred. No other issues shall be under his/her jurisdiction or review. Furthermore, the Parties agree that there shall be no submission of post hearing Briefs and the Arbitrator shall issue a decision from the Bench at closing of the hearing.

In the event the Arbitrator finds that the Employer has violated this Article, the resolution ordered shall include, at a minimum, a cease and desist order be posted at front door of each public entrance to all properties owned by the municipality for a period of seven (7) days, the immediate reinstatement of the employee(s) to their former position, a public declaration read into the minutes of the next scheduled meeting of the City Council outlining the conditions of the Arbitrators award and the Employer's compliance with such, and all Employee's affected by the violation shall be compensated for all lost wages at three times (x3) of their regular rate of pay at the time of the action.

## **ARTICLE 26**

### **UNIFORMS AND EQUIPMENT**

**Section 26.1** Initially when a Fire Division employee is hired and or promoted the Employer shall supply at no cost to the Employee all uniforms and equipment required by the Employer, excluding socks and underwear, in quantities specified herein, including uniforms and other items required should a member be on a FEMA / USAR or other specialized services team.

- A. One (1) dress uniform, complete.
- B. Five (5) work shirts, including patches, badges & collar insignia.
- C. Five (5) work pants, with one (1) work belt.
- D. One (1) pair work boots.
- E. Two (2) sets of PBI turnout gear, complete.
- F. One (1) SCBA face piece.
- G. One (1) job shirt, including patches, badges & collar insignia.
- H. One (1) winter work coat.
- I. One (1) rain coat.

Equipment, insignia, buttons, and other items not issued or required by the Employer may be utilized or worn only with the permission of the Fire Chief.

Section 26.2 All uniforms and equipment issued by the Employer are and shall remain the property of the Employer. Upon termination of employment of any bargaining unit Employee, all uniforms and equipment shall be returned to the Employer, allowing for reasonable wear and tear, prior to the issuance of any final compensation to the Employee.

Section 26.3 Commencing January 1 of the year following an Employee's appointment, each uniformed Employee shall be allocated a \$650 allowance per year in the form of an open purchase order at the authorized uniform suppliers for the purchase of uniform and equipment items and the maintenance or repair of such items. This allowance will not be made in the form of a direct cash payment to the member. Such funds, once allocated, shall not be utilized for any other purpose until after August 31st of the calendar year. August 31st of the calendar year shall be the cut-off date for routine ordering of uniforms and equipment, with exceptions as noted in this Article. Emergency replacement of equipment lost or damaged shall be funded on an as needed basis.

All purchases must be approved by the Employer, submitted in accordance with the normal purchase order procedure, billed to the Employer and charged against the individual's account.

Section 26.4 The Employer will make available at each station a commercial grade washing machine, dryer, and sufficient facilities so that Employees can launder uniforms, bathing towels, bed linens, etc. Structural firefighting gear shall not be cleaned utilizing machines intended for station wear as well as living items.

Section 26.5 The City shall purchase required structural firefighting gear for all employees of the Lebanon Fire Division. Structural firefighting gear will be repaired as needed and replaced in accordance with NFPA 1500 and NFPA 1971. Structural firefighting gear shall be cleaned and cared for by the employee in accordance with Ohio Administrative Code 4123:1-21-02.

Section 26.6 Where a bargaining unit Employee supplies evidence that he/she sustained damage to personal property that is work-appropriate while performing the duties of his/her assigned work, the Employer shall reimburse the Employee for the cost of necessary repairs or replacement up to a maximum of two hundred dollars (\$200.00) per year.

Section 26.7 Upon retirement, Employees shall be permitted to keep their fire helmets, fire boots and metal badges without the replacement cost being deducted from any final pay or compensation due the Employees upon their separation.

## **ARTICLE 27**

### **DISCHARGE AND DISCIPLINE**

Section 27.1 Verbal Counseling is not considered a disciplinary action, and is not subject to the grievance process.

Section 27.2 In the event of a recommended suspension, reduction, removal, or discharge, the grievance and arbitration procedure of this Agreement shall exclusively apply.

Section 27.3 No employee shall be disciplined except for just cause. The Employer may discipline employees for actions while the employee is on duty, working under the colors of the Fire Division, or off duty representing himself as an employee of the municipality or for convictions of a felony offense, or a misdemeanor involving moral turpitude. The employee may not be disciplined for actions on his own time that do not adversely affect the ability of the Fire Division to provide its services or the reputation of the Fire Division.

Section 27.4 The Parties agree generally to progressive discipline except in cases where, in the judgment of the City, progressive discipline would be inappropriate or

insufficient under particular circumstances presented. In those cases, when circumstances warrant, suspension or discharge may occur regardless of whether any previous discipline has occurred. The City may utilize any of the following forms of corrective action: verbal warning (with a written record), written reprimand, suspension (without pay), reduction in rank or position, and/or discharge. Not every form of discipline must be used in every case.

Section 27.5 Before initiating discipline, the supervisor recommending discipline shall attempt to resolve the matter by discussing the alleged infraction with the employee. This process may be documented in writing by the supervisor. The Chief or designee may issue verbal warning or written reprimands without prior notice where the Employer feels that immediate discipline is warranted. Suspensions from duty, reductions in rank or position, or discharge shall only be issued by the Fire Chief or his designee.

Section 27.6 In cases where the Fire Chief or his designee determines that a suspension, reduction in rank of position, or discharge may be the appropriate remedy, he shall notify the Employee in writing of the charge(s), and circumstances surrounding the charge(s). Within five (5) calendar days of receipt of this notification, a pre-disciplinary conference will be scheduled among the Fire Chief, the employee, a Union representative if Employee so chooses. The pre-disciplinary conference will be held no sooner than five (5) and no later than ten (10) business days from the Employee's receipt of the notice of pre-disciplinary conference. The employee is entitled to one continuance of the pre-disciplinary conference for a period of not more than seven (7) calendar days to prepare his/her case and secure adequate representation. The City is entitled to one continuance of the pre-disciplinary conference for a period of not more than seven (7) calendar days. The Parties may agree to additional continuances.

Section 27.7 Upon written request by the Employee or his/her designated Union representative, copies of any documents, written statements, recordings, and reports associated with the incident in question for which the Employee is being subjected to

discipline/discharge shall be furnished to the requesting party no later than twenty-four (24) hours following the receipt of such request or longer by agreement of the Parties.

Section 27.8 At the pre-disciplinary conference, the employee or his representative shall have the right to call witnesses on his behalf or present any other evidence in his defense he feels is warranted and/or to cross-examine witnesses. The pre-disciplinary conference may be recorded at the request of either party. The Employee may waive a pre-disciplinary conference by filing a signed statement with the Fire Chief indicating such waiver.

Section 27.9 Within five (5) calendar days of the conclusion of the pre-disciplinary conference, the Fire Chief or his designee will issue a written opinion of his findings and recommendations, with copies being sent to the employee, the Union President and the City Manager or his designee.

Section 27.10 All disciplinary actions may be appealed through the grievance procedure as outlined below:

- A. Verbal warnings from immediate supervisors may be appealed through step 2 of the grievance procedure.
- B. Written reprimands may be appealed through step 2 of the grievance procedure.
- C. Suspensions, reductions in pay or position, and discharge may be appealed through step 3 of the grievance procedure.

Matters of discipline involving a recommendation of suspension, reduction or discharge may be submitted directly to the Step 2 level of the grievance procedure.

Section 27.11 For the purpose of this Article, Employees who have failed to complete the required initial employment probationary period are considered to be “at will employees” and therefore shall not be permitted to appeal disciplinary actions to step 3 of the grievance procedure.

## **ARTICLE 28**

### **WAIVER IN CASE OF EMERGENCY**

Section 28.1 In cases of emergency declared by the President of the United States, the Federal Legislature, the Governor of the State of Ohio, the Ohio General Assembly, the Warren County Sheriff, or the City Manager of Lebanon the following conditions of this Agreement may be temporarily suspended by the Employer:

- A. Time limits for the processing of grievances; and,
- B. All work rules and/or practices relating to the assignment of Employees.

Section 28.2 Upon the termination of the emergency, if a valid grievance exists, it shall be processed in accordance with the provisions outlined in the grievance procedure of this Agreement and shall proceed from the point in the grievance procedure to which the grievance(s) had properly progressed prior to the emergency.

## **ARTICLE 29**

### **DRUG AND ALCOHOL TESTING**

Section 29.1 Supervisor Training: Supervisors will be trained in how to recognize behaviors that indicate the necessity of drug and/or alcohol testing; how to document such behaviors; and the confidentiality required in drug and/or alcohol-related matters.

Section 29.2 Informing Employees about Drug and Alcohol Testing: All employees shall be fully informed of the Fire Division's drug and alcohol testing policy. All newly hired Employees will be provided with this information on their initial date of hire. No Employee shall be tested before this information is provided to him/her.

Section 29.3 Consent & Release Form: Prior to any testing, the employee will be required to sign the *City of Lebanon Consent Form*.

Section 29.4 Employee Impairment of Drug and Alcohol Use: The possession, use, or being under the influence of alcoholic beverages, medications not prescribed for the person ingesting them, or controlled substances shall not be permitted at the Employer's work sites and/or while an employee is on duty. Any employee violating this provision will be subject to disciplinary action under Section 29.14 of this Article.

Section 29.5 Medical Prescriptions: Employees who are prescribed medications shall advise their physicians of the employee's job duties, which include driving fire apparatus, climbing ladders, EMT/paramedic services, etc. so the physician may advise the employee whether any prescribed medication will adversely affect the employee's ability to safely and proficiently perform their job. In the event the prescribed medication will adversely affect the employee's ability to successfully perform the duties of their job, the employee shall be instructed not to report to work. The employee shall provide a document from their physician(s) stating there is no appropriate medication which would not adversely affect the employee's ability to safely and proficiently perform the duties of their job. Under this circumstance, the employee may use sick time, vacation or compensatory time until they can obtain a release to return from the physician(s).

Section 29.6 Employee Testing: Employees shall not be subject to random drug/alcohol or medical testing for the purpose of discovering possible drug or alcohol use. Drug and alcohol testing will be conducted as follows:

A. Post Accident Testing: Post accident testing will be conducted whenever an employee is involved in an accident while driving Fire Division owned vehicles if any of the following conditions exist:

1. A fatality of anyone involved in the accident; or
2. Bodily injury to the employee and/or another person that requires off-site medical attention; or
3. Vehicular damage in apparent excess of \$2000.00 and/or damage to private property.

B. Reasonable Suspicion Testing: If there is reasonable suspicion to believe an employee's work performance is impaired due to drug or alcohol abuse, the Employer will require the employee to undergo drug or alcohol testing. Reasonable suspicion means an articulate belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Reasonable suspicion may be based on the following:

1. Direct observation of drug or alcohol use; or
2. Presence of physical symptoms of being under the influence of a drug or alcohol; or
3. A pattern of abnormal conduct or erratic behavior; or
4. Information provided by reliable and credible sources that have been independently corroborated.

C. Refusal to be tested: In the event an employee refuses post accident or reasonable suspicion testing for alcohol or drugs, the Employer will treat such refusal as though a

positive test result occurred. In such event, disciplinary action will be in accordance with Section 29.14 of this Article.

Section 29.7 Supervisor Observations: Supervisors who have reasonable suspicion to believe a member is under the influence of alcohol and/or drugs shall direct that the suspected member be taken to the Employer's designated collection provider. The supervisor will immediately notify the Fire Chief of the finding of reasonable suspicion. The supervisor finding reasonable suspicion shall document his/her reasons for finding reasonable suspicion.

Section 29.8 Sample Collection: No Fire Division personnel will be used to collect samples. The collection of the samples shall be performed only by a certified collection provider and by a physician or health care professional qualified and authorized to perform collection. The Employer shall use a collection provider who has certified Medical Review Physicians (MRP). The collection of urine samples shall be conducted in manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain-of-custody procedures must be followed for all samples as set by the National Institute of Drug Abuse (NIDA). Facilities and collection procedures used by the collection provider will be made available to the bargaining unit for review.

A split sample shall be reserved in all cases for an independent analysis in the event of a positive test result. That is, the urine is divided into two specimen bottles. If the test result of the primary specimen is positive, the employee may request the Medical Review Physician to send the second (or split) specimen to a different certified lab for testing.

Any notice of a confirmed positive will be copied to the employee.

The Union and Employer agree that security of the biological urine sample is absolutely necessary; therefore, the Employer agrees that if the security of the sample is compromised, any positive test shall be invalid and may not be used for any purposes.

Section 29.9 Drug Testing Procedures: The Employer shall only use federally certified laboratories. The federal Department of Health and Human Services (DHHS) certifies laboratories, and some are referred to under the name of one of the DHHS departments, such as National Institute of Drug Abuse (NIDA), or the Substance Abuse and Mental Health Services Administration (SAMSHA).

All drug testing must be done from the urine specimens collected under the highly controlled conditions. The laboratory shall test for only the substances and within the limits for the initial and confirmation test for the NIDA-5. The drug classes of NIDA-5 (5-Panel Drug Test) are the following:

- (1) Marijuana,
- (2) Cocaine,
- (3) Phencyclidine,
- (4) Amphetamines,
- (5) Opiates.

The positive levels for the five classes of drug tests shall be in accordance with those standards currently in effect in the U.S. Department of Transportation regulations. The NIDA-5 drug panel listing and the listed cutoffs will be made available by the specimen collection provider upon request of the person being tested.

After the urine specimen has been collected and forwarded to the laboratory, two tests may be performed. The initial test is the immunoassay test. This is a screening test to determine drug usage for the five classes of drugs. The second test is a confirmation test. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GS/MS). Only specimens that are confirmed positive on the second or confirmatory test are reported positive to the Medical Review Physician.

If initial confirmatory testing results are negative, the testing laboratory will advise the Employer's Medical Review Physician that the drug test was negative. No additional tests on the specimen will be done. All samples shall be destroyed and records of the reasonable suspicion accusations and the testing expunged from the employee's file.

Section 29.10 Alcohol Testing Procedures: An Evidential Breath Testing Machine (EBT), or breathalyzer, shall be used to screen for alcohol use. Testing can only be administered by a qualified breath alcohol technician. If the initial test shows a blood alcohol concentration of less than 0.04 grams of alcohol per 210 liters of breath, the test is recorded as negative. If initial testing results are negative, testing shall be discontinued, all samples destroyed, and records of the reasonable suspicion accusations and the testing expunged from the employee's file.

If the initial test result is 0.04 or greater, a confirmation test will be conducted. If the confirmation test result is 0.04 or greater, the test is positive. When the confirmation test result is different from the initial test, the confirmation test result will always be the final result of determination.

Before the initial test and the before the confirmation test is conducted, there will be a twenty minute waiting period. Before each test, the technician shall run an "air blank" test to make sure the EBT is working correctly and the reading is zero in the employee's presence. The employee will receive a copy of the breath alcohol testing results. Testing results will be reported to the Medical Review Physician.

Section 29.11 Medical Review Physician: The Employer shall only use a Medical Review Physician (MRP) who is a licensed physician with knowledge of substance abuse disorders and drug testing procedures. It is the role of the MRP to review and interpret the positive test results. The MRP will examine alternative medical explanation for any positive test results. This action will include conducting a medical interview with the affected employee, review the employee's medical history, and review any other relevant biomedical factors. The MRP will review all medical records made available by the

tested employee when a confirmed positive test could have resulted from legally prescribed medication.

Section 29.12 Laboratory Results: Positive drug test results are sent from laboratory to the collection provider for MRP review. The MRP then contacts the employee and reviews the results. Once this review is completed and it is still determined that a positive result exists, the MRP shall inform the Employer of the results. The Employer will keep drug results confidential unless required for use in a grievance process. Should the results reflect the use of prescribed medication, they are considered a personal medical record and will not be released to the general public.

Section 29.13 Paid Time / Paid Tests: An employee who is relieved from duty due to reasonable suspicion shall be placed on paid administrative leave and continue to be paid at the employee's regular rate of pay; or at the overtime rate, if applicable, for the hours scheduled for overtime, until verification of the test results from the MRP. The Employer shall pay all costs associated with the administration of alcohol and drug testing in accordance with this policy.

Any employee who is not allowed to return to work while awaiting split sample test results will be compensated during the waiting for all work time lost if the split sample test proves to be negative. An employee may, at their own cost, have the split sample retested at a laboratory of his choice, as long as the laboratory is certified under the regulations described in Section 11; however, the employee shall only be reimbursed by the Employer if the test is negative.

Section 29.14 Rehabilitation and Discipline:

A. Any employee may voluntarily enter rehabilitation without a requirement or prior testing. Employees who enter a program on their own initiative shall not be subject to retesting. The treatment and rehabilitation shall be paid for by the employee's health insurance program to the extent of the program coverage and limitations. Any costs over and above the insurance coverage shall be paid for by the Employee for initial treatment

and rehabilitation. Employees will be allowed to use their accrued and earned leave for the necessary time off involved in the rehabilitation program.

B. When the result of an alcohol test is above 0.04 and/or any of the 5-Panel drugs are positive, the employee will be relieved from duty and not permitted to report back to duty until a return-to-work assessment is made by a substance abuse professional. The Employer will make arrangements to transport the employee home. The Employer and the MRP will approve the substance abuse professional.

C. An employee who tests positive for alcohol and /or drugs shall be subject to dismissal unless this is a first time offense and the employee agrees to participate in and satisfies the obligations of a rehabilitation treatment program approved by the Employer and the substance abuse professional. An employee who agrees to participate and satisfies the obligations of this treatment program will be subject to discipline up to a 30 day suspension (but is also subject to discipline for other rule violations).

D. An employee who tested positive for alcohol and/or drugs, and is approved to return to duty, shall be subject to random alcohol and/or drug testing while on-duty for a period of 12 months. The period begins when the employee returns to duty. Any employee testing positive for alcohol or drugs a second time within this 12 month period shall be subject to disciplinary action up to and including discharge.

E. Any discipline imposed shall be in accordance with the procedures outlined within the collective bargaining agreement.

Section 29.15 Duty Assignment After Treatment: Once an employee successfully completes rehabilitation, he/she shall be returned to his/her regular duty assignment.

Section 29.16 Right of Appeal: The employee has the right to challenge the results of the drug and/or alcohol tests and any discipline imposed through the grievance procedure under the terms of this collective bargaining agreement.

Section 29.17 Revision/Amendment to this Policy: The Employer and /or the Union reserves the right to recommend revisions to the foregoing Article; however, no such revision(s) shall be implemented or take effect unless mutually agreed by the Employer and the Union.

Section 29.18 Union Held Harmless: The Employer assumes sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of the collective bargaining agreement relating to drug and alcohol testing. The Union shall be held harmless for the violation of any worker rights arising from the administration of the drug and alcohol testing program.

## **ARTICLE 30**

### **HEALTH, SAFETY & EMPLOYEE READINESS**

Section 30.1 The City agrees to conduct operations in accordance with the specific safety requirements of the Workers' Compensation Div. of the Department of Safety & Hygiene, Ohio Administrative Code Chapter 4123. All Employees shall be required to undergo a thorough medical physical exam once a year which shall be arranged and paid for by the Employer. Employee must supply certification from the examining physician that the Employee is fit to perform the essential functions of his job, according to the Employee's official job description. In all other respects, the results of such examinations shall remain confidential and will not be provided to the Employer unless the Employee so desires.

Section 30.2 SCBA Fit Testing: In order to meet and/or exceed state requirements for firefighters the Fire Division shall provide to all full-time bargaining unit Employees annual SCBA Face piece fit testing in accordance with the guidelines established in NFPA 1500 (Safety & Health Program) & NFPA 1404 (Breathing Apparatus Program).

Section 30.3 A Health and Safety Committee shall be established consisting of four (4) people; two (2) of whom will be representatives of the City while the other two (2) individuals will be Bargaining Unit Members who have been recommended by the membership. A list of the members of the Health and Safety Committee from each side will be exchanged within 30 calendar days from the ratification of this Agreement. The Health and Safety Committee shall meet at a minimum Bi-annually or upon written request of either Party at a time and place mutually agreeable, within seven (7) calendar days of the request of the initiating Party. The initiating Party shall furnish the other party with a written agenda not later than 72 hours prior to the scheduled time of the meeting. The purpose of the Health and Safety Committee shall be to discuss any and all issues regarding the health and safety of the Bargaining Unit Members. The City shall post a copy of the recommendations and decisions that were agreed on during the meeting at the fire stations along with providing a copy to the Union President and the Fire Chief.

## **ARTICLE 31**

### **DURATION OF AGREEMENT**

This Agreement shall take effect January 1, 2017, and shall remain in effect until midnight December 31, 2019.

If either party desires to modify or amend this Agreement, it shall give written notice of such intent no sooner than one hundred twenty (120) and no later than sixty (60) calendar days prior to the expiration date of this Agreement. Such notice shall contain a "proof of service" indicating the date, method of delivery and signature of the person attesting to the service. Failure to give the required notice shall result in the continuation of the Agreement for a period of one (1) year at the benefit rates in effect immediately prior to expiration.

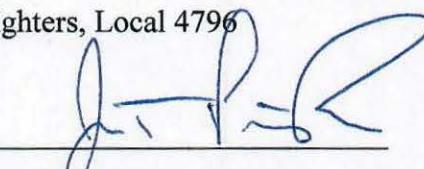
Executed this 7th day of Dec 2016 to be effective on and after January 1, 2017.

For the City of Lebanon, Ohio

G.P. CL

George P. Clements  
City Manager

For the International Association of Fire  
Fighters, Local 4796

  
Josh Pirk  
President

## APPENDIX A

**2017 Rates:** (2.5% increase and a \$0.28 per hour base pay adjustment for Lieutenants)

<u>CATEGORY</u>	<u>HOURLY</u>
Lieutenant	\$26.61
Captain	\$30.63

**2018 Rates:** (2.5% increase and a \$0.28 per hour base pay adjustment for Lieutenants)

<u>CATEGORY</u>	<u>HOURLY</u>
Lieutenant	\$27.55
Captain	\$31.39

**2019 Rates:** (2.25% increase and a \$0.28 per hour base pay adjustment for Lieutenants)

<u>CATEGORY</u>	<u>HOURLY</u>
Lieutenant	\$28.45
Captain	\$32.09