

# **AGREEMENT**

between

**THE CITY OF LACKAWANNA**

and

**THE LACKAWANNA PROFESSIONAL  
FIRE FIGHTERS ASSOCIATION  
LOCAL 3166, I.A.F.F., AFL-CIO**

**AUGUST 1, 2017 through JULY 31, 2025**

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## AGREEMENT

This Agreement, made this 5th day of January, 2022, by and between the Mayor of the CITY OF LACKAWANNA, on behalf of the CITY OF LACKAWANNA (hereinafter referred to as the "City" or "Council"), and the LACKAWANNA PROFESSIONAL FIRE FIGHTERS ASSOCIATION LOCAL 3166, I.A.F.F., AFL-CIO, (hereinafter referred to as the "Association").

WHEREAS, it is the intent and purpose of the parties to set forth the basic agreement covering wages and terms and conditions of employment to be observed between the parties hereto.

The parties agree that all negotiable items have been discussed during the negotiations leading to this Agreement and therefore that negotiations will not be opened on any item whether contained herein or not until a new contract is to be negotiated.

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF THE LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFORE, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN ITS APPROVAL.

NOW, THEREFORE, it is mutually agreed as follows:

### ARTICLE I Recognition

- Section 1.** The City recognizes the Association as the exclusive bargaining agent for all members of the Lackawanna Fire Department in the titles of Fire Fighter, Lieutenant, and Captain.
- Section 2.** The City will deduct from all members of the Association, who have filed dues deduction authorizations with the City, a dues deduction amount to be established by the Association. The Association shall communicate to the City in writing the amount and changes to the amount of said dues deducted.
- Section 3.** The City will deduct from all members of the bargaining unit, who are not members of the Association, an agency fee equivalent to Association dues. Such agency fee deduction shall commence within thirty (30) days from the date of hire into the bargaining unit.
- Section 4.** The Association shall indemnify and save the City harmless against any and all claims, demands, suits, or other forms of liability that may arise by reason of action taken or not taken by the City for the purpose of complying with any of the provisions of this section.

**ARTICLE II**  
**Duration of the Contract**

The provisions of this Agreement shall be effective as of the first day of August, 2017 and shall continue in full force until the 31<sup>st</sup> day of July, 2025. If an Agreement on a new contract is not reached by the 31<sup>st</sup> day of July, 2025, the terms and conditions of this contract shall remain in full force and effect until such Agreement is reached.

On or before February 1, 2025, either party may submit a request to reopen this Agreement.

**ARTICLE III**  
**Compensation**

**Section 1.** All Fire Fighters, Captains, and Lieutenants in the bargaining unit will receive salaries as listed below:

<u>Fire Fighter</u>	<u>8/1/2017</u> <u>2.5%</u> Lump Sum <sup>^</sup>	<u>8/1/2018</u> <u>2.5%</u>	<u>8/1/2019</u> <u>2.5%</u>	<u>8/1/2020</u> <u>3.0%</u>
1 <sup>st</sup> Step	\$50,025.30	\$51,275.93	\$52,557.83	\$54,134.57
2 <sup>nd</sup> Step	\$52,971.41	\$54,295.70	\$55,653.09	\$57,322.68
3 <sup>rd</sup> Step	\$55,920.69	\$57,318.71	\$58,751.67	\$60,514.23
4 <sup>th</sup> Step	\$63,328.69	\$64,911.91	\$66,534.70	\$68,530.75
Lieutenant	\$69,661.54	\$71,403.08	\$73,188.16	\$75,383.80
Captain	\$76,627.70	\$78,543.39	\$80,506.98	\$82,922.19

<u>Fire Fighter</u>	<u>8/1/2021</u> <u>3.0%</u>	<u>8/1/2022</u> <u>3.5%</u>	<u>8/1/2023</u> <u>3.5%</u>	<u>8/1/2024</u> <u>3.5%</u>
New hire step*	\$41,000.00	\$41,000.00	\$41,000.00	\$41,000.00
1 <sup>st</sup> Step	\$55,758.60	\$57,710.15	\$59,730.01	\$61,820.56
2 <sup>nd</sup> Step	\$59,042.36	\$61,108.84	\$63,247.65	\$65,461.32
3 <sup>rd</sup> Step	\$62,329.65	\$64,511.19	\$66,769.08	\$69,106.00
4 <sup>th</sup> Step	\$70,586.67	\$73,057.20	\$75,614.20	\$78,260.70
Lieutenant	\$77,645.31	\$80,362.90	\$83,175.60	\$86,086.75
Captain	\$85,409.85	\$88,399.20	\$91,493.17	\$94,695.43

- A. <sup>^</sup> For the period from August 1, 2017 to July 31, 2018, each firefighter employed shall receive a one-time payment equal to 2.5% of their gross wages for that period.
- B. Effective August 1, 2018- an increase of 2.5%
- C. Effective August 1, 2019- an increase of 2.5%
- D. Effective August 1, 2020- an increase of 3.0%
- E. Effective August 1, 2021- an increase of 3.0%
- F. Effective August 1, 2022- an increase of 3.5%

- G. Effective August 1, 2023- an increase of 3.5%
- H. Effective August 1, 2024- an increase of 3.5%

Retroactive salary increases will apply to firefighters who have left employment on or after August 1, 2017.

\* Firefighters hired after January 5<sup>th</sup> 2022 will start at new hire step (\$41,000) and proceed to:

- Step 1- upon completion of New York State Fire Academy
- Step 2- one (1) year after completion of New York State Fire Academy
- Step 3- two (2) years after completion of New York State Fire Academy
- Step 4- three (3) years after completion of New York State Fire Academy

All firefighters hired prior to January 5<sup>th</sup> 2022 will follow Section 3 below for anniversary dates and proceed to steps as follows:

- Step 1- initial hire step
- Step 2- 1<sup>st</sup> anniversary
- Step 3- 2<sup>nd</sup> anniversary
- Step 4- 3<sup>rd</sup> anniversary

**Section 2.** In any case, when a member of the Association is temporarily required to serve regularly in and accept the responsibility for the work in a higher class of position (acting officer), such member shall receive the rate of pay for the higher class, biannually-in June and December.

**Section 3.** For the purpose of salary schedules, it is agreed that anniversary dates for all members of the Association shall be in accordance with the following schedule:

- A. If a member's date of employment falls between the dates January 1 through March 31, his anniversary date shall be January 1.
- B. If a member's date of employment falls between the dates April 1 through June 30, his anniversary date shall be April 1.
- C. If a member's date of employment falls between the dates July 1 through September 30, his anniversary date of service shall be July 1.
- D. If a member's date of employment falls between the dates October 1 through December 31, his anniversary date shall be October 1.
- E. For members hired after January 5<sup>th</sup> 2022, "date of employment" for the purpose of section 3 shall mean "date of graduation" from NYS Fire Academy.

**Section 4.** The Parties agree that in all years which have twenty-seven (27) payroll periods, the City will pay all retiring employees an adjustment so that they will receive pro-rated benefits based on a twenty-six (26) payroll period.

**ARTICLE IV**  
**Longevity**

**Section 1.** Effective 8/1/2019, all members of the Association shall be granted the following non-accumulated longevity increment:

**Longevity Schedule**

• After 5 years of service . . . . .	\$400
• After 6 years of service . . . . .	\$500
• Additional increments of \$75 per year of service to 20 years	\$1,550
• After 25 years of service . . . . .	\$2,250

**Section 2.** Longevity payments shall be spread proportionately over the pay periods in any given year. For the purpose of this section, "service" shall mean any service as a full-time employee of this bargaining unit.

**ARTICLE V**  
**Uniform and Equipment Allowance**

**Section 1.** The City agrees to provide all Fire Department personnel covered in this Agreement the sum of five hundred dollars (\$500) per year to provide and maintain their uniforms (work uniforms). The five hundred dollars (\$500) shall be paid in a lump sum in the first payroll period in December to all active employees [on duty within prior twelve (12) month period].

**Section 2.** The City agrees to furnish and replace, when necessary, all turn-out gear of Fire Department personnel covered by this Agreement, including coat, boots, hood, bunker pants, helmet, suspenders, and water/fireproof gloves, all of which shall be OSHA approved.

**Section 3.** The City will repair or replace damaged, worn or outdated turn-out gear which is listed above.

**Section 4.** At the time of separation from the City, whether through Retirement, Disability, Termination, or Resignation, the employee must return to the City, all equipment issued (turn out gear, SCBA face piece, firehouse keys, and any other City owned property) with the exception of: duty uniform shirts and pants, fire boots, fire helmet, and badges. If used equipment is to be re-issued, the equipment must be reconditioned, commercially cleaned and sanitized. Failure to return said property upon separation will result in funds being held from Employee to cover the cost of replacement.

**Section 5.** Employees shall be reimbursed for the cost of repair or replacement of personal property damaged, lost, or destroyed in the course of employment.

## ARTICLE VI Death Benefits

**Section 1.** The trust fund currently in effect for the benefit of and payable to the families of members killed in the line of duty shall remain in effect and shall be payable as follows:

Fifteen thousand dollars (\$15,000) to the surviving spouse or designated beneficiary and ten thousand dollars (\$10,000) to each surviving child provided, however, that the maximum amount payable shall be thirty-five thousand dollars (\$35,000). In the event a member leaves a surviving spouse and more than three (3) children, the surviving spouse shall receive fifteen thousand dollars (\$15,000) and surviving children shall receive twenty thousand dollars (\$20,000) to be divided in equal shares.

**Section 2.** Employees who are disabled and retire pursuant to Section 207(a) of the General Municipal Law, shall be permitted to retain their Death Benefits Coverage, as noted in Section 1 above, during their life and through retirement; i.e., Death Benefit Coverage shall not terminate upon their retirement from the Lackawanna Fire Department. Survivors of an employee covered under this section will receive such Death Benefits only if the employee's death was a direct result of his service connected disability.

**Section 3.** A guaranteed death benefit from the State of New York known as 360(b) will be provided by the City.

## ARTICLE VII Work Week

**Section 1.** The standard work week shall be forty (40) hours.

**Section 2.** The City shall accord members of the Association the right to substitute (trade) work shifts or any part thereof as long as the position is filled by another qualified City Fire Fighter.

A work shift (day) shall be defined as one (1) eight (8) hour tour of duty.

Any substitution (trade) which encompasses less than one (1) hour at the beginning or end of each shift shall be defined as an early relief.

It will be the responsibility of the Platoon Officer on duty to maintain full and complete records of happenings and platoon assignment changes during his time of duty. Any change (trade) cannot result in a monetary cost to the City.

When a Fire Fighter comes in to relieve another for a personal reason, that entry shall be made in the daily logbook by the Platoon Officer or man on watch. When a substitution (trade) for any other than personal reasons is made it shall be with prior knowledge of the officer in charge and it shall be recorded on the time sheet and in the daily logbook at each respective fire station by the Platoon Officer or the man on watch. In all instances of a mutual exchange, it shall be authorized through the officer in charge.

Each Fire Fighter shall assume the full responsibility of seeing that the total number of hours worked shall constitute a full year (2080 hours of regularly scheduled work) of service to the City. It is recognized that a slight adjustment may be necessary at the end of the year. Therefore, it is agreed that the make-up time for these hours must be completed by December 31<sup>st</sup> of that year. At the end of December 31<sup>st</sup>, a Fire Fighter shall be no more than 3 hours away from their full year of service (2080 hours of regularly scheduled work).

Members will be provided quarterly reports of their accrued time and plus/minus hours with the final report given the first week of December.

If a member is four (4) or more hours in arrears at the end of December 31<sup>st</sup>, the member's accrued time will be used to make up any shortfall in the full year of service (2080 hours of regularly scheduled work). Personal time will be used to make up a 4 hour deficit. Vacation days, Kelly days, Holiday days, and Sick leave will be used in that order to make up any deficit of more than 8 hours.

**Section 3.** If the City contemplates changing the present twenty-four (24) hour work shift, it agrees one hundred and twenty (120) days prior to making such a change to establish a committee composed of one (1) member appointed by the Association, the Mayor or his/her representative, the Fire Chief, and one (1) member of the City Council or its representative [a four (4) member committee]. The purpose of this committee is to investigate and study the feasibility of such change, and submit a report(s) to the Mayor, City Council and the Association, for approval by all parties at least thirty (30) days prior to the proposed implementation of such a change. These thirty (30) days are part of and included in the one hundred twenty (120) day period.

**Section 4.** The City agrees to allow Fire Fighters the option, at the beginning of each year (January), of choosing to take their Kelly Days as time off or in money. Once that decision is made it cannot be changed until the following year. Those who choose to take the days in money will receive this pay at straight time at the rate in which said time was earned in one (1) check during the first pay period in December of any given year. Those who choose to take Kelly days as time off, must use all allotted Kelly days in that calendar year. These days will not be carried into the next calendar year.

## ARTICLE VIII Holidays

All employees shall be given fifteen (15) full-day holidays regardless of their work schedule. Holidays will be in recognition of (although not necessarily scheduled in relation to) the following holidays:

New Year's Day  
Martin Luther King's Birthday  
Lincoln's Birthday  
Washington's Birthday  
Good Friday  
Memorial Day  
Independence Day  
Labor Day

Columbus Day  
Election Day  
Veterans Day  
Thanksgiving Day  
Christmas Eve  
Christmas Day  
New Year's Eve

**Section 1.** In the year of retirement, a retiree shall be entitled to 1.25 holidays for each full month of service that year; holiday pay for retirees shall be pro-rated and paid accordingly for any month with less than full service. The City will not pay the retiree for any accumulated Holiday days earned in previous years of employment. The City agrees to allow Firefighters the option, at the beginning of each year (January), of choosing to take their holidays as time off or in money. Once that decision is made it cannot be changed until the following year. Those who choose to take the days in money will receive payment at straight time at the rate in which said time was earned in one (1) check during the first pay period in December of any given year. Those who choose to take Holiday days as time off, can carry any unused Holiday Time into the next calendar year.

**ARTICLE IX  
Vacation Eligibility and Allowance**

**Section 1.** For the purpose of computing the employee's vacation allowance all time in the employ of the City is to be computed. The vacation schedule shall be:

After	1 year:	2 weeks
	5 years:	3 weeks
	10 years:	5 weeks
	18 years:	6 weeks

A vacation week shall be defined as forty (40) hours.

**Section 2.** In the event of postponement of a regularly scheduled vacation due to illness requiring hospitalization of an employee including out-patient treatment that prevents the member from performing his normal duties as a Fire Fighter, such employee shall be entitled to his regularly scheduled vacation period upon recovery from such illness.

**Section 3.** Blank vacation schedules shall be distributed in November of each year and finalized by January 1st.

**Section 4.** Two (2) members shall be permitted time off during the year. The total of two (2) men off could consist of two (2) men on vacation or any combination of accrued earned time.

**Section 5.** If four (4) or more members are retiring during the first sixty (60) days of any given year, the City has the option to schedule only one (1) member off during these sixty (60) days.

**Section 6.** A member shall be entitled to be paid in cash, at the time of his retirement from the City's service pursuant to the Civil Service Law of the State of New York or New York State Retirement System, for the monetary value of such unused vacation time standing to the credit of such member at the time of retirement. In the case of death in service of any member, such payment shall be paid to his beneficiaries.

**Section 7.** The City agrees to allow firefighters the option at the beginning of the year (January), of choosing to take all or a portion of vacation time in time or in money. Once that decision is made it cannot be changed until the following year. Those who choose to take any days in money will receive pay for those days at straight time at the rate in which said time was earned

in one (1) check during the first pay period in December. Those who choose to take Vacation days as time off, must use all allotted Vacation days in that calendar year. These days will not be carried into the next calendar year.

## **ARTICLE X**

### **Sick Leave**

**Section 1.** All employees shall be entitled to sick leave with pay for personal illness/disability or illness/disability of the immediate family. Immediate family shall be defined pursuant to Article XII, Section 1. Sick leave credit shall accrue at the rate of one and one-half (1 and 1/2) days per month.

The sick leave herein provided for shall be cumulative, which is hereby construed to mean the accumulation of all unused sick leave which a member shall have to his credit as of the effective date of this contract. Every employee shall be allowed to accumulate up to a maximum of two hundred and fifty-eight (258) sick days. No employee, however, shall be entitled to carry over more than two hundred and forty (240) sick days leave into the next calendar year. No covered employee, however, shall be entitled to use more than two hundred and forty (240) sick days leave with pay in any one (1) year of service.

**Section 2.** The City shall provide each employee, once in every year on February 1st, with a written statement of the sick time accumulated by the employee.

**Section 3.** Members absent from work on legal holidays during sick leave, vacation or disability arising from injuries sustained in the course of their employment, for all authorized leaves of absence and for authorized leaves without pay for not over twenty-four (24) days in any one (1) calendar year, shall continue to accumulate sick leave at the regularly prescribed rate during such absence as though they were on duty subject to the maximum limitation herein provided.

**Section 4.** If an employee is injured in a work related accident (Workers' Compensation), said employee will not accrue additional sick days during such absence.

**Section 5.** Each employee having not less than ten (10) years of service with the Department shall be entitled to sick leave at one-half (1/2) pay for personal illnesses after all of his sick leave has been used; provided, however, the total of all sick leave at half-pay (1/2) shall not exceed one (1) pay period for each completed year of service with the Department.

#### **Section 6. Sick Leave Policy**

- A. After six (6) undocumented (no doctor's slip) sick leave days [eight (8) hour shifts] due to member or family sick, the employee's pay will be reduced at the rate of one (1) day's pay [eight (8) hours] for each undocumented day used.
- B. This provision shall be in effect from January 1st until December 31st of each year.
- C. No verbal or written warning will be required before enforcement of this policy.

- D. An employee's seniority shall not be affected by the enforcement of this policy.
- E. An employee may provide documentation from his personal physician or the designated City physician at no out-of-pocket expense, after utilizing the provision of his health care contract (co-pay provision).
- F. Documentation shall be submitted to the Fire Chief's office within five (5) business days of the return to duty of the employee. The day of return to duty will be excluded from this five (5) business day calculation.
- G. The loss of a day's pay under the provisions of this policy shall not require the loss of a sick day from the employee's sick leave accumulation.

**Section 7.** After one (1) full shift (24 hours) of continuous sick leave, the employee may be visited by an officer designated by the Department for the purpose of verifying the illness, and/or the Chief may request verification after twenty-four (24) hours of sick leave. Where there are indications of sick leave abuse, such sick leave absence may be subject to sick verification from the first day of absence.

**Section 8.** When an Association member is fully vested under the current retirement plan and becomes disabled, the City will make every effort to determine, from the employee, in writing, if his intent is to return to active duty. If the employee chooses not to return to duty, and if the City feels a need exists to fill the vacancy, the City will be free to hire for that vacancy.

## **ARTICLE XI Personal Leave**

Employees shall be entitled to thirty-two (32) hours of personal leave each year. Personal leave may be taken in either four (4) or eight (8) hour increments. Four (4) hour increments must be used in the first or second half of each eight (8) hour shift. (e.g. 0800-1200, 1200-1600), Employees may use personal time at their discretion without the need for documentation or available openings on the schedule. If unused in the calendar year, such days shall be converted to sick leave accumulation.

## **ARTICLE XII Bereavement**

**Section 1.** An employee who has a death in the immediate family (parent, wife, child, grandchild, brother, sister, grandparent, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-parents, and step-children) shall be entitled to time off from the time of notification of death until the working day next following the funeral, provided, however, if the funeral is held on a day that the member is scheduled to work, he shall not be required to report for duty during that twenty-four (24) hour period.

**Section 2.** An employee who has a death of his aunt or uncle shall be entitled to one (1) tour day off [to a maximum of eight (8) hours] for each such death, to attend funeral services.

**Section 3.** In the event a member must utilize bereavement leave while he is on vacation, he shall not lose vacation time for the number of days he uses bereavement leave.

**ARTICLE XIII**  
**Association Business**

The Association shall be entitled to time off with pay for the purpose of Association business in attending conferences, workshops, etc. A maximum of eight (8) days leave shall be provided for such meetings. Requests to attend such conferences, workshops, etc., must be submitted in advance and approved by the Fire Chief. Such approval will not be unreasonably withheld.

**ARTICLE XIV**  
**New Appointments**

**Section 1. Firefighter Gear and Training**

A. The City will equip each newly appointed Fire Fighter with the following turn-out gear: helmet, boots, hood, bunker pants and coat, suspenders, SCBA facepiece two (2) pairs of water/fire proof gloves, and spanner all of which are properly fitted and OSHA approved, before assignment to a duty platoon. Three (3) sets of permanent press work uniforms shall also be included in this distribution.

B. The City shall train newly appointed employees in accordance with a New York State Certified Fire Fighters Training Program. The City shall provide newly appointed employees paid time off for and cover all costs, including but not limited to tuition, required books, text, materials, and travel expenses, associated with attending such New York State Certified Fire Fighter Training Program.

**Section 2.** New appointments will be required to purchase a complete dress uniform, at their own expense, within one (1) month of the completion of the New York State Fire Fighter's certification program. Uniform specifications are provided in the Department's policy handbook. A copy of the sales receipt will be sufficient evidence to comply with this requirement.

**ARTICLE XV**  
**Health Insurance**

**Section 1.** Effective as soon as reasonably practicable following ratification of this Agreement, on behalf of each full-time employee bargaining unit employee who is eligible for and elects coverage, the City will contribute for family or single coverage, as applicable, under Blue Cross and Blue Shield of WNY POS 204 or equivalent, and dental insurance through American International Life Insurance Company, or equivalent. Any deductible for hospitalization shall be self-insured by the City up to a maximum of \$500 per year. If the coverage specified in this article is discontinued or modified by the carrier, the Employer's obligation shall be limited to providing the closest substitute coverage commercially available from such carrier.

**Section 2.** Effective August 1, 2003 new employees hired after August 1, 1994, will pay fifteen (15%) percent of the premium of selected coverage.

**Section 3.** The City agrees to pay each employee the full cost of repair or replacement of glasses and/or teeth which are damaged, destroyed or lost in the line of duty.

**Section 4.** If an employee dies in active service his hospitalization shall be continued to be paid by the City for three (3) months after such death.

**Section 5.** Spouse of employees, who died in service, shall be permitted to join the Hospitalization Plan, if such spouse pays the premium subject to the terms of the plan. All spouses shall have sixty (60) days from the date of death to exercise such option. If such spouse remarries, this benefit shall be void. The benefits included in this section shall not conflict with the provisions of the COBRA law; *i.e.*, the employee shall have the better of both plans.

**Section 6.** Parties agree to the implementation of a Section 125 plan.

Employees who are eligible for health insurance and who provide written notice of the desire to opt out of such insurance to the City's Health Care Administrator on or before the 15th day of any month preceding the effective month of the opt out will be entitled to a monthly payment in the amount of \$83.33 for those with single coverage, and \$166.66 for family coverage, as applicable. If seven (7) or more active firefighters opt out of health insurance, the monthly payments will double to \$166.66 for those with single coverage, and \$333.32 for family coverage, as applicable. All such opt out payments will be paid in the month of May, covering the prior 12 months, pro rata for anyone that did not opt out for the entire year. Employees who elect to waive Health Insurance coverage shall be allowed to opt back in during the annual open enrollment period, or at any time given a qualifying life changing event. This increase of payment will be reviewed at the end of the contract date to see if the program will be extended applicable.

## ARTICLE XVI Retirement Benefits

**Section 1.** The City shall continue to cover all employees in the non-contributory retirement plan providing for the following:

- A. Upon retirement, an employee covered by this contract will be granted the following benefit within the limitations indicated:
  1. If an employee has two hundred (200) to two hundred forty (240) days accumulated sick leave, he shall be paid ninety percent (90%) of all such accumulated time.
  2. If an employee has one hundred fifty (150) to one hundred ninety-nine (199) days accumulated sick leave, he shall be paid seventy percent (70%) of all such accumulated time.
  3. If an employee has one hundred (100) to one hundred forty-nine (149) days accumulated sick leave, he shall be paid fifty percent (50%) of all such accumulated time.
  4. If an employee has zero (0) to ninety-nine (99) days accumulated sick leave, he shall be paid twenty-five percent (25%) of all such accumulated time.

5. To be eligible for such payment, the employee must give written notice to the City by April 1st.
- B. Section 384(e) of the Social Security and Retirement Law shall be available to all employees.
- C. The right to purchase up to three (3) years credit for military service during World War II.

If the New York State Retirement Plan is modified to allow purchase of additional credits for military service, the City agrees to pass appropriate legislation enacting such modification. The parties agree this will be done only where there is no cost to the City.

- D. The right to transfer credits within the system for a period of one (1) year.
- E. If an employee dies prior to retirement his estate shall be paid the amount of accumulated sick leave according to the percent as set forth above.

**Section 2.** The City agrees to provide complete medical insurance coverage in the form of HMO's offered to an active employee for all hereafter retiring.

**Section 3.** Retired employees who are eligible for health insurance and who provide written notice of the desire to opt out of such insurance to the City's Health Care Administrator on or before the 15th day of any month preceding the effective month of the opt out will be entitled to a monthly payment in the amount of \$83.33 for those with single coverage, and \$166.66 for family coverage, as applicable. If eight (8) or more combined active/retired firefighters opt out of health insurance, the monthly payments will double to \$166.66 for those with single coverage, and \$333.32 for family coverage, as applicable. All such opt out payments will be paid in the month of May, pro rata for anyone that did not opt out for the entire year. Such retirees who elect to waive Health Insurance coverage shall be allowed to opt back in during the annual open enrollment period, or at any time given a qualifying life changing event. This section will be reviewed at the end of the contract date to see if the program will be extended.

Out of area - City will pay cost of coverage for retirees out of area upon proof of coverage and premium costs, up to a maximum equal to the cost of the most expensive HMO option.

## ARTICLE XVII Overtime

**Section 1.** In the event of an emergency as declared by the Mayor, Director of Public Safety, or the Fire Chief, an employee called to work during such emergency shall be compensated for all overtime worked and paid in accordance with Article XVII, Section 4.

**Section 2.** Any employee recalled to work or scheduled to work outside of his normal work schedule shall be guaranteed a four (4) hour minimum pay. In addition, there shall be no right for the City to make work, except of an emergency nature. Complying with a subpoena to testify in court outside the employee's normal work schedule shall constitute being recalled to work outside of his normal work schedule.

**Section 3.** An employee may apply for Administrative Overtime in the amount of two thousand five hundred dollars (\$2,500) if the employee has nineteen (19) years of service. Such overtime shall be on notice by April 1st of the previous year that the overtime is to be paid. Payment of such overtime shall be included in the employee's bi-weekly paychecks over a twelve (12) month period. Employee's who are involuntarily retired under Section 207 (a) General Municipal Law shall not be entitled to Administrative Overtime.

**Section 4.** When employees are entitled to overtime compensation under the terms of this Agreement, such overtime shall be paid at the rate of one and one-half (1½) times the employee's regular rate of pay, or paid as compensatory time, at one and one-half (1½) hours per one (1) hour of overtime worked. Compensatory time may be accumulated up to 96 hours. Compensatory time must be used in minimum 4 hour blocks. Compensatory time use requires approval of the City and compensatory time must be scheduled in accordance with the limits of total members off specified in Article IX, Section 4.

Employees who are involuntarily retired under Section 207 (a) General Municipal Law shall not be entitled to Administrative Overtime.

#### **ARTICLE XVIII Grievance Procedure**

A grievance is a complaint or dispute by any member or group of members of an alleged violation of any of the terms and conditions of this Agreement between the City and the Association. No alleged grievance shall be entertained and shall be deemed waived unless presented at the first available stage within thirty (30) working days after the aggrieved party knew or should have known of the act and the condition on which the alleged grievance is based. The parties agree that the Fire Chief and the Mayor or his/her designee, shall be vested with all necessary authority to settle the grievance.

**Step 1.** Any member having a grievance will submit it to the Fire Chief directly or through a representative of the Association with the view of settling the matter. The Fire Chief will have five (5) working days to submit an answer to the Grievant with a copy to the President of the Association.

**Step 2.** If the member having a grievance is not satisfied or the grievance is not resolved at Step 1, the grievance may be filed with the Mayor or his/her designee, who shall render his/her decision within five (5) working days, by submitting his/her answer to the Grievant with a copy to the President of the Association.

**Step 3.** In the event such dispute is not then disposed of in twenty-one (21) days, it may be referred by either party to arbitration.

A list of arbitrators and the selection procedure shall be provided by the Public Employment Relations Board.

The arbitrator shall have authority to apply the provisions of this Agreement, but he/she shall not have the authority to amend, modify or delete any of the provisions of said Agreement.

Any grievance that has not been submitted for arbitration within one (1) calendar year shall be considered withdrawn, unless mutually agreed upon, in writing.

The parties shall be bound by the rules and procedures of the Public Employment Relations Board.

The cost for the services of the arbitrator, including expenses, if any, shall be borne equally by the City and the Association. The decision of the arbitrator shall be binding on both parties.

One (1) Association representative and necessary witnesses shall be allowed to attend a grievance arbitration hearing without loss of pay.

## **ARTICLE XIX**

### **Working Conditions**

**Section 1.** No Fire Fighter shall be required to perform other than Fire Fighter's duties in or for any other department or division of the City.

**Section 2.** It is agreed that there shall be assigned a minimum crew of two (2) to the Emergency and Rescue Truck, a minimum crew of three (3) to the Pumper, and a minimum of two (2) to the Aerial Ladder Truck. Anytime a Pumper is in service, a Lieutenant or other Officer shall be assigned to the truck with a minimum of two (2) Fire Fighters.

**Section 3.** As Orders of the Day or Standard Operating Procedure are changed by verbal orders of the Fire Chief or his designee, such orders must be followed up by written confirmation within twenty-four (24) hours of the verbal orders' effective date. In the event that changes are contemplated in City policies, such changes are to be provided to the Union prior to said policies going into effect. In the event said changes constitute mandatory subjects of bargaining under the Taylor Law, such changes shall be negotiated to the extent required under the Taylor Law.

**Section 4.** The Parties agree that employees may be disciplined by the Director of Public Safety or his designee and the employee may appeal such discipline by filing a Demand for Arbitration with P.E.R.B. The arbitrator's decision and award shall be binding and final. This procedure shall be in lieu of and be substituted for all rights and procedures under Sections 75 and 76 of the Civil Service Law.

**Section 5.** Disciplinary Action.

The Fire Chief may discipline a member for just cause subject to the provisions of this agreement. The discipline may exist in the form of a verbal reprimand, written reprimand, suspension of up to 30 days without pay (except where applicable under Section 7 of Article XXVII), or dismissal. This discipline must be based upon the seriousness and circumstances of the offense. Any member who is disciplined in any manner shall be allowed to appeal such discipline or discharge in accordance with the terms of this agreement. However, if the member agrees, in writing, to accept the terms and conditions of the disciplinary action at the time

discipline is imposed then the member and the president of the union shall waive their right to appeal said discipline as provided under section 7.

#### **Section 6. Notice of discipline.**

The City shall promptly notify the member and the president of the union, in writing, of any impending disciplinary actions or investigations. The member will be allowed to discuss the disciplinary action with the president of the union and the City will make an area available for private consultation. The City shall not commence disciplinary action against any member for events which occurred more than 180 calendar days from the date the City became aware or should have been aware of the alleged offense giving rise to the charges unless the action(s) leading to the charges are criminal offenses, and in such case, the city shall have the amount of time set forth under New York State Law. A copy of any disciplinary action taken against any member, which will be entered into the member's personnel file, shall be provided to the member and the president of the union within seventy-two hours of such action being taken. All evidence available at the time that written charges are served shall be provided to the member and the president of the union, unless the disciplinary action is based on a criminal offense. Any evidence acquired by the City after service of the charges shall also be provided to the member and the president of the union within a reasonable time after such information is acquired by the City unless it is a criminal offense.

#### **Section 7. Appeal of Discipline**

Should the member or the president of the union consider the discipline imposed to be improper, excessive, or unjust, either party may file a grievance in accordance with Article XVIII of this agreement. If the grievance of a disciplinary action is not satisfactorily settled pursuant to Article XVIII of this agreement, the member may utilize the arbitration process set forth in XVIII of this agreement. The failure to file a grievance within the proper time frame or the timely appeal to arbitration as set forth in this agreement shall constitute an acceptance of the disciplinary penalty and shall settle the matter with prejudice in its entirety. The cost of the arbitration and payment for the services of the arbitrator, including any and all expenses, shall be equally borne by the City and the union.

#### **Section 8. Authority of Arbitrator**

The authority of the arbitrator shall be limited to determine whether just cause existed to impose discipline and if the proposed penalty was appropriate, and, if not, then impose different discipline. The award of the arbitrator shall be final and binding. Should any party be aggrieved by the determination as provided for in this agreement, application may be made for judicial review, as provided by law. All references to discipline imposed by the City shall be removed from the personnel folder of the member and destroyed if just cause for the discipline is not found by the arbitrator, or after proceedings reversed by a court of competent jurisdiction.

## ARTICLE XX Schooling

**Section 1.** The City may permit members to attend non-required training courses relating to the Fire Fighters' profession. Such members, when attending such meetings, shall be allowed time off from their regularly scheduled duties to attend such courses and shall be compensated for all expenses incurred as the result of attending such courses, including, but not limited to, tuition, required books, text or materials, and travel expenses. The City shall not unreasonably withhold its permission.

**Section 2.** Employees who enter a Fire Protection Technology, Fire Science, or other college course, shall not have such course paid for, including the tuition, books, text and materials and travel expenses.

**Section 3.** In the event more members request to attend non-required training courses than the number the City may authorize, such requests shall be granted in the order of seniority, need, training, and expenses.

The City shall, however, as far as practicable, see that such training is equally distributed among the members.

**Section 4.** For the purpose of this Article, courses relating to the Fire Fighter's profession shall be deemed courses given by Erie Community College, American Red Cross, and any other accredited Fire Fighters' training course.

**Section 5.** All employees who complete an approved Associates Degree in Fire Protection Technology or other Associates Degree in Fire Science shall receive an annual incentive of five hundred dollars (\$500).

**Section 6.** Upon ratification, all employees who are New York State certified Emergency Medical Technicians (EMTs), and who are assigned to the duty platoons, which included Alarm Operators and the Municipal Training Officer, shall be given eighty-six cents (\$.86) per hour, supplemental pay, for all such hours assigned and worked.

All new employees hired after August 1, 1996, as a condition of employment, shall have one (1) year from the completion of their New York State Fire Fighter's Certification Program to become certified as an EMT.

During the first year of employment: (a) employees will be allowed paid time off from regularly scheduled duties to attend a course and take such tests as are necessary to obtain initial certification as an EMT; and (b) the City will reimburse employees for tuition, required books, text, materials, and travel expenses associated with such initial training and certification. Attendance during the employees' scheduled working hours shall constitute compensable hours of work.

**Section 7.** Upon ratification, any member who accepts a promotion to Officer (Lieutenant or Captain) will have one (1) year from the time of promotion to attend and complete training of First-Line Supervisors (FLSTP) pursuant to New York State Department of Homeland Security

and Emergency Services Title 19 Chapter XII Part 437 (19 NYCRR Part 437). If FLSTP classes are unavailable within the one (1) year period, then the Officer must attend the next available class. In the event of extenuating circumstances, the Fire Chief shall have the authority to extend this requirement. Every member must make a good faith effort to register for training upon being promoted.

**Section 8.** Any member filling the position of Municipal Training Officer (MTO) must meet the minimum requirements for the MTO position pursuant to New York State Department of Homeland Security and Emergency Services Title 19 Chapter XII Part 427 (19 NYCRR Part 427). Specifically, 19 NYCRR Part 427.4 within one (1) year of accepting the MTO position. In the event of extenuating circumstances, the Fire Chief shall have the authority to extend this requirement. Every member must make a good faith effort to schedule and attend training once accepting the Municipal Training Officer position.

**Section 9.** Any member filling the position of Fire Inspector must meet the minimum requirements for a New York State Code Enforcement Officer pursuant to the Department of State, Division of Buildings Standards and Codes, Title 19 NYCRR Part 1208 within one (1) year of accepting the Fire Inspector position. In the event of extenuating circumstances, the Fire Chief shall have the authority to extend this requirement. Every member must make a good faith effort to schedule and attend training upon acceptance of the Fire Inspector position.

## ARTICLE XXI Vacancies, Promotions, Call-In's

**Section 1.** If the City determines that a permanent vacancy is to be filled, that position should be posted in all fire houses, listing the specific duty platoon, for a period of at least twenty (20) days. The City may temporarily assign an employee unrestricted, for a thirty (30) day period. Thereafter, the most senior qualified employee applying for that duty platoon will be given the opportunity to fill that vacancy in the same classification. If no one applies, the City will assign the qualified employee with the lowest seniority in that permanent classification with an exception for the Alarm Room.

**Section 2.** Filling of permanent vacancies:

- A. All permanent vacancies that occurred during the year shall be posted for first round bidding by the first day of October for twenty (20) calendar days.
- B. Awards will be posted the twenty-fifth (25th) day of October and second round bidding will commence on the first (1st) of November and shall be posted until the tenth (10th) of November.
- C. Second round awards will be posted by the fifteenth (15th) of November.
- D. Bidding will include all Fire Fighter positions [including at least three (3) alarm room positions], one (1) Fire Inspector position, eight (8) Lieutenant and five (5) Captain positions.

- E. All employees hired between November 6, 2013 and January 5<sup>th</sup>, 2022 shall be residents of the City of Lackawanna and shall remain residents for the lesser of 1.) throughout their employment with the City of Lackawanna or 2.) for twelve (12) years; provided, however, that such residency shall not be required, for any purpose (including promotion) of employees hired before November 6, 2013.
- F. All employees hired after January 5<sup>th</sup> 2022 shall be a resident of the City of Lackawanna and shall remain a resident throughout their employment with the City of Lackawanna.

### Section 3. Seniority in Duty Platoon.

Permanent members of duty platoon will be allowed to bid off/on assignments, only if there is a qualified but less senior person available to fill such assignment within the same classification.

To bid off, an assignment must be within their job classification, on their duty platoon and assigned to their fire station. A Fire Fighter regularly assigned to a particular position may be held in that position up to a period of six (6) months prior to reassignment. A Fire Fighter assigned to a particular position shall retain that position for a period of at least six (6) months.

A Fire Fighter assigned to a duty platoon or Alarm Office must have successfully completed the Red Cross Adult and Pediatric First Aid/CPR/AED course.

### Section 4. Acting/Temporary Promotions.

All non-permanent promotions shall be of two (2) types - acting or temporary.

- A. Acting promotions shall apply to replacing of officers for days off, vacation, sick leave, and Section 207(a) disabilities. If the sick leave or Section 207(a) disabilities last longer than sixty (60) calendar days, the promotion shall be filled by a temporary promotion as noted in paragraph B, herein. The senior officer (time in title) is entitled to the promotion on a platoon-wide basis. Where a Civil Service list exists, the senior officer/fire fighter (time in title) who is on the Civil Service list is entitled to the promotion on a platoon-wide basis. Ranking on the list is not relative to the appointment.
- B. Temporary promotions apply to replacing of officers for leave of absences, officers temporarily re-assigned from the platoon, no permanent officers assigned to the platoon, sick leave over sixty (60) calendar days, or Section 207(a) disabilities over sixty (60) calendar days. Senior officer (time in title) is entitled to the promotions on a department-wide basis. Where a Civil Service list exists the Senior officer (time in title) is entitled to the promotion on a department-wide basis. Appropriate Civil Service rules and law shall apply where applicable.

**Section 5.** The City agrees to distribute call-in opportunities in an equitable fashion among all members. A record of opportunities will be maintained and reviewed on a regular basis.

**Section 6.** Any "call-in" overtime shall be compensated at the rate of one and one-half (1½) times the employee's regular rate of pay, or, at the discretion of the employee, may be taken as compensatory time in accordance with Article XVII, Section 4 of this Agreement.

**Section 7.** The City shall have the right to subcontract alarm room duties (which the parties understand to include duties typically performed by an employee while assigned to work in the alarm room and not other regular EMT or firefighting duties) to another governmental entity upon notice to and discussion with the union. In the event that, within fifteen (15) calendar days of its receipt of notice of such a proposed subcontract, the Union delivers to the Mayor a written demand for impact negotiations, the discussions shall include negotiations over the impact of the City's decision to subcontract such duties, and the City shall not implement such decision to subcontract until the conclusion of such impact negotiations, whether by written agreement or arbitration award, or otherwise. If the parties have not reached an agreement on impact within thirty (30) calendar days of such a demand to negotiate, the parties agree to cooperate in the quick selection of a neutral interest arbitrator, without the need to file for impasse with PERB or to employ the services of a mediator. If the parties have not agreed upon a neutral interest arbitrator within forty (40) calendar days of the demand to negotiate, either party may designate Robert Rabin as the neutral interest arbitrator, or if he is unavailable to conduct a hearing within thirty (30) calendar days, Howard Foster, or if he is unavailable to conduct a hearing within thirty (30) calendar days, a neutral arbitrator selected from a list of arbitrators provided, upon demand by either party, by PERB in accordance with Part 207 of its Rules of Procedure. The arbitrator must hold a hearing within thirty (30) days of his appointment and render a decision within thirty (30) calendar days of closing of the hearing. The arbitrator shall render an award based on the criteria that would be considered by a PERB-appointed neutral arbitrator for resolution of such an impasse in negotiations pertaining to the impact of subcontracting such alarm room work. The arbitrator's decisions shall be final and binding and the cost of the arbitrator shall be shared equally by both the City and the Union.

Nothing contained in this section shall apply or diminish the rights of either party with regard to the discontinuance (as opposed to subcontracting) of alarm room work.

In the event the City exercises its rights under this section, the reference to alarm room positions in Article XXI, Section 2, subsection (D), will be of no further force or effect.

## ARTICLE XXII

### General

**Section 1.** If any section, sub-section, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof. If a clause is held to be invalid, then the parties agree to make their best effort to negotiate a substantially equal substitute for the invalid clause within a reasonable period of time. The parties agree to meet within ten (10) days from the date of such invalidity of the clause.

**Section 2.** The City shall provide a copy of this Agreement to all bargaining unit members, plus 10 copies to the Union Attorney, within thirty (30) days of the initialed or signed final draft. Failure of the City to so provide within the thirty (30) days shall permit the Union to provide such copies and bill the City.

**Section 3.** All employees in the bargaining unit shall be permitted time off with pay to take Civil Service examinations for fire service positions within the city.

**Section 4.** No employees in the bargaining unit shall be replaced with volunteer fire fighters.

**Section 5.** Effective as soon as reasonably practicable after ratification of this Agreement, the City will provide a single office space, to be located in Station Three (3), for Union use, provided any necessary refurbishment of such space does not require that the City incur any cost.

### **ARTICLE XXIII Management Rights**

There is reserved exclusively to the City all responsibilities, powers, rights, and authority expressly or inherently vested in it by the Laws and Constitution of the State of New York and the United States, excepting where expressly and in specific terms limited by the provisions of this Agreement.

### **ARTICLE XXIV Substance Abuse Policy**

A. This Policy endorses the City's responsibility and commitment to provide a safe and healthy work environment for its employees and community for its residents. The goals of the City's drug and alcohol testing program are detection, deterrence, and rehabilitation. The possibility of being identified as a drug user or under the influence of alcohol discourages individuals from using drugs or alcohol and will enhance the safety of the City's operations.

B. This Policy applies to all bargaining unit employees in the Fire Department.

#### **Section 1. Prohibited Conduct**

A. An employee shall not report for duty or remain on duty while having an alcohol concentration of 0.02. No employee shall report for duty or remain on duty while an employee possesses alcohol or a prohibited drug.

B. No employee shall use alcohol or any prohibited drug while on duty.

C. No employee shall report to duty within four (4) hours after using alcohol. An employee will not report for duty while having a level of prohibited drugs in his system in excess of the cutoff levels explained further in this policy.

D. As used herein, a prohibited drug means the drugs identified in the U.S. Department of Transportation regulations, *e.g.*, marijuana, cocaine, opiates, phencyclidine, and amphetamines.

## **Section 2. Required Testing**

A. The City may require an employee to submit to an alcohol test and/or a drug test when the City has reasonable suspicion to believe that the employee has violated the prohibitions of its Policy. Additionally, if there has been an accident or if a traffic citation has been issued, the City may require an employee to submit to an alcohol and/or drug test.

B. Any employee required to be tested for the presence of alcohol or drugs pursuant to law or this Policy shall submit to and cooperate with such testing. The City shall pay such employee for and during time spent in connection with City-required drug testing. Refusal to submit to such required testing shall be considered as testing positive and shall constitute a violation of prohibitions of this Policy. An employee who hinders collection procedures, adulterates or substitutes a sample, or attempts such hindrance or adulteration will be considered as having tested positive.

C. An employee found to be in violation of the prohibitions of this Policy may be removed from duty and the City may discipline or discharge the employee in a manner not inconsistent with the collective bargaining agreement (*i.e.*, it is understood that the concept of "just cause" would apply to any disciplinary action) and/or refer the employee for appropriate counseling or treatment. In non-disciplinary cases, the employee may be returned to duty in accordance with the recommendation of the employee's counselor. The employee may use any of his/her accrued leave while he/she is removed from and before he/she is discharged or disciplined for the duration of his absence from work under this Policy.

## **Section 3. Testing Procedure**

A. The City shall use a laboratory with National Institute on Drug Abuse Certification.

B. The employee will be required to provide a urine specimen under the U.S. Department of Transportation guidelines.

C. The cutoff levels utilized by the U. S. Department of Transportation shall be utilized. Testing levels which fall below these cutoff levels shall be considered negative results.

## **Section 4. Reasonable Suspicion**

Reasonable suspicion is established by observed behavior recognized and accepted as being indicative of possible use of alcohol or a prohibited drug, and/or physical manifestations of drug use (such as possession of a prohibited drug or drug paraphernalia). In all cases involving reasonable suspicion, the observer(s) shall document observations of the employee's behavior and factors leading to the establishment of reasonable suspicion of the employee's behavior. Such documentation shall be given to the Fire Chief, or his designee, who

shall exercise his discretion to determine whether, based upon the documentation, reasonable suspicion drug testing shall take place. The employee will be given the opportunity to make a verbal statement or provide appropriate medical documentation to the medical review officer explaining why his or her behavior or other physical signs may be indicating that he or she appears to be under the influence of alcohol or prohibited drugs.

#### **Section 5. Medical Review Officer**

A test will not be considered positive until the City's designated Medical Review Officer (MRO) has determined that the test is positive for alcohol or a prohibited drug. An employee on a leave due to a positive drug test will only be allowed to return to work after verified negative test result has been received by the MRO. The employee shall have the right to the presence of a steward at all times.

#### **Section 6. Confidentiality**

Except for legitimate business purposes amongst those with a legitimate need to know in connection with the administration of this policy and challenges related thereto and as otherwise required by law, the City will maintain confidentiality of drug and alcohol tests and related records and reports.

### **ARTICLE XXV**

#### **General Municipal Law Section 207-a Procedure**

##### **Section 1. Intent and Definitions**

A. This procedure is intended to implement the express language of New York General Municipal Law Section 207-a ("GML § 207-a") and is not intended to reduce any benefits that firefighters are entitled to pursuant to GML § 207-a. This procedure is not intended to expand or diminish any existing rights to employee benefits while a member is on GML § 207-a.

B. The parties hereto specifically acknowledge that the purpose of this agreement is to enact procedural requirements for the provision of GML § 207-a benefits in the Lackawanna Fire Department. The enactment of this policy is not intended to alter the coverage available under GML § 207-a for any particular type of injury/illness, nor does it supersede any applicable case law concerning when coverage applies or benefits available for a member under the law and/or the collective bargaining agreement.

C. For the purposes of this procedure, "business day" shall mean Monday through Friday excluding any holiday when City Hall is closed for regular business.

D. For the purposes of this procedure, "member" shall mean any bargaining unit employee of the Lackawanna Fire Department who is covered under the provisions of GML § 207-a.

E. For the purposes of this procedure, "City" shall mean the City of Lackawanna.

**Section 2. Notice of Disability or Need for Medical or Hospital Treatment**

A. A member or anyone acting on the member's behalf, who claims a right to benefits under GML § 207-a either because of a new illness or injury or the recurrence of a prior illness or injury, shall make written notice and application for those benefits within fifteen (15) business days of when the firefighter reasonably should have known that the illness or injury would give rise to the claim of entitlement to GML § 207-a benefits. The member shall have the continuing right to supplement or amend his notice and application with any information obtained subsequent to the filing of such notice and application. Any dispute arising over an alleged failure of the member to file notice and application within the time limits set forth herein shall be subject to the dispute resolution procedure provided for in Section 6 of this Article.

B. The member shall provide a medical authorization for the City to obtain copies of those medical records from his/her treating physician or other health care provider which pertain to the illness/injury claimed. The medical authorization shall contain a confidentiality statement prohibiting the use or release of the member's medical records except for purposes authorized by this Procedure or as otherwise permitted by law (including the use or viewing by those at the City with a legitimate need to know) and shall be specifically limited to the illness or injury for which benefits are claimed. The City will provide the member, without cost to the member, a copy of the records and reports provided to the City pursuant to the authorization. Except for legitimate business purposes in connection with the administration of this policy and challenges related thereto and as otherwise required by law, the City will maintain confidentiality of those records and reports.

C. The failure to satisfy any time limits specified above shall render a notice of filing untimely and shall preclude an award of any benefits pursuant to GML § 207-a; provided, however, that the City shall have the discretionary authority to excuse a failure to provide notice or file a report upon good cause shown. Any alleged failure to satisfy the time limits under this section shall be subject to the dispute resolution procedure set forth in Section f.

**Section 3. Status Pending Determination of Eligibility for Benefits**

A. A member who is injured in the line-of-duty and who makes a good-faith application for GML § 207-a benefits shall be placed on presumptive GML § 207-a leave, pending the City's determination of his/her eligibility for GML § 207-a benefits. Where a member is already receiving GML § 207-a benefits following a City determination (or arbitrator's award), if the City decides to remove him from GML § 207-a, and if in response the procedures under part "f" herein are invoked, the member shall remain on presumptive GML § 207-a until an arbitrator has rendered his award, the grievance is withdrawn, or the parties otherwise agree.

B. If the member's GML § 207-a application, or his continuation of GML § 207-a benefits, is denied by the City and following any hearing which may be scheduled under Section "f" of this procedure, the City shall deduct from the member's sick-leave accruals all leave time expended during the determination period. In the event such sick-leave accruals are insufficient to reimburse the City for presumptive GML § 207-a leave benefits paid, the affected member shall, at the discretion of the City either be required to sign an authorization permitting

the City to deduct such unreimbursed amounts from his paycheck in accordance with legal procedure or forfeit future sick leave accruals until the member has reimbursed the City for the presumptive GML § 207-a benefits paid. Nothing contained herein shall compromise the City's right to pursue any lawful means, whether or not specified in this paragraph, to recover for GML § 207-a benefits (or presumptive GML § 207-a benefits) paid to any member without a bona fide entitlement to such benefits under GML § 207-a.

#### **Section 4. Benefit Determinations**

A. The City shall promptly review a member's application for GML § 207-a benefits and shall determine his eligibility within fifteen (15) business days after the City receives the application.

B. In determining the application, the City may require a more detailed statement from the member than that contained on the application. The City may take statements from witnesses and may send the member to a physician or physicians of its choice for examination at the City's expense.

C. The determination will be made in writing to the firefighter, and copied to the Union, setting forth in detail any and all reasons for the determination. In the event that the application is denied, the City will simultaneously provide the member, without cost, a copy of all medical or other information produced or acquired by it, in connection with the member's application and determination for GML § 207-a benefits. The City will continue to provide the member with additional medical information subsequently produced or acquired.

D. Denial of GML § 207-a benefits is appealable, at the member's option, pursuant to the terms of Section f of this policy. The City's determination shall include notice and instructions to the member regarding how to initiate the appeal process.

#### **Section 5. Assignment to Light Duty**

A. As authorized by the provisions of Subdivision 3 of GML § 207-a, the City may assign a disabled member specified light duties.

B. The City, prior to making a light duty assignment, shall advise the member receiving benefits under GML § 207-a that his/her ability to perform a light duty assignment is being reviewed. The member may submit to the City, any document or other evidence in regard to the extent of his/her disability. The City may cause a medical examination or examinations of the member, to be made at the expense of the City. The physician selected, the member and his/her physician, shall be provided with the list of duties and activities associated with a proposed light duty assignment, prior to any implementation of the same. The City's physician shall make an initial evaluation as to the ability of the disabled member to perform certain duties or activities, given the nature and extent of the disability. If the member's physician does not agree that the member is medically able to perform the light duty assignment, he/she must express, in writing, those elements of the light duty assignment which the employee cannot perform and the specific medical reasons which preclude the member from performing the duties.

C. If there is a disagreement between the City's physician and the member's physician as to the member's fitness to perform one or more portions of the duties of the light duty assignment, those portions cannot be assigned until the dispute is resolved pursuant to Section f. It is understood that assignment to light duty is temporary and that a member so assigned does not have any entitlement to a continued light duty assignment for an indefinite duration of time. Nothing contained herein shall require the Department to create light duty assignments or be deemed to change any existing practice regarding performance of overtime in a light duty assignment.

## **Section 6. Dispute Resolution Procedure**

A. In the event a member is aggrieved by the City's denial of an application for GML § 207-a benefits or decision to discontinue GML § 207-a benefits, or if there is a dispute about whether a member is capable of performing a specific light duty assignment, an issue with respect to outside employment, an issue regarding whether a member has waived GML § 207-a benefits, or any other dispute concerning initial or continued entitlement to GML § 207-a benefits, the matter may be submitted directly to binding arbitration pursuant to the grievance and arbitration procedure contained in the collective bargaining agreement, except that the cost for services of the arbitrator shall be borne equally by the City and the member. The arbitrator shall have authority to review the facts and applicable law and issue an award on the issues appropriately submitted to arbitration under this GML § 207-a procedure. The burden of going forward with regard to the subject of the hearing shall be upon the party who has initiated the change in status.

B. A hearing shall be held within thirty (30) days of appointment of an arbitrator except that the deadline may be extended upon mutual consent in writing. The arbitrator shall render a decision within ten (10) days of the hearing date. The arbitrator's determination shall be based upon the submissions made at hearing, and the parties shall not be permitted to submit post-hearing briefs or arguments, unless mutually agreed to.

C. The parties shall have the option, upon mutual consent and whenever practicable, to submit their respective evidence and positions to the arbitrator upon a stipulated record and written arguments, without necessity of hearing. In this case, such submission shall be made to the arbitrator on or before the thirtieth (30th) day, measured from the date of the arbitrator's appointment.

D. The determination of the arbitrator shall be final and binding on the City and the member, but shall not preclude further review at a subsequent date based upon new or supplemental medical or other information. The cost of the arbitration shall be borne equally by the City and the member. The costs of any transcript or medical testimony shall be borne by the person/party requesting the same.

## **Section 7. Disability Retirement**

Consistent with GML § 207-a, the City may file an application on the member's behalf for retirement under Sections 363 or 363-c of the New York State Retirement and Social Security Law. Any injured or sick member who is receiving GML § 207-a benefits shall permit

reasonable medical inspections in connection with such an application for accidental disability retirement or performance of duty disability retirement.

### **Section 8. Outside Employment**

A. Any firefighter receiving payments or benefits under GML § 207-a, who engages in any employment other than as expressly permitted under such section, shall as of the commencement of such employment, forfeit his entitlement to any payments and benefits hereunder, and any such payment or benefit unlawfully received by such firefighter shall be refunded to and may be recovered by the City in accordance with applicable law.

B. A member receiving GML § 207-a payments or benefits must cooperate with an investigation undertaken by the City for purposes of verifying outside employment. In this regard, upon request, the member must provide the City with a W-2 form or tax returns or other proof if reasonably requested in this regard. The member may redact irrelevant information from the income tax information requested by the City, e.g., spousal income.

C. If the City determines that a member has engaged in disqualifying outside employment while simultaneously receiving salary pursuant to GML § 207-a, the City shall provide written notice of such determination. The notice shall specify, in detail, any and all reasons and the factual basis for those reasons for the determination, and to the extent possible, an assessment of damages, if any, due to the City under GML § 207-a. In the event the City cannot determine damages, it may file a grievance in accordance with Section f above. In such case, the arbitrator shall have the final authority to determine the amount of payments and benefits to be reimbursed, if any, and direct the manner in which such reimbursement shall be made.

D. A member may appeal a City's determination that the member has engaged in disqualifying outside employment or assessment of damages pursuant to Section f herein.

E. Additionally, the City shall have the right to discipline the member subject to the provisions of the collective bargaining agreement.

### **Section 9. Hazardous Exposure**

A. A member who reasonably believes he/she may have been exposed to a health hazard, e.g., AIDS, Hepatitis-B, biological or chemical toxins, etc., as a result of the performance of his or her duties, shall file an exposure form at the time of the exposure or promptly thereafter. If the member is unable to file such form, the City shall cause the same to be completed on his/her behalf. The City will maintain the exposure form in the member's personnel file.

B. If a member claims a job-related injury due to exposure to a health hazard, he or she must comply with the requirements of this Article.

### **Section 10. Exclusivity of Procedures**

These procedures are the sole exclusive procedures for determining a member's eligibility for benefits under GML § 207-a. Nothing contained in these procedures shall expand or diminish any member's right to benefits under GML § 207-a.

## **ARTICLE XXVI Maternity Leave**

**Section 1.** A pregnant employee, holding a position by permanent appointment, shall be granted a leave of absence without pay for a period of six months, which may be extended by the appointing authority up to one year.

**Section 2.** The employee shall report to the appointing authority the existence of pregnancy not later than the end of the fourth month.

**Section 3.** The appointing authority may thereafter place the employee on light duty at any time when, in its judgement, the interest of either the department or the employee would be best served by such action.

**Section 4.** The employee may be allowed to reduce the six- month period of leave without pay by the use of any or all earned credits.

**Section 5.** A physician's statement as to the fitness of the employee for the performance of her duties may be required at any time before her leave commences, and may be required prior to her return to duty.

## **ARTICLE XXVII Drivers License Policy**

**Section 1.** All members of the Lackawanna Fire Department must possess a valid New York State Driver's License on their person at all times, and must be able to display license when called upon.

**Section 2.** Whether on or off duty, members who are issued traffic citations, summons, arrest notices, or who have been placed under Police custody are expected to conduct themselves in a proper manner, refraining from cursing, using abusive language or lewd gestures.

**Section 3.** It is the responsibility of every member to immediately notify the Fire Chief of any off-duty arrest, case pending for, or conviction related to, but not limited to:

- a. DWI-Driving While Intoxicated
- b. DWAI/Alcohol - Driving While Ability Impaired by Alcohol
- c. DWAI/Drug - Driving While Ability Impaired a Drug

- d. other than Alcohol.  
DWAI/Combination - Driving While Ability Impaired  
by a Combined Influence of Drugs or Alcohol.
- e. Chemical Test Refusal

- Section 4.** Members must immediately inform the Fire Chief if their driving privileges are restricted, suspended, or revoked.
- Section 5.** A member arrested and or charged with any of the items listed in Section 3 of this policy will be suspended without pay not to exceed 30 days. However, a member may be permitted to utilize accrued vacation, compensatory, and/or personal time while on suspension.
- Section 6.** A member will not be allowed to return to duty until they possess a valid New York State Drivers license (regular or conditional), unless there is good cause. In the event of a disagreement, a meeting shall be held between the City, the Union and the affected member, to reach an equitable resolution.
- Section 7.** If a member does not possess a valid drivers license when the suspension ends said employee will be allowed to use accrued time until such time that a valid drivers license is obtained.
- Section 8.** Member must be evaluated by a substance abuse professional and must comply with any treatment requirements given by said substance abuse professional before returning to duty.
- Section 9.** Member must comply with all court ordered treatments.
- Section 10.** A second violation of this policy will result in progressive disciplinary action including possible termination.

THE CITY OF LACKAWANNA

LACKAWANNA PROFESSIONAL FIRE  
FIGHTERS ASSOCIATION

By: Quetta Tafallu

By: [Signature]

Date: January 7, 2022

Date: 01/7/2022