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AGREEMENT BETWEEN

THE

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES**

OHIO COUNCIL 8, LOCAL 363

AFL-CIO

And

THE CITY OF LEBANON

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ARTICLE 1

PREAMBLE

Section 1.1 This Agreement, entered into by the City of Lebanon, Ohio, hereinafter referred to as the “Employer” or “City” and the American Federation of State County And Municipal Employees Ohio Council 8, Local 363, AFL-CIO, hereinafter referred to as the “AFSCME” or “Union,” has as its purpose to comply with the requirements of Chapter 4117 of the Ohio Revised Code.

ARTICLE 2

RECOGNITION

Section 2.1 The Employer recognizes AFSCME as the sole and exclusive representative for all employees of the Employer in the certified bargaining unit (Case No. 07-REP-11-0167) defined as follows:

- Included: All full-time, regular part-time, or intermittent employees of the City of Lebanon, Division of Public Works, including the classifications MSW I, MSW II, Senior MSW, and Mechanics.
- Excluded: All management-level (including the Public Works Superintendent), confidential and supervisory employees as defined in the Act, and all seasonal and casual employees as defined by SERB.

ARTICLE 3

UNION BUSINESS

Section 3.1 The City recognizes the Union’s right to select local union officers, stewards, and alternate stewards to conduct approved Union business under this Agreement. The alternate steward shall act as steward when the steward is absent from work.

Section 3.2 The Union is authorized to select up to 3 representatives to conduct approved Union business for the bargaining unit. The steward/alternate, upon giving reasonable notice, and upon authorization from the City Manager or designee, may be allowed reasonable time off without loss or gain in pay to investigate a

grievance, consult with the Employer in processing a grievance, or to assist in the settlement of disputes. Permission to investigate and/or process a grievance or attend a disciplinary hearing during on duty time is at the sole discretion of the Employer. Permission to investigate and/or process a grievance or attend a disciplinary hearing shall not be unreasonably denied.

Section 3.3 The Union agrees to provide the Employer, within 30 calendar days, of the effective date of this Agreement, with:

- A. The name, address, and telephone number of the professional staff member who will act as representative for the Union local; and
- B. The names of the Local President, Vice President, Steward, and Alternate Stewards.
- C. It also shall inform the City of any changes within 30 calendar days of the change.

Section 3.4 The Union further agrees to keep such lists current, and the Employer has no obligation to recognize or communicate with any Union official or steward not so designated.

Section 3.5 Rules governing the activity of Union representatives are as follows:

- A. The Union agrees that no representative of the Union (Employee or non-Employee) shall interfere, interrupt or disrupt the normal work duties of other employees unless authorized by this Agreement or with the express prior approval of the City Manager or designee. The Union further agrees not to conduct Union business during working hours except to the extent authorized by the Agreement or with the express prior approval of the City Manager or designee.
- B. The Union shall not conduct Union activities in any work area during work hours. Upon prior notification to the supervisor of the general nature of the Union activity, Union members can discuss Union business on lunch breaks and other breaks, but the Union acknowledges that it cannot exclude non-union members from common areas.

Section 3.6 The Union representative or Employee shall cease unauthorized Union activities immediately upon the request of any supervisor of the area in which Union activity is to be or is being conducted.

Section 3.7 The Union is permitted to have up to 2 Employees released to attend scheduled collective bargaining negotiation sessions with the City without loss or gain in pay if the bargaining meeting hours coincide with their regularly scheduled work hours. They shall not be compensated for pre-or post-bargaining negotiation session activities with the Union. No overtime payment will be made to Employees serving on the negotiation committee.

Section 3.8 Whenever the word “Employee” or “Bargaining Unit” is used in this Agreement, it shall be deemed to mean the Employee(s) in the bargaining unit covered by this Agreement.

ARTICLE 4

MANAGEMENT RIGHTS

Section 4.1 Except as expressly modified or restricted by a specific provision of this Agreement, the Union recognizes that the City shall have the exclusive right to manage the operations, control the premises, direct the work force and maintain efficiency of operations. Among the City’s management rights, but not by way of limitation, are the following:

- A. 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 Employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- B. Determine the overall methods, process, means or personnel by which the Employer’s operations are to be conducted;
- C. Maintain and improve the efficiency and effectiveness of the Employer’s operations;
- D. To determine the mission of the Public Works Department and the personnel, methods, means, and procedures necessary to most efficiently fulfill that mission;
- E. To determine the size (including the creation of new positions), composition, and job duties of the work force;
- F. Determine the adequacy of the work force, as well as to make, amend, and enforce work rules and regulations, standard operating procedures and general and special orders;
- G. To lay off Employees or abolish positions;
- H. To hire, schedule, promote, demote, transfer, evaluate, and assign Employees;
- I. To recruit, select, and determine the qualifications and characteristics desired in new hires;

- J. To suspend, discipline, reduce, or discharge Employees for just cause;
- K. To train or retrain Employees as management deems appropriate and require Employees to maintain certifications, including but not limited to certifications required by the State of Ohio to perform a particular job;
- L. To schedule or not schedule overtime in the manner that promotes efficient department operations;
- M. To determine the location, size and number of facilities;
- N. To determine quality standards and in order to promote efficient operations;
- O. To schedule Employees and establish their hours, shifts, and days of work;
- P. To select the type, quantity and quality of equipment, tools and machinery to be used in the methods of operating them and the responsibilities therefore;
- Q. To take necessary action during emergency situations;
- R. To establish and enforce a tardiness and absenteeism policy permitting discipline, including termination, for any violation thereof;
- S. To establish and enforce a Drug and Alcohol Policy permitting discipline, including termination, for any violation thereof; and
- T. To generally manage the Public Works Department's business as it deems best, including without limitation, utilizing other City employees (as the City deems necessary) to perform work of the kind performed by Employees; and
- U. To subcontract work of the kind performed by Employees. The Union acknowledges that the City always has subcontracted work and it maintains the right to continue to do so. If bargaining unit positions are expected to be reduced as a result of subcontracting, the parties agree to bargain about the decision to reduce bargaining unit positions. If the parties reach impasse, the City will meet and confer with the Union regarding the effects of the City's decision, if the decision is to proceed with subcontracting.

The above listing of management rights shall not be deemed to exclude other proper functions not specifically listed herein or traditionally exercised by the Employer.

ARTICLE 5

NO STRIKE OR LOCKOUT

Section 5.1 The Employer and the AFSCME recognize that a work stoppage of any kind may create a clear and present danger to the health and safety of the public. This Agreement provides 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, picketing, or any other concerted activity which would interrupt the operation or services of the Employer.
- B. During the term of this Agreement, the Employer shall not cause permit or engage in any lockout of the bargaining unit Employees.

Section 5.2 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 5.3 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 24 hours of a request by the Employer, shall:

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

Section 5.4 Nothing in this Article shall be construed to limit or abridge the Employer's or the Union's right to seek other available remedies provided by law to deal with any unauthorized or unlawful work stoppages or lockouts.

ARTICLE 6

PROBATIONARY PERIOD

Section 6.1 During the first 180 calendar days of employment, a newly hired Employee shall be considered a probationary Employee. The probationary period may be extended up to an additional 180 calendar days. Probationary Employees shall not have access to the grievance and arbitration procedures of this Agreement for the purpose of appealing a disciplinary action and/or termination.

Section 6.2 Any Employee promoted into a higher level position shall be required to successfully complete a promotional probationary period of 180 calendar days. An Employee serving a promotional probationary period whose performance is judged unsatisfactory may be returned to his former classification and pay level. The return of an Employee to his former classification and pay level shall not be subject to the grievance and arbitration procedures.

ARTICLE 7

DUES DEDUCTION

Section 7.1 Union Membership. Subject to the provisions in Sections 7.2 and 7.3 below, all Employees covered by this Agreement who are members of the Union on the effective date of this Agreement, may remain members in good standing, and those who are not members on that date may become and remain members in good standing. All Employees hired after the effective date of this Agreement may become and remain members in good standing. A member in good standing is defined as an Employee who tenders the periodic dues, initiation fees, and assessments uniformly required as a condition of acquiring and maintaining membership in the Union.

Section 7.2 Member Dues Check-Off. The Employer agrees to deduct Union membership dues from the paychecks of Employees who are members of the Union. This obligation shall commence upon the successful completion of the probationary period or 60 calendar days following the beginning of employment, whichever is less. The deduction shall be made on a bi-weekly basis. The deduction shall be in the amount certified by the Union to the Employer. No deduction shall be made from the pay of any Employee unless and until the Union furnishes to the City Manager a payroll deduction form signed and dated by the Employee member of the Union voluntarily authorizing the deduction. The membership due deduction shall be made by the Employer from each Employee during the term of this Agreement, unless the Employee revokes the authorization by written notice to

the City Manager and Treasurer of the Local Union during the first 10 calendar days of the 30 calendar day period preceding the termination of this Agreement or the Employee's City employment terminates.

Section 7.3 **Fair Share Fee.** Bargaining Unit Employees who choose not to become members of AFSCME shall, as a condition of continued employment, within 60 calendar days of the effective date of this Agreement (or within 60 calendar days of their date of hire), pay to AFSCME a Fair Share Fee. This provision shall not require any Employee to become or remain a member of AFSCME, nor shall the Fair Share Fee exceed the dues paid by members of AFSCME in the same bargaining unit. AFSCME is responsible for notifying the Employer of the Fair Share Fee amount. AFSCME shall comply with Ohio Revised Code Section 4117.09(C) and any applicable regulations regarding Fair Share Fees and rebate procedures.

Section 7.4 **Forwarding of Dues/Fees.** The City will forward all applicable membership dues and Fair Share Fees collected to AFSCME's designated financial officer, the Controller of Ohio Council 8, at 6800 M. High Street, Worthington, Ohio 43085. Along with forwarding those membership dues and/or Fair Share Fees, the City also will forward a list of names and addresses of all Employees whose membership dues and/or Fair Share Fees have been deducted.

Section 7.5 **Indemnification.** The Union shall indemnify and hold harmless the Employer (and all City employees involved in the payroll process) from any claims made against the Employer arising out of this Article and from any and all costs and expenses arising out of any such claims.

ARTICLE 8

NO DISCRIMINATION

Section 8.1 The Employer and the Union agree to provide equal employment opportunities to all persons consistent with applicable federal, state, and municipal equal employment opportunity laws prohibiting discrimination and/or harassment based on race, sex (including pregnancy), age (40 and older), disability, military status, genetic information, religion, ancestry, color, national origin, or any other statutorily protected group status. The Employer and Union also agree there will be no discrimination or retaliation toward Employees because of their participation or non-participation in Union affairs.

Section 8.2 Words used in this Agreement in the masculine gender will be read and construed in the feminine gender as well, unless otherwise indicated.

ARTICLE 9

DISCIPLINE

Section 9.1 The employment of every Employee subject to the terms and conditions of this Agreement shall be during good behavior and efficient service (except probationary Employees who are governed by Article 6). No Employee shall be reduced in pay and position, suspended, removed or discharged except for grounds stated in this Agreement. The Employer may take disciplinary action against any Employee in the bargaining unit only for just cause. In addition to disciplinary action as set forth in this Article, the Employer may take this type of action for actions occurring while the Employee is on duty, in instances where the Employee's conduct violates his oath of office, or while off-duty representing himself as an Employee of the City of Lebanon, or if the conduct impacts the Employee's ability to perform his job or be trusted. He may not be disciplined for actions on his own personal time that do not reflect directly on the City, or do not violate any local, state, or federal laws, or City rules and/or regulations.

Forms of disciplinary action are:

- A. Oral reprimands (written record)
- B. Written reprimand
- C. Suspension without pay
- D. Reduction in pay or position
- E. Discharge from employment

Section 9.2 Among other things, incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, absence without leave, or any conduct unbecoming an Employee or any other acts of misfeasance, malfeasance, or nonfeasance, or violations of local, state, or federal law or the City's rules and/or regulations shall be just cause for disciplinary action up to and including termination.

Section 9.3 Whenever the Employer determines that an Employee may be disciplined for cause (excluding oral reprimands, written reprimands, or any action concerning probationary Employees), a pre-disciplinary hearing will be scheduled to give the Employee an opportunity to offer an explanation of the alleged misconduct.

Section 9.4 Pre-disciplinary hearings will be conducted by the City Manager or designee.

Section 9.5 Not less than 72 hours prior to the scheduled starting time, the Employer will provide to the Employee a written outline of the charges which may be the basis

for disciplinary action. The formal charge of misconduct shall, regardless of its point of origin: (a) be placed in writing; (b) specify the misconduct; and (c) disclose the witnesses to be relied upon (other than as rebuttal witnesses) – except in cases in which the City Manager or designee determines that the identity of a witness shall not be disclosed in advance. In such a case, a continuance will not be opposed by the Employer once the identity is disclosed. The Employee may choose to:

- 1) Appear at the hearing to present an oral or written statement in his defense with a Union representative also present;
- 2) Appear at the hearing and have a Union representative present an oral or written statement in defense of the Employee;
- 3) Appear at the hearing and request that legal counsel be present; or
- 4) Elect to waive (in writing) the opportunity to have a pre-disciplinary hearing.

Section 9.6 The Employee must elect to exercise, in writing, the options listed above concerning a pre-disciplinary hearing. An Employee may elect to waive any or all of his rights concerning disciplinary procedures, but the waiver must be in writing.

Section 9.7 At the pre-disciplinary hearing, the City Manager or designee will ask the Employee or his representative to respond to the allegations of misconduct which were outlined to the Employee.

Section 9.8 At the pre-disciplinary hearing, the Employee and Employer may present any testimony, witnesses, or documents which explain whether or not the alleged misconduct occurred. The Employer may be represented by any person(s) it chooses. The Employee shall provide a list of witnesses to the City Manager or designee as far in advance as possible, but no later than 24 hours prior to the pre-disciplinary hearing. It is the Employee's responsibility to notify his witnesses that he desires their attendance at the pre-disciplinary hearing.

Section 9.9 The Employee or his representative and the Employer and its representative will be permitted to cross-examine witnesses. A written report will be prepared by the City Manager or designee which will contain a finding of whether or not the alleged misconduct occurred. The City Manager or designee will decide what discipline, if any, is appropriate. A copy of the City Manager's findings will be provided to the Employee within 14 calendar days following the hearing.

Section 9.10 Pre-disciplinary hearings shall be tape recorded. A copy of the recording may be furnished to the Employee, at the Employee's request, within 48 hours of the close of the hearing. The Employee may also record the hearing. All disciplinary action, except for oral reprimands, may be appealed through the grievance procedures outlined in this Agreement.

- Section 9.11** Employees participating in an administrative investigation shall be advised that refusing to answer questions or refusal to answer truthfully could lead to disciplinary action for insubordination, up to and including termination.
- Section 9.12** In issuing discipline, the City may take into account the nature of the violation, the Employee's record of discipline, and the Employee's performance record.
- Section 9.13** Any Employee charged with or under indictment for a felony who is not disciplined or discharged by the Employer, may be placed on unpaid leave of absence without pay until resolution of the court proceedings. An Employee may use accrued but unused vacation time during the leave. An Employee found guilty by the trial court of a felony shall be summarily discharged and shall have no recourse through the grievance or arbitration procedures. Where the charges are reduced to a misdemeanor or the Employee is found innocent of the charges, the Employee may be subject to discipline pursuant to the terms of this Article.
- Section 9.14** Provided no other disciplinary measures have been issued in that 2 year time frame, records of oral and/or written reprimands shall cease to have force and effect 2 years from the date of issuance and shall, upon the Employee's written request, be sealed in an unlabeled envelope in the official personnel file.
- Section 9.15** Provided no other disciplinary measures have been issued in that 3 year time frame, records of suspensions of less than 30 calendar days shall cease to have force and effect 3 years from the date of issuance and, shall, upon the Employee's written request, be sealed in an unlabeled envelope in the official personnel file.

ARTICLE 10

GRIEVANCE PROCEDURE

- Section 10.1** The term "grievance" shall mean an allegation that there has been a breach, misinterpretation, or improper application of this Agreement. It is not intended that the grievance procedure 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 by the United States or State of Ohio constitutions.
- Section 10.2** 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 3 of the grievance procedure. The aggrieved Employee or the Union 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. The withdrawal of any grievance shall have no prejudicial effect.

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. Any grievance that is not processed within the time limits set forth in this Agreement shall be considered resolved based on the City's last answer. Time limits set forth herein may only be extended upon mutual written agreement.

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 member of the bargaining unit in a similar manner, one member selected by such group will process the grievance, and shall so indicate that the grievance is a group grievance. Each aggrieved Employee who desires to be included in such grievance shall sign the grievance.

Wherever used in this procedure, the word "day" shall mean calendar day. The computing of any time period will be governed by Article 41, Computing Time.

Section 10.3 An Employee may orally discuss any dispute he may have with his immediate supervisor but for such dispute to be filed as a grievance, it shall be reduced to writing. Moreover, such written grievance must be submitted to the grievance procedure within 10 calendar days after an Employee knows or should have known the facts giving rise to the grievance, otherwise it will be considered not to have existed. Moreover, under this "knows or should have known" standard, no such grievance shall be filed more than 30 calendar days after the actual occurrence that gave rise to the grievance.

Section 10.4 All grievances must be submitted on a form agreed to by the parties and must contain the following information to be considered:

- 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 incident was first discussed with supervisor, if applicable;
- E. Name of supervisor with whom incident was first discussed, if applicable;
- 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 the grievance.

Section 10.5 Any grievant may, if he so desires, have a Union representative accompany the grievant at any step or meeting provided for in this Article.

Section 10.6 It is the mutual desire of the Employer and the Union to provide for prompt adjustment of grievances, with a minimum amount of interruption of the work schedules. Every responsible effort shall be made by the Employer and the Union to effect the resolution of grievances at the earliest step possible. In furtherance of this objective, the following procedures shall be followed:

Step 1: Within the established time limits, the aggrieved Employee shall submit his written grievance to the Public Works Superintendent. It shall be the responsibility of the Public Works Superintendent or designee to investigate the matter and to provide a written response to the aggrieved Employee within 10 calendar days following his receipt of the grievance.

Step 2: If the grievance is not resolved in Step 1, the Employee may within 10 calendar days following the Step 1 reply, refer the grievance to the Deputy City Manager or designee. The Deputy City Manager or designee shall have 10 calendar days in which to schedule a meeting with the grieved Employee and any desired Union representative. The Deputy City Manager or designee shall investigate and respond in writing to the grievance within 10 calendar days following the meeting date or 10 calendar days following receipt of the grievance, whichever is later.

Step 3: If the grievance is not resolved in Step 2, the Employee may refer the grievance to the City Manager or designee within 10 calendar days after receiving the Step 2 reply. The City Manager or designee has 10 calendar days in which to schedule a meeting with the aggrieved Employee and any desired Union representative. The City Manager or designee shall investigate and respond in writing to the grievant and/or appropriate Union representative within 14 calendar days following the meeting.

Step 4: A grievance unresolved at Step 3 may be submitted to arbitration upon request of the Union in accordance with the provisions of Section 10.7 of this Article below. The Union and the Employer may mutually consent to submit the grievance to mediation to discuss a possible resolution prior to the arbitration hearing. The parties shall use the mediation process provided by the Federal Mediation and Conciliation Service (FMCS). Once a grievance has been submitted to mediation, the time limits for arbitration set forth in this Article will be suspended until the mediation process is completed.

Section 10.7 The Union, based upon the facts presented, has the right to decide whether to arbitrate a grievance. Within 21 calendar days from the date of the final answer on a grievance from Step 3, the Union shall notify the Employer in writing of its intent to seek arbitration over an unresolved grievance. The Union may withdraw its request to arbitrate at any time prior to the actual hearing. Any cancellation fee due the arbitrator shall be paid by the party or parties canceling the arbitration. Any grievance not submitted to arbitration within the 21 calendar day period described above shall be deemed settled on the basis of the last answer by the Employer or its representative(s).

- A. The arbitrator shall be selected in the following manner: The parties shall jointly request of the Arbitration and Mediation Service ("AMS") a panel list of 9 arbitrators from within 125 miles of Cincinnati, Ohio. AMS rules (which permit the parties to rank and strike arbitrators) shall apply to selection procedures and conduct of hearings. Either party may once reject the list and request another list from AMS. The parties may at any time mutually agree, in writing, to an alternate arbitration service or method of selection of an arbitrator.
- B. If either party challenges the arbitrability of a grievance, it shall notify the other party of its challenge and intent to raise the issue at the arbitration hearing. At the hearing, the first question to be placed before the arbitrator is whether or not the issue is arbitrable and within his jurisdiction to decide. If the arbitrator determines the grievance is arbitrable, the grievance will be heard on its merits before the same arbitrator.
- C. The arbitrator shall have no power or authority to add to, subtract from, modify, otherwise alter this Agreement, nor to establish or change any wage rate, nor to substitute his judgment for the Employer's whenever the Employer is granted the right to exercise such judgment, nor to grant any remedy or back pay award for any period prior to the effective date of this Agreement or any period in excess of 10 calendar days prior to the date the written grievance is submitted to the Employer as provided in Section 10.6, Step 1 of this Article, or for any event occurring or period extending beyond the termination date of this Agreement, nor to grant any relief that was greater than that which was specifically requested in the grievance when it was reduced to writing at Step 1 of the grievance procedure.

The sole function of the arbitrator shall be judicial (not legislative), where he interprets the written provision(s) of this Agreement and applies them to the specific facts presented at the hearing in response to the issues submitted by the City and the Union; provided, however, that no issue shall be raised or contention made at the hearing which could have been, but was not, raised nor made in the Step 3 grievance presentation.

Furthermore, in explanation of the Employer's right to promulgate rules and regulations, general orders and standard operation procedures set forth herein in the Management Rights clause, the Union or grievant shall not have recourse through the grievance and arbitration procedure to challenge the reasonableness or appropriateness of the Employer's existing or future rules and regulations, general orders or standard operating procedures; provided that the Employer has given the Union or Employees notice and permits the Union, upon request, to meet and confer with respect to the proposed rule.

- D. This provision does not prevent an Employee disciplined by any such existing or future rule to grieve the application of that rule to his particular circumstances.
- E. The decision of the arbitrator shall be final or binding on the grievant, the Union, and the Employer, if it is in conformity with the power and authority granted the arbitrator in this Agreement. The arbitrator shall be requested to issue his decision within 30 calendar days after the conclusion of testimony and arguments and submission of final briefs.
- F. Where the underlying grievance relief involves back or lost wages covering a period of an Employee's payroll separation due to suspension or discharge, the amount so awarded shall be less any other monies received by the Employee(s) (through working for another person or entity or self-employment) during that period and less any unemployment compensation monies received by the aggrieved Employee(s).
- G. The fees and other costs for the services of the arbitrator, the cost of any proofs produced at the direction of the arbitrator, the fee of the arbitrator, and the cost of the hearing room, if any, shall be borne equally by the Employer and the Union. 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 paid by the party asking for one, or split equally by the parties if both parties desire a court reporter or request a copy of any transcripts. Any bargaining unit member whose attendance is required for such hearing shall not lose pay or benefits to the extent such hearing hours occur during his regularly scheduled working hours on the day of the hearing. He, however, shall not be compensated for his attendance at any such hearing, or part of that hearing, that occurs after his regularly scheduled work hours.

Section 10.8 Oral reprimands shall not be appealable through the Grievance Procedure. Written reprimands may be appealed to Steps 1, 2 and 3 of the grievance procedure, but shall not be appealed to Step 4.

Section 10.9 As this Agreement provides for final and binding arbitration of disciplinary action involving suspension without pay, reduction in classification or rank, and/or termination from employment, consistent with ORC 4117.10, neither the State Personnel Board of Review nor Lebanon Civil Service Commission shall have jurisdiction to receive and determine any appeal relating to such disciplinary action. This Agreement and Article shall be the sole recourse for any dispute between the parties with regard to disciplinary matters.

ARTICLE 11

FMLA AND ADA OBLIGATIONS

Section 11.1 Nothing in this Agreement shall be construed or permitted to impede, prohibit or prevent the Employer from satisfying its obligations under the Americans With Disabilities Act (ADA) or the Family Medical Leave Act (FMLA). Furthermore, nothing in this Agreement shall limit, impede, or prohibit the Employer from exercising available options offered or available to the Employer under the ADA and the FMLA and the development of policies consistent with this paragraph, which the City may change from time to time.

ARTICLE 12

LABOR MANAGEMENT COMMITTEE

Section 12.1 If requested by either party, a Quarterly Labor Management Meeting will be held between the City and the Union at a mutually agreeable date and time. Those meetings also may be held on a more frequent, as-needed, basis upon agreement of the parties. Said committee may be composed of up to 3 representatives of the City and up to 3 representatives selected by the Union. At least 7 calendar days in advance of the scheduled meeting, either party may submit a written agenda outlining the items to be discussed.

Such meetings may include discussion of: the administration of the Agreement, information of general interest, and/or health and safety matters.

ARTICLE 13

DOCUMENTATION

Section 13.1 Upon request, an Employee shall receive a copy of any document that the City requires the Employee to sign other than sign-in sheets; provided the document is retained by and in the possession of the City.

ARTICLE 14

UNIFORMS

Section 14.1 **Clothing.** The Employer will provide the following size appropriate clothes to each Employee in the bargaining unit as follows:

- 1 pair of work boots (replaced annually)
- 1 set winter gloves (replaced annually)
- Work uniforms (11 sets of the following uniform pieces: 11 short sleeve reflective t-shirts; 11 pairs of pants) -- replaced as needed
- 1 “Carhartt” (or equivalent) winter coat (replaced as needed)
- 1 reflective cold weather jacket with removable sleeves (replaced as needed)
- 1 “Carhartt” (or equivalent) lightweight jacket (replaced as needed)
- 1 set of Rain Gear (jacket and pants or ranch length coat) (replaced as needed)
- 1 “Carhartt” (or equivalent) bib overalls (replaced as needed)
- 1 hooded sweatshirt (replaced as needed)
- Safety Equipment: eye and ear protection, dust mask (replace as needed)

Where uniforms are provided for Employees, the Employees must wear them properly at all times. Except for the provided tee shirts, the uniforms will be cleaned and mended at the Employer’s expense. Uniforms will be supplied to each Employee required to wear uniforms so that each Employee has one clean uniform each work day. These uniforms are provided by a uniform company with which the City contracts. Uniforms will be replaced on an as-needed basis. Upon termination of employment, uniforms must be promptly returned, and the cost of missing uniforms will be deducted from the Employee’s final paycheck.

Section 14.2 Automotive Mechanics are required to furnish their own basic professional mechanic tool set. Each Mechanic will receive a tool allowance of up to \$500.00 annually for the replacement of personal tools while used on the job. The \$500.00 allowance cannot be carried over to the next year. To utilize the allowance, an Employee must have the prior approval of the Department Director prior to the purchase and present a receipt.

Section 14.3 Equipment, insignia, buttons, and other items not issued or required by the Employer may be utilized or worn only with the prior written permission of the Department Director.

Section 14.4 All clothing provided to Employees is, and remains, the City's property and cannot be sold or given to other individual(s) or entities (entity) without prior written approval of the Department Director.

Section 14.5 As indicated in Section 14.1, the City will replace damaged or worn (beyond repair) clothing items on "as needed" basis and upon return of the damaged or worn (beyond repair) clothing item(s).

ARTICLE 15

WAGES

Section 15.1 For each applicable year of this Agreement, Bargaining Unit Employees will receive the same periodic cost of living increases, if any, that the City provides to its Classified, Non-Exempt, employees. Additionally, in the City's sole discretion, Bargaining Unit Employees are eligible to receive periodic performance pay rate increases, if any, based on the results of the City's formal performance evaluation process, which may be changed from time to time, and which also applies to the City's Classified, Non-Exempt, employees.

ARTICLE 16

HOURS OF WORK AND OVERTIME

This Article is intended solely to define an Employee's expected hours of work. This section does not constitute a guarantee by the City that such hours or any overtime shall in fact be worked.

Section 16.1 So long as the overtime provisions of the Fair Labor Standards Act ("FLSA"), as amended, are applicable to state and local governments, the Employer shall pay overtime in accordance with existing rules and regulations applicable to the FLSA. Work performed in excess of 40 actual hours in any work week shall be compensated at the rate of time and one-half of the Employee's regular rate of pay, according to FLSA.

Section 16.2 Definition. The standard workweek shall normally consist of five (5) working days Monday through Friday that begin at 7:30am and end at 4:00pm, however, nothing contained in this agreement shall prevent the employer from scheduling other work hours based on operational needs. Full-time Employees generally will be scheduled to work 40 hours per work week. Except in emergency situations beyond the Employer's control, if the Employer decides to change the work days, work hours, and/or work shifts, a minimum of 3 calendar days posted notice shall be provided to the Employees affected by such change(s). Employees shall also be dressed for work and begin work at the start of their designated shift.

Section 16.3 Lunch Period. Instead of a 1/2 hour lunch period and two 15 minute rest breaks, Employees will receive a one hour lunch period during their regularly scheduled tour of duty, which generally begins at 7:30 a.m. Consistent with a normal work schedule, such periods shall begin within the 5-1/2 hour period following the start of the Employee's work day. If, in the opinion of the supervisor, it becomes necessary to postpone the lunch period, the regular work day may be shortened by the length of the normal lunch period. Lunch periods shall begin at the time the Employee ceases performing his assigned duties. The Employee is expected to be at his work assignment ready to work at the end of the lunch period. There are no rest breaks.

Section 16.4 Assignment of Overtime. The Employer has the right to require Employees to work overtime. For purposes of assignment of overtime, said work shall be defined as:

- A. Snow and ice control
- B. Miscellaneous and other emergency situations
- C. Scheduled overtime

For overtime assignments involving snow and ice control, the Employer shall assign the work to the Employees who are normally assigned to the route in question. For overtime assignments known in advance, the Employer shall establish an overtime rotation list with the names of Employees who have volunteered for such work, based on classification, and the Employees on said list shall be ranked in order of seniority. The list shall be periodically updated or revised as needed. The Employer shall offer overtime to Employees on the applicable list in the order in which the Employees' names appear ranked with the most senior Employee at the top of the list.

When an overtime opportunity arises, the Employer shall contact the name of the Employee next appearing after the last Employee who accepted an overtime assignment on the list. If an Employee declines to accept an offer of overtime, or fails to answer a telephone call, the Employee will be deemed to have declined the overtime, and the Employer shall contact the next name on the overtime list. If

no Employee on the applicable list accepts the overtime, the Employer shall assign it to the least senior Employee on the relevant list.

If the overtime work is of an emergency nature, the Employer may offer the overtime to the work crew or Employees performing the work at the close of the regular shift in lieu of the procedures set forth above. If no such Employees accept the overtime, the procedures set forth above shall apply.

Section 16.5 If any Employee is scheduled to work overtime but reports off for any reason, his scheduled overtime is cancelled and he shall not receive any otherwise applicable pay for that time off.

Section 16.6 No Pyramiding. There shall be no duplication or pyramiding in the computation of overtime or other premium wages. Nothing in this Agreement shall be construed to require the payment of overtime and other premium pay more than once for the same hours worked.

Section 16.7 Basis for Computing Overtime Pay. A full-time Employee will receive overtime compensation for all actual hours worked in excess of 40 hours per week. The overtime rate of pay will be 1½ times the Employee's hourly straight time pay rate.

Section 16.8 Overtime Authorization and Reporting Procedures: Employees shall have prior and proper authorization to work in excess of their normally schedule shift. Overtime authorization shall be approved by the Department Director or designee. This includes but is not limited to special meetings, trainings, events, and other activities relating to the Employee's duties at the City. Employees that work an authorized overtime period shall complete, validate, and submit an Overtime Reporting Form with their Time Sheet and Payroll record.

Section 16.9 Stand-By Pay: Employees who are required to stand by for possible call-out during a 7 calendar day period will be considered to be on "stand by" status. Employees on "stand by" status during a 7 calendar day period will be paid 16 hours of straight time pay in addition to any other applicable amounts earned for any call-out as calculated in Section 16.10 below.

If an Employee is scheduled for "stand by" status during a City recognized holiday, the Employee will receive an additional eight hours of paid time.

Section 16.10

- A. "Stand-By Status" Call-Out Pay. An employee assigned to stand-by status as outlined in Section 16.9 of this Agreement, and who is called back to work after completing his regular shift will be paid for hours worked at a rate of 1 ½ times the employee's regular rate of pay and will be paid for a minimum of two (2) hours of work. Following the minimum two (2) hours paid at the overtime rate, any hours worked following a Call Out that fall within the regularly scheduled work day will be paid at the regular

rate. If the work lasts longer than the minimum two (2) hours, the employee will be compensated at 1 ½ times his rate of pay for all hours worked that do not fall within his regular scheduled work day.

- B. “Off-Duty Status Call-Out Pay”. An employee who is not assigned to stand-by status as outlined in Section 16.9 of this Agreement, and who is called back to work after completing his regular shift will be paid for hours worked at a rate of 1 ½ times the employee’s regular rate of pay and will be paid for a minimum of three (3) hours of work. Following the minimum three (3) hours paid at the overtime rate, any hours worked following an Off-Duty Call Out that fall within the regularly scheduled work day will be paid at the regular rate. If the work lasts longer than the minimum three (3) hours, the employee will be compensated at 1 ½ times his rate of pay for all hours worked that do not fall within his regular scheduled work day.

Section 16.11 Any scheduled overtime that involves work that is normally performed by the full-time bargaining unit employees shall first be offered to all full-time bargaining unit employees on the overtime list before being offered to part-time or seasonal employees.

ARTICLE 17

COMPENSATORY TIME

Section 17.1 Upon application and approval by the Employee’s supervisor, the City may grant compensatory time at a rate of 1-1/2 hours for each hour of overtime worked in lieu of the payment of cash for overtime.

Section 17.2 Compensatory time is to be used in increments of no less than 1 hour at any one time and is subject to prior approval by the Employee’s supervisor. An Employee requesting compensatory leave shall complete a leave request form at least 24 hours in advance of the requested leave.

Section 17.3 An Employee may accumulate up to 40 hours of unused compensatory time in a non-refillable compensatory time bank during each calendar year. Once this limit is reached, the Employee will be paid in cash for additional accrued overtime hours.

Section 17.4 Unused compensatory time must be used or sold back to the City by December 31st of the applicable year. No Employee shall be permitted to carry over any unused compensatory time to the next calendar year.

ARTICLE 18

PERSONAL DAYS

Section 18.1 Each full-time Employee will be granted 2 personal days each applicable calendar year of this Agreement. Pay for one personal day will be 8 hours of pay at the regular base hourly wage rate. Personal days will be counted as “hours worked” for purposes of calculating overtime.

Section 18.2 When an Employee requests approval to use his applicable and unused personal day(s), he shall directly and personally notify his immediate supervisor or authorized designee no later than 24 hours before the requested time off in non-emergency situations or no later than 1 hour (unless otherwise not possible and then the notification must take place as soon as possible) in an unexpected emergency situation. If the initial request was made orally, then the Employee shall document his request (day, number of hours taken, emergency or non-emergency situation, time notified immediate supervisor), in writing, to his immediate supervisor or authorized designee on the next scheduled work day.

Section 18.3 Personal days shall be taken in increments of 4 or more hours and shall not be carried over from year to year. If they are not used, they are forfeited.

ARTICLE 19

LONGEVITY PAY

Section 19.1 Each full-time Employee who has at least 5 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 1st being the date used for determining the number of years of service in active pay status. The requirement that service for longevity credit will be continuous in nature shall only apply to service beginning after January 1, 1981.

Eligible 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 eligible Employee who has taken an unpaid leave shall be advanced forward the same number of days as the leave continued.

Eligible 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 20

HOLIDAYS

Section 20.1 The following holidays shall be observed with pay for full-time Employees whose regularly scheduled work day falls on an observed holiday:

New Years Day	Columbus Day
Martin Luther King, Jr. Day	Labor Day
Presidents' Day	Thanksgiving
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Day
	Day before or after Christmas Day (as determined by the City Manager)

Other non-eligible Employees will receive the day off without holiday pay.

Section 20.2 An Employee who is directed to work, and works, a designated holiday will accrue 8 hours of holiday time to be taken off at a later date by the Employee – as approved by the Employer.

Section 20.3 Employees who are not available for duty on any of the above designated holidays due to unpaid leave, layoff, or disciplinary suspension, shall not be

eligible for holiday pay for that holiday. Employees also forfeit holiday pay if they are on unpaid leave on both the workday before and after the designated holiday.

Section 20.4 Holiday pay for full-time Employees will be paid at the Employee's regular rate of pay for 8 hours per observed holiday. Holiday hours will be counted as "hours worked" for purposes of calculating overtime. Holidays that fall on a Saturday will be observed on the previous Friday. Holidays that fall on a Sunday will be observed on the following Monday.

Section 20.5 A full-time Employee may request time off to celebrate a bona fide religious holiday that is not observed by the City. He must notify his immediate supervisor, in writing, at least 30 calendar days before that religious holiday. His supervisor will respond within 7 calendar days after receipt of that request. The Employee must receive prior written approval before he may be excused for that holiday. If granted, the Employee may use applicable and unused vacation hours or Personal Days (as set forth in Article 18) or take the holiday off without pay.

ARTICLE 21

VACATIONS

Section 21.1 When a full-time Employee has completed 1 year of uninterrupted employment, the base vacation accrual of 96 hours shall be credited on the first pay period of each year. The length of service vacation shall be credited on the Employee's anniversary date.

<u>Completed Years of Uninterrupted Service in the Unit</u>	<u>Amount of Vacation Accrual</u>
0-less than one year	4 hours/calendar month
After 1 year but less than 5 years	8 hours/calendar month
After 5 years but less than 10 years	104 hours/calendar year
After 10 years but less than 15 years	120 hours/calendar year
After 15 years	160 hours/calendar year

Other non-eligible Employees shall not receive this vacation benefit.

Section 21.2 An Employee of the City, who was formerly employed by the State of Ohio, or a political subdivision thereof, 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 Employee requesting consideration under this section shall furnish the Personnel Department with certification of the period of time of such previous employment.

Section 21.3 Vacation leave will be scheduled as follows:

- A. Vacation selection will be based on unit seniority between January 1st and February 1st of each year. Beginning February 1st, vacation selection will be determined by the date the request is submitted. The Employee who submits his vacation request the earliest will be granted leave as long as his request is otherwise in compliance with this Article.
- B. The Employee can use vacation in not less than 4 hour increments.
- C. The Employer can refuse to grant vacation leave that is requested less than 14 calendar days in advance. The Employer also may refuse to grant vacation leave if circumstances dictate that it needs to retain a sufficient number of Employees to maintain its services for the City's residents.

Section 21.4 Any observed holidays that occur during an approved vacation period will not be counted as vacation time.

Section 21.5 Sick leave will not be approved for illnesses occurring while on vacation status. Vacation hours will be counted as "hours worked" for purposes of calculating overtime.

Section 21.6 Full-time Employees can accrue vacation up to 2 times their annual accrual rate. Full-time Employees cannot carry a vacation balance in excess of 2 times their annual accrual rate beyond December 31 of each applicable year. If a full-time Employee has accrued vacation in excess of 2 times their annual rate, his vacation balance will be revised effective January 1 of each year to reflect a balance not to exceed 2 times the annual accrual rate.

Full-time Employees may submit an Excess Vacation Time Carryover Request Form to the City Manager no later than October 1 of each applicable calendar 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 he is unable to consume the excess vacation.

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

Section 21.7 An Employee who has been employed by the City for a period of at least 1 continuous year and who resigns, retires, goes on disability, or dies is entitled to compensation at his current rate of pay for any earned but unused vacation leave to his credit at the time of separation, provided that all of the following has occurred:

1. He has successfully passed the probationary period.
2. He is not dismissed for just cause.
3. He gave at least 14 calendar days' written notice of resignation.
4. He has returned all City property and completed an exit interview. He then will be compensated for unused vacation accrued at his monthly rate for the months worked during the calendar year that he 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.

Section 21.8 An Employee may request additional vacation pay in lieu of taking vacation leave. Approval of vacation buy back is subject to all of the following conditions:

1. Employee shall have completed at least 7 years of continuous City service (no credit for prior service with the State of Ohio or one of its political subdivisions).
2. Employee shall have already taken a minimum of 50% of his annual vacation accrual for the calendar year and taken all personal days.
3. Employee may apply for a maximum of 7 days of vacation pay each year in lieu of taking vacation.

Section 21.9 Employees may donate accrued vacation time to other full-time City employees eligible to accrue and use sick leave. The intent of the leave donation program is to allow Employees to voluntarily provide assistance to their eligible co-workers who are in critical need of leave due to the serious illness of the full-time employee. Only vacation time may be donated. Sick leave may not be donated. This policy does not supersede, replace, or supplement entitlement programs (e.g., workers comp, disability or retirement benefits). Rather, those programs are governed by the applicable statutory laws and/or formal plan documents.

An Employee may be paid donated leave at a rate not to exceed the maximum number or hours he is scheduled to work each pay period, provided that:

- A. He has a serious illness or injury, or has an immediate family member who has such a serious illness or injury;

- B. All individual donor forms, available in the personnel department, have been submitted and approved by the City;
- C. The Employee has exhausted all other available paid leave (sick, vacation, personal days, comp time); and
- D. Maximum donated vacation leave shall not exceed 24 weeks.

Donated time is made on a voluntary basis and must be made in 4 hour increments. Donated time shall not be returned to the donating Employee once it has been donated to a co-employee.

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

ARTICLE 22

LEAVES OF ABSENCE

Section 22.1

A. Court Leave

When an Employee is required to serve on a jury or as a subpoenaed witness in any court of law or equity or administrative tribunal, such Employee shall be granted leave of absence with pay and without loss of his seniority for each day that he is required to perform such services. He shall promptly notify the Employer as soon as he learns that he has been called for jury duty or has been subpoenaed as a witness. An Employee released from jury duty/witness service prior to the end of his scheduled work day shall report to work for the remaining hours of his shift. Any compensation received for said jury duty/witness service shall be turned over to the Employer.

The Employer, however, 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. These absences would be leave without pay, personal days, or vacation at the discretion of the Employee, provided the Employee has available leave. An Employee

shall request prior approval for court leave, in order for such leave to be granted.

B. Military Leave

Employees will receive leave according to applicable Ohio, federal law, and the provisions of Chapter 600.3 of the Lebanon City Employee Manual--as may be changed from time to time.

C. Funeral Leave

Each full-time Employee, who has completed his probationary period, shall receive pay for the time necessarily lost from work, up to a maximum of 3 consecutive workdays due to attending a funeral of the Employee's spouse, parent (in-laws) (step), child (step), brother or sister, grandparent, grandchild, legal guardian, or other person who stands in place of the Employee's parent.

Funeral leave of one work day lost may be granted when a death occurs to any other relative or friend of the Employee upon prior written approval of the Department Director and the City Manager (up to a maximum of 2 work days per calendar year).

Pay for such time necessarily lost will be for the hours (not to exceed 8) such Employee was regularly scheduled to work on that work day at the Employee's straight time hourly rate. Written verification of the relationship, the date of death, and the funeral time and place must be provided by the Employee in order to be eligible for the payment. An Employee who intends to seek payment must notify the Department Director or designee of the family member's (or friend's) death and the date of the funeral as soon as possible in advance of absencing himself from work under this section.

ARTICLE 23

SICK LEAVE

Section 23.1 A full-time Employee, who has completed his probationary period, may request sick leave for absences resulting from illness as described below. Sick leave may be requested for the following reasons:

1. Illness or injury of the Employee, a member of his immediate family, or a member of the Employee's household, where his attendance is reasonably necessary;

2. Exposure of Employee, a member of his immediate family, or a member of the Employee's household to a contagious disease which would have the potential of jeopardizing the Employee's health or the health of others;
3. Medical, dental, or optical examinations or treatment of an Employee, a member of his immediate family, or a member of the Employee's household;
4. Pregnancy, childbirth, and/or related medical conditions; or
5. Any other reason that would meet the requirements of the Family and Medical Leave Act ("FMLA"). An otherwise eligible Employee's FMLA 12 week leave entitlement (or 26 weeks if the FMLA leave is needed to care for a covered service member) also shall run concurrent with any applicable sick leave hours when the Employee's (or applicable family member's) medical condition meets the criteria for a "Serious Health Condition," or a "serious illness or injury" with regard to covered servicemember FMLA leave.

Section 23.2 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 or designee.

Section 23.3 The City maintains the right to investigate any Employee's absence. Employees may be required to furnish proof of illness as evidence by a physician's statement, or other satisfactory written statements of the Employee as required by the City Manager or designee.

Section 23.4 All full-time Employees who work on average a 40-hour work week shall accrue 4.6 hours of sick leave per pay period. Sick leave hours will be counted as "hours worked" for purposes of computing overtime.

Section 23.5 Any Employee requesting sick leave must inform his supervisor within the prescribed time frame established by the department/division rules and regulations. The Employee must give a satisfactory reason for his sick leave and location of convalescence, if different than the home address. He also must be available to be reached by telephone or cell phone.

Section 23.6 Vacation leave, personal days, and compensatory time (if applicable) also may be used for sick leave purposes at the Employee's request and with the approval of the City Manager. The first 12 weeks of paid leave (vacation, personal days or sick leave) will be counted against the 12 week FMLA period. Employees who are unable to return to work after exhausting all paid leave may apply for an unpaid medical leave of absence or may be eligible for unpaid FMLA leave -- to the extent the 12 week FMLA period has not expired.

Section 23.7 Employees shall schedule medical and dental appointments to minimize interference with work hours. To keep lost work time to a minimum, the Employee should schedule appointments for early or late in the day. Employees should request only as much time as is needed to attend and return from the scheduled appointment, including reasonable travel time.

Section 23.8 In (non-FMLA) sick leave situations, if the City questions an Employee's fitness to return to work, the Employee will be required, prior to returning to work, to submit a physician's certification confirming his ability to perform the essential functions of the position, with or without a suggested accommodation. 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 essential functions, with or without a suggested accommodation. Return to limited or light duty will be permitted only upon the recommendation from the Department Director and approval by the City Manager.

An Employee returning from FMLA-covered sick leave for his own serious health condition will be required to submit a Fitness for Duty Certification, as set forth in the City's FMLA policy. That certification, in turn, must certify that the Employee is able to resume work and must specifically address his ability to perform the essential functions of his job.

Section 23.9 Employees absent on approved sick leave shall be paid at their regular hourly rate for all regularly scheduled work hours missed.

Section 23.10 If sick leave is denied and as a result the Employee has been overpaid, such overpayment shall be deducted from the Employee's next paycheck, and the Employee's sick leave balance shall be restored.

Section 23.11 An Employee fraudulently obtaining sick leave, abusing sick leave, or falsifying sick leave records, shall be subject to disciplinary action, up to and including discharge.

ARTICLE 24

INSURANCE

Section 24.1 Full-time bargaining unit Employees will continue to be 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) the City provides to Classified, Non-Exempt, employees.

Section 24.2 The City shall select the insurance carrier or carriers to provide the insurance benefits described above and may change the carrier from time to time for any or

all or some portion of such insurance benefits, as the City may, in its sole discretion, decide. If the City determines it is necessary to change carriers or any or all or some of the insurance benefits, it will meet with the Union and discuss the planned changes before they are implemented.

Section 24.3 The Employer shall provide, to each full-time Employee, group term life insurance coverage with a death benefit of \$40,000.00, payable to the Employee's spouse, the designated beneficiary, or the Employee's estate.

Section 24.4 The Employer shall indemnify and hold harmless an Employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the Employee in a state or federal court or as a result of a law of a foreign jurisdiction and that is for damages for injury, death, or loss to persons or property caused by an act or omission in connection with a governmental or proprietary function, as defined in Ohio Revised Code Section 2744.01, if at the time of the act or omission the Employee was acting in good faith and within the scope of his employment or official responsibilities.

Section 24.5 A dispute between any eligible Employee (or his beneficiary) and the insurance carrier(s) or the processor of claims shall not be subject to the grievance and arbitration procedures provided for in the Agreement between the Employer and the Union.

Section 24.6 The failure of any insurance carrier(s) to provide any benefit for which it has contracted shall result in no liability to the Employer or to the Union; nor shall such failure be considered a breach by the Employer 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 Employer, Union, eligible Employee, or beneficiary of any eligible Employee.

Section 24.7 The Employer and Union agree that the above-referenced insurance plans including eligibility, waiting periods, participation, coverage, benefit levels, and limitations, exclusions, and other requirements and provisions are set forth in, and governed by, the formal plan documents.

ARTICLE 25

DRUG FREE WORK PLACE

Section 25.1 The Union agrees with and supports the City's drug testing program and is committed to ensuring a safe, drug free workplace. To achieve that goal, the Union hereby agrees to adhere to the drug/alcohol testing policy in place at the ratification of this Agreement (Chapter 300.16 of the Employee Manual – which

the City may change from time to time) or that is developed thereafter consistent with the CDL regulations and the Ohio Bureau Workers Compensation guidelines that permit the highest discount to the City. If the City determines it is necessary to make major changes to its drug/alcohol testing policy, it will meet with the Union and discuss the planned changes before they are implemented.

ARTICLE 26

BULLETIN BOARDS

Section 26.1 The City will provide 3 bulletin boards, one at the Fleet Maintenance Shop, one at the Mechanics Garage, and one at the Cemetery Maintenance Garage, for use by the Union and bargaining unit Employees. Each bulletin board will be no less than 2 feet by 3 feet in size.

Section 26.2 The Union may post on the board material relating to recreational and social events applicable to Employees; elections or election results; general membership meetings and other related business meetings; and/or general Union business of interest to Employees. All such material must be signed and dated by a Union representative. No posted material shall contain any language or visuals that is: political; critical of the City, any City official, any City employee, or any other person or entity; or comments upon a candidate for public or union office.

Section 26.3 Upon notice of a violation of Section 26.2, the Union immediately shall remove the offending material.

ARTICLE 27

MODIFICATION, SEPARABILITY AND CONFLICT OF LAWS

Section 27.1 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, enlarge, or modify any of its provisions.

If any provision of this Agreement be 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.

The parties agree that this Agreement will be the sole and exclusive recourse available to Employees and the parties hereto.

All sections of this Agreement that are inconsistent with Ohio law are intended to supersede Ohio law, in accordance with Chapter 4117 of the Ohio Revised Code. The parties agree that some sections of the Agreement may specifically identify certain Ohio laws that are superseded and others may not. If a section does not specifically indicate that Ohio law is superseded, that section shall nevertheless be interpreted to supersede Ohio law.

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 30 calendar days of such request for the purpose of renegotiating said Article or Section by good faith negotiations up to and through the impasse procedure as provided under Ohio Revised Code § 4117.

ARTICLE 28

SENIORITY

Section 28.1 **Definition:** Seniority shall be defined as the length of continuous service measured in years, months, and days that an Employee has accumulated as an Employee in the service of the City of Lebanon from his most recent date of hire.

Section 28.2 **Accrual:** An Employee's seniority shall commence after the completion of the probationary period and shall be retroactive to the first day the Employee reported for work as an Employee.

Section 28.3 **Loss of Seniority:** An Employee's seniority and employment status shall terminate when he:

- A. terminates voluntarily;
- B. is discharged for just cause;
- C. has not worked for a consecutive period in excess of 365 calendar days or in excess of his length of seniority as of his last day worked, whichever is the lesser time period;
- D. fails to report to work at the termination of an authorized leave of absence;

- E. fails to notify the Employer of his intent to return to work on a recall from layoff, within 5 calendar days after the Employer has sent notice to him to return by letter with a copy to the Union to the last address furnished to the Employer by the Employee. It shall be the responsibility of the Employee to advise the Employer of his current address.
- F. is absent for 2 consecutive scheduled work days without a reason acceptable to the Employer and without notifying the Employer of that reason within that two work day time period unless the failure to so notify the Employer within that period is due solely to unusual circumstances that the Employer concludes is beyond the Employee's control;
- G. retires;
- H. has been laid off for a period in excess of 730 calendar days without being recalled.

Section 28.4 **Application:** Seniority will be applied to those benefits (vacation and longevity pay) where seniority is a factor.

Section 28.5 The City will provide the Union with 2 copies of a seniority list within 30 calendar days after the effective date of this Agreement. That list will include the Employee's name, job classification, and last date of hire with the City. The City also will provide the Union with a current seniority list on the first work day of each applicable year of this Agreement.

ARTICLE 29

SAFETY

Section 29.1 The City will strive to provide safe working conditions, tools, equipment, and work methods for Employees.

Section 29.2 The City and the Union will work together to see that all safety rules are obeyed and safe working methods are utilized by all Employees. It is the Employees' duty to obey all safety rules and utilize safe methods as directed by the City. Violation of safety rules and failure to utilize safe methods will be considered the same as a violation of any other Division rule under Article 9, Discipline.

Section 29.3 If an Employee feels the equipment assigned for his use is not suitable for use, the Employee shall immediately report it to his supervisor for a determination by supervisor of whether or not it should be used.

- Section 29.4 All Employees shall immediately report unsafe or defective equipment to the Department Director, in writing, and the Employee shall receive a copy of this report for his records.
- Section 29.5 All Employees are responsible, at the end of any given workday, for cleaning equipment used.
- Section 29.6 The City, in its sole discretion, may provide safety training for all Employees on an annual basis.
- Section 29.7 Quarterly, or on a more frequent basis as determined by the Department Director, the Public Works Division will conduct a 30 minute meeting (at a date/time determined by the City) to discuss general or safety topics.

ARTICLE 30

LAYOFF AND RECALL

- Section 30.1 The Employer, in its sole discretion, may lay off Employees in the bargaining unit. The City will lay off probationary Employees, regular part-time Employees, and/or intermittent full-time Bargaining Unit Employees before full-time employees are laid off. If the Employer determines it is necessary to lay off and/or reduce the number of hours of work of one or more full-time Employees in a particular job classification, then the Employer shall lay off and/or reduce the number of hours of work of the Employees in that job classification by seniority (as defined in Article 28, seniority). Seniority, as defined in Article 28, shall be used to determine which Employee(s) in that job classification shall be laid off and/or have his hours of work reduced. For layoffs initially determined to last more than 7 calendar days, it will notify the affected Employee(s) no less than 14 calendar days in advance of the effective date of the layoff. Otherwise, it will give as much notice as it determines is practicable. The City will notify the Union, in writing, of the reason(s) for the layoff no later than 14 calendar days prior to the effective date of the layoff.
- Section 30.2 Employees who are laid off shall be placed on a recall list for a period of 730 calendar days. If there is a recall, Employees who still are on the recall list shall be recalled, in the inverse order of their layoff provided they are presently qualified to perform the work in the classification to which they are recalled. Any recalled Employee requiring additional training to meet new position qualifications in existence at the time of recall must satisfactorily complete the additional training requirements within 365 calendar days of the recall.
- Section 30.3 Notice of recall shall be sent to the Employee by certified mail or hand delivered to the Employee's last known residence. 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 in writing by the Employee.

Section 30.4 The recalled Employee shall have 5 calendar days following the date of receipt or attempted delivery of the recall notice to notify the Employer of his intention to return to work and shall have 14 calendar days following the receipt or attempted delivery of the recall notice in which to report for duty, unless a different date for returning to work is otherwise specified in the notice.

Section 30.5 An Employee who is laid off in excess of 365 calendar days shall be paid for all accrued but unused vacation leave or any other accrued and applicable paid leave that legally would be payable upon termination.

ARTICLE 31

WAIVER IN CASE OF EMERGENCY

Section 31.1 In cases of emergency declared by the President of the United States, the Governor of the State of Ohio, the Warren County Sheriff, the City Manager of the City of Lebanon, or the federal or Ohio Legislature, such as acts of God or civil disorder, 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 agreements and practices relating to the assignment of Employees.

Upon the termination of the emergency, and should valid grievances exist, they 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 32

TUITION REIMBURSEMENT

Section 32.1 Full-time employees who have completed their Probationary Period are eligible to participate in the City's Tuition Reimbursement Program (Chapter 400.9 of the Employee Manual) which the City may change from time to time or discontinue.

ARTICLE 33

CERTIFICATIONS AND LICENSES

Section 33.1 Upon presentation of an applicable invoice, the Employer will pay the pesticide certification, re-certification, and license renewal for Employees who are required to maintain those certifications/licenses as part of their job.

Section 33.2 Upon receipt of proof of payment, the Employer will reimburse the cost of a Commercial Drivers License ("CDL"), and any renewals, for those Employees who are required to maintain a valid CDL -- provided they are actively employed by the City when they present proof of payment to the Employer.

Section 33.3 Any Employee must maintain all certifications and licenses that he held when he was hired or that he obtained during his City employment. An Employee who fails to maintain such certifications and licenses will be subject to discipline, up to and including termination.

ARTICLE 34

MILEAGE

Section 34.1 An Employee required to use his personal vehicle on official City business or to travel from one worksite to another will be reimbursed for mileage equal to the then current I.R.S. rate for business mileage. An Employee shall not receive mileage reimbursement for driving from home to the initial worksite (or base work area) and from the final worksite (or base work area) to home.

ARTICLE 35

JOB DESCRIPTIONS

Section 35.1 Within 30 calendar days after the effective date of this Agreement, the City will provide the Union with copies of job descriptions (which the City may change from time to time) for all classifications in the bargaining unit.

Section 35.2 If the City, in its sole discretion, revises a written job description(s), it will provide the Union, as well as the affected Employee(s), with a copy of revised job description, no later than 7 calendar days before it/they became effective.

ARTICLE 36

NEW CLASSIFICATION

Section 36.1 If the City, in its sole discretion, decides to create a new classification that may be included in the certified bargaining unit ("Unit"), then it will notify the Union to determine whether that new classification should be included in the Unit. Any dispute as to whether the new classification should or should not be included in the Unit will be addressed through SERB -- as provided under Ohio Revised Code §4117. If the new classification is included in the Unit, then the City will negotiate with the Union about the applicable pay rate for that new classification. If no agreement is reached over the applicable pay rate, then the parties will utilize the applicable impasse procedure as provided under Ohio Revised Code §4117.

ARTICLE 37

YMCA

Section 37.1 All full-time Employees will receive the same discount (if any) offered by the YMCA to the City's Classified, Non-Exempt, employees.

ARTICLE 38

DEFERRED COMPENSATION PROGRAM

Section 38.1 All full-time Employees may elect to participate in the Deferred Compensation Program pursuant to the terms of that program which may be changed by the City from time to time or discontinued.

ARTICLE 39

OHIO PUBLIC EMPLOYEE RETIREMENT SYSTEM

Section 39.1 All City Employees, except for those specifically exempted by statute, are required to participate in the Ohio Employees Retirement System ("OPERS").

ARTICLE 40

DIRECT DEPOSIT

Section 40.1 Direct deposit of Employee paychecks is available and can be coordinated through the payroll/personnel department.

ARTICLE 41

COMPUTING TIME

Section 41.1 In computing any period of time prescribed by this Agreement, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. If the last day of a designated period ends on a Saturday, Sunday, or recognized City holiday, then the designated period shall extend to the next calendar day which is not a Saturday, Sunday, or recognized City holiday.

ARTICLE 42

DURATION

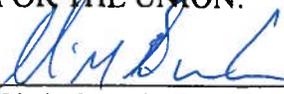
Section 42.1 This Agreement shall be effective as of midnight on the 1st day of January 1, 2012 and shall remain in full force and effect until midnight on the December 31, 2014.

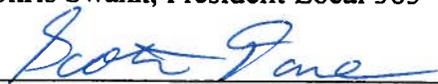
Section 42.2 If either party desires to modify or amend this Agreement, it shall give written notice of such intent no later than 90 calendar days prior to the expiration date of this Agreement. Such notice shall be via certified mail with return receipt requested or a date and time stamped letter of intent.

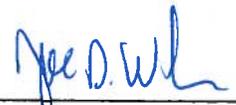
Section 42.3 The parties acknowledge that during the negotiations, which resulted in this Agreement, each had the unlimited right to make demands and proposals on any subject matter not removed by law from the area of collective bargaining. In addition that the entire understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The provisions of this Agreement supersede any prior agreement and constitute the entire Agreement between the Employer and Union and all prior agreements, either oral or written are hereby canceled.

IN WITNESS WHEREOF, the City and the Union have duly executed this Agreement on the dates set forth below.

FOR THE UNION:


Chris Swank, President Local 363


Scott Dane, Negotiating Committee


Joe D. Wilson, Staff Representative

4-16-12
Date

FOR THE CITY OF LEBANON:


George P. Clements, City Manager

4-12-12
Date

Approved as to form:


Mark Yurick, Counsel for the City

4-16-12
Date

