

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2019-19

By Nick Haschka Sponsored By Mayor Cyril M. Kleem
AN ORDINANCE

APPROVING AND RATIFYING A THREE-YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF BEREA AND THE BEREA FIREFIGHTERS REPRESENTED BY LOCAL 1836 OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, PURSUANT TO CHAPTER 4117 OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor of the City has reported to this Council that the Administration has undertaken collective bargaining negotiations with the International Association of Firefighters, represented by Local 1836, pursuant to Chapter 4117 of the Ohio Revised Code, in an effort to establish an Agreement between the City of Berea and the Bargaining Unit representing the Firefighters of the City; and

WHEREAS, such negotiations resulted in an Agreement between the City of Berea and the said Bargaining Unit, a true copy of which Agreement is attached hereto as Exhibit "A" and made a part hereof, as if fully rewritten herein; and

WHEREAS, the Mayor has presented the proposed Collective Bargaining Agreement to this Council for its review, approval and ratification, with his recommendation that the said Agreement be so approved and ratified as a fair, just and equitable negotiation and settlement of all of the matters at issue between the City of Berea and the said Bargaining Unit; and

WHEREAS, said Agreement is for a three-year period covering January 1, 2019, through December 31, 2021.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, Cuyahoga County, State of Ohio:

SECTION 1. That this Council finds that the Collective Bargaining Agreement negotiated by the Administration of the City with the Firefighters represented by Local 1836 of the International Association of Firefighters, a true copy of which proposed Agreement is attached hereto, and made a part hereof, as if fully rewritten herein, is a fair, just and equitable resolution of all matters between the City of Berea and the said Bargaining Unit, which are subject to negotiations and settlement pursuant to Chapter 4117 of the Ohio Revised Code, and that the said Agreement covering the period of January 1, 2019 through December 31, 2021, should be, and hereby is, approved, confirmed and ratified by this Council.

SECTION 2. That the Director of Finance be, and hereby is, authorized and directed to pay such funds as may be required pursuant to the terms and conditions of the Collective Bargaining Agreement ratified herein, to the beneficiaries of such Agreement according to the tenor thereof, and such funds as may be required and necessary to accomplish the same are hereby appropriated and allocated to the various and several funds as may be designated by the Director of Finance for accounting purposes required by law.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the establishment of Collective Bargaining Agreements is required by law and necessary for the immediate and continued operation of the City, particularly in matters of public safety. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: March 18, 2019

ATTEST: [Signature]
Clerk of Council

APPROVED: March 19, 2019

[Signature]
President of Council
[Signature]
Mayor

Approved as to Form:

[Signature]
Director of Law

AN AGREEMENT

BETWEEN

THE CITY OF BEREA, OHIO

and

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL 1836, AFL-CIO**

EFFECTIVE: January 1, 2019

EXPIRES: December 31, 2021

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ARTICLE 1

THE CONTRACT

1.01 This Agreement is entered into by and between the City of Berea, Ohio, hereinafter referred to, variously, as the "Employer" and the "City," and the International Association of Firefighters, Local 1836, AFL-CIO, hereinafter referred to, variously, as the "Union," the "Bargaining Unit," the "Bargaining Agent" or, individually, as "employee(s)," "Firefighter(s)," "Fire Lieutenant(s)," or "Fire Captain(s)."

ARTICLE 2

PURPOSE AND INTENT

2.01 In an effort to continue harmonious and cooperative relationships with its employees and to ensure the orderly and uninterrupted efficient operations of government, the Employer desires to enter into a collectively bargained agreement which has for its purposes, among other, the following: 1) to recognize the legitimate interests of the employees to participate through collective bargaining in the determination of certain of the terms and conditions of their employment; 2) to promote fair and reasonable working conditions; 3) to promote effective and efficient service to the residents of the City of Berea, Ohio; 4) to avoid interruption, interference, or inefficiency in the operation of the Government of the City; and 5) to provide a basis for the adjustment of matters of mutual interest by means of amicable discussion.

ARTICLE 3

RECOGNITION

3.01 The Employer hereby recognizes the Union as the sole and exclusive Bargaining Agent with respect to wages, hours, and certain terms and conditions of employment for all employees occupying the position(s) of Firefighter, Fire, Lieutenant, and Fire Captain, excluding all part-time employees. All other employees of the Employer are excluded from the Bargaining Unit.

3.02 The Employer warrants that no employee shall be transferred to a position in any other Department or Division within the City, which position requires qualifications substantially different from those of the Division of Fire, without the written consent of such employee.

ARTICLE 4

MANAGEMENT RIGHTS

4.01 Unless otherwise agreed to elsewhere within this Collective Bargaining Agreement, the Employer shall have the right and responsibility to: 1) determine matters of managerial policy which include areas of discretion or policy such as the functions and programs, standards of services, overall budget, utilization of technology, and organizational structure; 2) direct, supervise, evaluate, and hire employees; 3) maintain and improve the efficiency and effectiveness of operations; 4) determine the overall methods, processes, means, and personnel by which operations are to be conducted; 5) suspend, discipline, demote or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees; 6) determine the adequacy of the workforce; 7) effectively manage the workforce.

4.02 In addition, the Union agrees that all of the functions, rights, powers, responsibilities, and authority of the Employer with regard to the operation of its business, and its direction of the

workforce, which the Employer has not specifically deleted, granted, or modified by the express and specific written provisions of this Agreement are, and shall remain, exclusively those of the Employer.

ARTICLE 5 **NO-STRIKE**

5.01 The Union does hereby affirm and agree that it will not, directly or indirectly, call, sanction, encourage, finance, instigate, or assist in any way, in any strike, slowdown, walkout, work stoppage, or other concerted interference with, or the withholding of services from, the Employer, including any sympathy strike, nor shall any employee member of the Union act to do so.

5.02 In addition, the Union shall cooperate at all times with the Employer in the continuation of its operations and services and shall actively discourage, and attempt to prevent, any violation of this Article. If any violation of this Article occurs, the Union shall immediately notify all employees that the strike, slowdown, work stoppage, or other concerted interference with, or the withholding of services from, the Employer is prohibited and not sanctioned by the Union, and immediately order, in writing, all employees to return to work forthwith, with a copy of such order delivered to the Employer. Thereupon, the liability of the Union for sponsoring an unauthorized activity as prohibited by this Article shall cease.

5.03 It is recognized by the parties that the Employer is responsible for, and engaged in, activities which affect the health, safety, and welfare of its citizens and that any violation of this Article gives rise to irreparable damage to the Employer and the public at large.

5.04 It is further agreed that any violation of this Article shall be sufficient grounds for discharge or other disciplinary action.

5.05 The Employer shall not lock-out any employee(s) during the term of this Agreement.

ARTICLE 6 **NON-DISCRIMINATION**

6.01 The Employer and the Union agree not to discriminate against any employee(s) on the basis of race, color, creed, national origin, age, sex, disability, or handicap.

6.02 The Union expressly agrees that membership in the Union is at the option of the employee and that it will not discriminate with respect to representation between members and non-members.

ARTICLE 7 **DUES DEDUCTIONS**

7.01 During the term of this Agreement, the Employer shall deduct regular Union dues from the wages of those employees who have voluntarily signed dues deduction authorization forms authorizing such deductions. If the compensation of any employee for any period is insufficient, the Employer shall make the deduction from the next pay period which is sufficient.

7.02 The Employer agrees to supply the Union with a list of employees for whom dues deductions have been made.

7.03 A draft in the amount of total dues withheld from employees authorizing such deduction shall be tendered to the Treasurer of the Union within thirty (30) days from the date of making said deductions.

7.04 The Union hereby agrees to hold the Employer harmless from any and all liabilities or damages which may arise from the performance of the obligations of this Article.

ARTICLE 8 **UNION/EMPLOYEE RIGHTS**

8.01 The Employer shall not discriminate against, interfere with, nor restrain any employee from lawful membership and activity in the Union.

8.02 The Employer shall allow the Union to conduct local Union meetings on City property, provided that the Union informs the Chief of any such proposed meeting, and the Chief finds that such meeting will not interfere with the operation of the Division.

8.03 An employee who is an elected officer of the International Association of Firefighters, Local 1836, AFL-CIO, who is scheduled for duty, shall be authorized to attend various meetings of the said Union, without pay, upon the advance approval of the Chief.

8.04 Whenever a firefighter, who is a sworn member of a fire department in Cuyahoga County, Ohio, is killed in the line of duty, one (1) employee member of the Union shall be given time off with pay to attend the funeral and shall be afforded the use of a marked fire vehicle for such purpose.

8.05 Seniority shall be determined by the length of service within the Division of Fire, Department of Public Safety, of the City of Berea, Ohio. In the event that an employee shall have been separated from the Division of Fire and is subsequently rehired, the seniority for such rehired employee shall be determined by the length of service within the Division of Fire commencing with the date of rehire. In the event that two (2) or more employees shall have the same commencement date, seniority between them shall be determined by their relative placement on the Eligible Candidate List of the Berea Civil Service Commission from which such employees were appointed to service in the Division of Fire, the higher placement being the senior employee,

8.06 All layoffs of employees shall be on the basis of reverse seniority, wherein an employee of lesser seniority shall be subject to layoff before an employee of greater seniority. Similarly, laid-off employees shall be called back to service in order of seniority, with the laid-off employee having the highest seniority called back before an employee of lesser seniority.

8.07 If a verbal complaint is made against an employee containing no corroborative evidence of any kind, the employee accused shall not be required to submit to any investigations, or make any report, until the Employer reasonably qualifies the complaint with other reliable corroborative evidence. Citizen complaints shall be reduced to writing by the City prior to the member being

required to respond. All complaints concerning federally protected classes or sexual harassment shall be investigated.

8.08 An employee interviewed concerning an act that, if proven, could reasonably result in suspension, demotion or termination will be afforded the additional safeguards:

1. Notification of Scope of Questioning. Whenever an employee is being investigated, the employee shall be informed of the general scope and nature of the investigation prior to questioning. The notification shall include the name of the complainant, a copy of the written complaint, the date of the incident, the specific rules the employer alleges were violated, whether the citizen has signed a complaint form, and a summary of the nature of the charges. The employee may agree to answer questions at that time or request that questioning be delayed for up to three (3) calendar days in order to obtain legal advice or other assistance.
2. Notification of Suspicion. The employee will be informed prior to the interview if the Employer believes the employee is the subject of the investigation.
3. Right to Representation. At the request of any employee under disciplinary investigation, he shall have the right to be represented by the Union, who shall be present at all times during such questioning whenever such questioning may result in suspension, demotion or termination.
4. Right to an Attorney. An employee who is the subject of an investigation or complaints or suspected violations of rules or regulations shall have the right to have an attorney of his choosing and at his cost accompany him in such proceedings.
5. Limitation of Scope of Interviews. All interviews shall be limited in scope to activities, circumstances, events, conduct or acts that pertain to the incident that is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the employee about information that is developed during the course of the interview.
6. Witness Status. If an employee is questioned only as a witness, but the investigator believes or reasonably should believe that the employee's responses disclose his own possible violations of the law or regulations, the employee shall be immediately advised of the possibility that his actions or omissions may result in an investigation or disciplinary action and of the right to seek legal advice or other assistance. After the advice is given, the questioning will cease at the request of the employee or the investigator.

8.09 An employee has the right to the presence of counsel or other representative chosen by such employee, at the employee's cost, at all stages of the Grievance Procedures provided in article 31 and at all disciplinary hearings before the Chief, Director of Public Safety, Mayor or the Civil Service Commission.

8.10 There shall be no press release(s) initiated by the Employer or the Union regarding any employee under investigation.

ARTICLE 9

PROBATIONARY PERIOD

9.01 All newly-hired employees are required to serve a Probationary Period of eighteen (18) months. During the first sixty (60) days of such Probationary Period, the newly-hired employee shall not be entitled to participate in the medical and hospitalization Employee Benefit Plan provided for by this Agreement, but shall otherwise be covered by the terms of this Agreement. During the entire Probationary Period, however, the Employer shall have the sole discretion to discipline or discharge any such probationary employee and any such action shall not be appealable through any grievance or appeal procedure contained herein.

9.02 If an employee leaves the service of the City during the initial Probationary Period and is later rehired, such employee shall be considered a new employee and shall be subject to the provisions of paragraph 9.01 above.

9.03 All newly-promoted employees are required to serve a promotional Probationary Period of one (1) year. During such period, the Employer shall have the sole discretion to return such employee to the position previously held and any such action shall not be appealable through any grievance or appeal procedure contained herein.

ARTICLE 10

PARAMEDIC TRAINING

10.01 All employees hired after January 1, 1995, shall be certified Paramedics at the time of hire. All employees hired after January 1, 1985, and before January 1, 1995, shall, at the employer's expense, participate in Paramedic training during the Probationary Period and shall become certified Paramedics as a condition of the satisfactory completion of the Probationary Period.

10.02 Except as limited by the application of the second sentence of 10.01 above, all employees hired after January 1, 1985, shall continue their Paramedic certification as a condition of continued employment with the Employer. In the event that a certified Paramedic is unable to continue to accept Paramedic assignments by reason of emotional distress relating solely to Paramedic work, continued employment with the Employer will not be conditioned upon maintaining Paramedic certification if such emotional distress shall be certified by one (1) physician licensed to practice medicine in the State of Ohio and holding Board Certification in Psychiatric Medicine, who shall be chosen by the Employer and from out of town. The cost of certification shall be divided equally between the City and the employee.

10.03 All employees hired after January 1, 1985, shall maintain Paramedic certification for a minimum period of fifteen (15) years of employment with the City.

After fifteen (15) years of employment as a certified Paramedic, such employees shall have the option of discontinuing such certification (with a consequent elimination of Paramedic wage supplement) so long as the pool of Paramedics hired after January 1, 1985, then exceeds eighty percent (80%) of the total employees within the Collective Bargaining Unit.

Seniority shall be used as a basis for determining which employee shall be given the option of discontinuing Paramedic certification wherein employees with more seniority shall be allowed to discontinue such certification prior to employees with lesser seniority.

Paramedic certification for the Collective Bargaining Unit members shall at no time be less than eighty percent (80%) of such members.

ARTICLE 11

HOURS OF WORK

11.01 The basic workweek shall average fifty-one and seven-tenths (51.7) hours. The Division shall be divided into three (3) shifts. Each shift shall work a basic schedule of twenty-four (24) hours on duty and have forty-eight (48) hours thereafter off duty. In accordance with the Fair Labor Standards Act the work cycle shall be twenty-six (26) days. In any twenty-six (26) day cycle in which an employee is scheduled to work nine (9) tours of duty, such employee shall receive one (1) tour of duty of authorized Leave. Employees shall schedule such authorized Leave only within the first twenty-one (21) calendar days of the twenty-six (26) day cycle in which it is generated unless otherwise approved by the Chief. All such authorized Leave shall be selected within the twenty-six (26) day cycle in which it is earned.

11.02 An employee may be temporarily scheduled to work a forty (40) hour work week consisting of five (5) consecutive work days of eight (8) hours each in any seven (7) day period, as designated by the Chief.

11.03 An employee may exchange an individual tour of duty, or part thereof, with another employee within the Division, when such exchange does not interfere with the operation of the Division and such exchange has been approved by the immediate supervisor of such employee or by the Chief.

ARTICLE 12

OVERTIME

12.01 For the purpose of this Article, overtime work is defined as any work in excess of an average fifty-one and seven-tenths (51.7) hour work week, or such other work week as may be established pursuant to paragraph 11.02 above. For the purpose of calculating overtime, all Leave with Pay granted elsewhere in this Agreement shall be included as work actually physically performed.

12.02 An employee assigned to overtime work, including but not limited to call-outs and continuing Paramedic- or fire-related training, shall be compensated at the overtime premium rate set out in Exhibits A and B attached hereto pursuant to the provisions of paragraphs 13.01, 13.02 and 13.03

below for all overtime hours actually worked but, in any event, such employee shall be paid at the overtime premium rate for not less than three (3) hours, whether or not the employee actually performed physical work during such three (3) hour period but provided, further, that the three (3) hour minimum shall not apply to any overtime work which is continuous with the beginning or ending of a regularly-scheduled tour of duty.

12.03 RESERVED FOR FUTURE USE

12.04 An employee required to travel outside the City of Berea in the service of the Employer shall be compensated, at the appropriate rate, for all time spent in both actual physical work and in transit.

12.05 An employee required to appear in any court on a matter related to employment, wherein such employee is neither a plaintiff nor a claimant, shall be compensated at the regular wage rate of such employee for any absence from regularly-scheduled work occasioned by such court appearance. In the event that such court appearance defined herein shall take place outside of a regularly-scheduled work period, the employee required to appear thereat shall be compensated at the overtime premium rate set out in paragraph 13.01, 13.02 and 13.03 below, if applicable pursuant to the definition set forth in 12.01 above. No other benefits granted elsewhere in this Agreement shall be diminished in any way by reason of the court appearance referred to in this paragraph.

12.06 Acceptance of overtime work shall be voluntary on the part of the employee; provided, however, that in the event of an emergency declared by the Chief, all employees may be subject to mandatory assignment of overtime work.

ARTICLE 13 **RATES OF PAY**

13.01 Effective January 1, 2019, all employees shall be paid bi-weekly according to the wage schedule set out in Exhibit A, attached hereto and made a part hereof as if fully rewritten herein.

13.02 Effective January 1, 2020, all employees shall be paid bi-weekly according to the wage schedule set out in Exhibit B, attached hereto and made a part hereof as if fully rewritten herein.

13.03 Effective January 1, 2021, all employees shall be paid bi-weekly according to the wage schedule set out in Exhibit B, attached hereto and made a part hereof as if fully rewritten herein.

13.04 A Firefighter acting as the shift Officer-in-Charge shall be compensated an additional two dollars (\$2.00) per hour for each hour serviced in the Officer in Charge position.

The premiums set out hereinabove shall be paid, as appropriate, in addition to the regular rate of pay for the Firefighter assigned to Officer-in-Charge status.

13.05 Each employee, upon satisfactory completion of initial certification as an Emergency Medical Technician, shall receive an EMT Wage Supplement in the amount of three percent (3%) of the basic

wage of such employee, in addition to the rates of pay set out in paragraphs 13.01, 13.02 and 13.03 above.

ARTICLE 14

PROFESSIONAL WAGE SUPPLEMENT

14.01 Beginning in the first pay period of July 2019, an employee who has successfully completed the program of instruction set out in ORC Section 4731.84(B)-(C) and has been certified as a Paramedic, or who thereafter has completed the program of EMT-P Certification and training established by the Ohio Board of Regents and has been re-certified as a Paramedic and is actually functioning as a Paramedic in the Division of Fire, shall receive a Professional Wage Supplement in the amount of seven percent (7%) of the EMT wage of such employee, in addition to the rates of pay set out in paragraphs 13.01, 13.02, 13.03 and 13.05 above. Beginning in the first pay period of January 2020, the Professional Wage Supplement shall be seven and one-half percent (7.5) of the EMT wage of such employee, in addition to the rates of pay set out in paragraphs 13.01, 13.02, 13.03 and 13.05 above. Such additional compensation shall commence with the first day of the pay period following that pay period in which such employee is certified (or re-certified) and actually works as a Paramedic; provided, however, that it shall be the responsibility of the employee to provide to the Employer the certification required in this paragraph and any delay in providing such certification shall sustain a delay in the commencement of the wage supplement set out herein.

ARTICLE 15

LONGEVITY COMPENSATION

15.01 All employees shall receive additional compensation for length of service with the Employer according to the following schedule:

- a. On December 1 in the calendar year in which an employee completes five (5) years of continuous service, such employee shall receive One Hundred Dollars (\$100);
- b. On December 1 in each calendar year following the year in which the payment set out in sub-paragraph (a) above has been made, the employee shall receive an amount calculated by multiplying the total number of consecutive calendar years of service, minus three (3), times Eighty-Five Dollars (\$85);

15.02 All payments made to employees by reason of this Article shall be made in a draft separate and distinct from the regular bi-weekly wage payments, and Federal Withholding Tax shall be calculated on this sum separately and distinctly from all other wage payments.

15.03 Upon involuntary separation from service, or voluntary separation from service with less than two (2) weeks' advance notice, Longevity Compensation for the current year will be forfeited. Upon separation from service of an employee for any other reason, annual Longevity Compensation shall be calculated pro rata as to the date of such separation for the current year.

ARTICLE 16

UNIFORM ALLOWANCE

16.01 All probationary employees, immediately upon swearing-in, shall be provided with one entire complement of fire clothing, including one (1) pair of shoes, two (2) work uniforms, one (1) dress uniform, one (1) winter squad jacket, one (1) summer squad jacket, and the following NFPA-approved items, to wit: one (1) fire helmet with liner, one (1) turnout coat with liner, one (1) pair of fire protective pants with liner, one (1) pair of fire boots and one (1) pair of gloves. All fire clothing, thus provided, shall be surrendered to the Employer if the employee fails to complete the Probationary Period. Upon completion of the Probationary Period and certification as a Firefighter, but in no event later than February 1 of the calendar year in which the employee completes two (2) years of service, such employee shall be paid the sum of Four Hundred and Fifty Dollars (\$450) as and for a clothing allowance.

16.02 Other than as set out in paragraph 16.01 above, all employees shall be paid an annual allowance for uniform purchases, replacement, maintenance, and repair in an amount of Eight Hundred Dollars (\$800.00) payable on the first pay date in the month of February of each year. Beginning in 2020, all employees shall be paid an annual allowance for uniform purchases, replacement, maintenance, and repair in an amount of One-Thousand Dollars (\$1,000) payable on the first pay date in the month of February of each year. All payments made to employees by reason of this Article shall be made in one (1) draft separate and distinct from the regular bi-weekly payments.

16.03 Should any fire clothing be damaged or destroyed in the line of duty, such fire clothing shall be repaired or replaced by the City. In the event of an emergency situation wherein an employee may be required to wear personal clothing and such personal clothing is damaged or destroyed in the line of duty, such personal clothing shall be repaired or replaced by the City.

16.04 In the event that the Employer, or any authority of government superior to the Employer, shall require the use of fire clothing in addition to that which has been granted by this Agreement, the Employer shall provide such additionally-required fire clothing at no cost to the employee.

16.05 All employees shall be well-groomed to maintain the professional dignity of the Employer.

ARTICLE 17

EXPENSE ALLOWANCE

17.01 Any employee, who is authorized by the Chief to use a private automobile for a business purpose, shall be compensated in cash money for such use at the rate of reimbursement per mile consistent with Internal Revenue Service regulations then in effect, excluding travel to and from Firefighter Recruit Training and EMT-A Training.

17.02 Any employee, who is authorized by the Chief to expend personal funds for lodging, food and other reasonable expenses of travel in the line of duty, shall be compensated for the same upon the presentation of appropriate voucher indicating the actual expenditure(s) made.

ARTICLE 18

INSURANCE

18.01 The Employer shall provide, at no cost to the employee, insurance upon the life of all employees who have completed one (1) month of continuous service with the City, in the amount of Twenty-Five Thousand Dollars (\$25,000). All employees shall have the further option to purchase additional life insurance in an amount of up to a total of One Hundred Fifty Thousand Dollars (\$150,000) subject to insurability requirements of the carrier, upon the payment of the appropriate premium for such additional amount of insurance.

18.02 The Employer shall continue to pay the premium upon all hospitalization insurance in effect for employees who have completed sixty (60) calendar days of employment and their dependents upon the terms and conditions of the "City of Berea Health Insurance Plan (Summary Plan Document), as amended April 1, 2019". Such hospitalization insurance includes provisions for basic medical, major medical, prescription drug, dental care and vision care benefits. Employee contributions for the actual cost of health insurance shall be as follows:

Effective April 1, 2019, the employee shall contribute 8% of the actual cost of health insurance on a pre-tax basis based upon the previous year's cost.

18.03 The Employer reserves the right to change insurers in any and all matters of insurance covered by this Agreement; provided, however, that the benefits are equal to, or greater than, the coverage existing prior to such change.

18.04 The Employer shall continue to provide the presently-existing liability insurance for employees as long as such coverage is available. In any event, the Employer shall hold all employees harmless from and indemnify them against, any and all claims arising out of their employment; provided, however, that such indemnification does not extend to any malicious, willful or wanton act of the employee while acting within the scope of employment.

18.05 The Basic and Major Medical benefits for the medical and hospital insurance referred to in 18.02 shall be modified as follows:

a. The Major Medical deductible referred to in the City of Berea Health Insurance Plan (Summary Plan Document), as amended April 1, 2019, shall be replaced with the following deductible which shall now be applicable to both Basic and Major Medical benefit coverage:

1. For "Network Providers" care consistent with the current plan coverage, there shall be a Five Hundred Dollar (\$500) per person, One Thousand Dollar (\$1,000) per family deductible. Thereafter, the Employee will pay ten percent (10%) of medical expenses up to a maximum out-of-pocket of One Thousand Two Hundred Dollars (\$1,200) per person and One Thousand Six Hundred Dollars (\$1,600) per family.
2. For "Non-Network Providers", there shall be a Seven Hundred Fifty Dollar (\$750) per person, One Thousand Five Hundred Dollar (\$1,500) per family, deductible.

Thereafter, the Employee shall pay twenty percent (20%) of medical expenses up to a maximum out-of-pocket of One Thousand Four Hundred Twenty-five Dollars (\$1,425) per person and One Thousand Nine Hundred Dollars (\$1,900) per family.

3. Deductibles (either per person or per family, network provider or non-network provider) shall not be considered separate and distinct, and monies paid toward one deductible shall be considered as paid toward all deductibles.
 4. There shall be a One Hundred Dollar (\$100) co-pay per occurrence for treatment in a hospital emergency room. Said deductible shall be waived if the person is directly admitted to the hospital.
- b. The prescription drug program shall be comprised of three tiers and shall provide for a per prescription deductible of Ten Dollars (\$10.00) for Tier I generic prescriptions; and Twenty Dollars (\$20.00) for Tier II, formulary prescriptions; and Thirty-five Dollars (\$35.00) for Tier III, non-formulary prescriptions, subject to preauthorization. A mail order program providing a three-months' supply will be made available with the same deductibles.
 - c. The life-time maximum benefit for each individual covered by the Employee Benefit Plan shall be One Million Dollars (\$1,000,000).
 - d. The City shall provide any additional benefits that are applicable to the City pursuant to the Affordable Care Act.

18.06 The IAFF shall elect one of its members as a participant in a health care committee to be established by the City to discuss issues related to the health insurance provided by the City. The committee will consist of two (2) representatives from the City's Administration and one (1) representative from each of the City's Bargaining Units. The committee shall meet at least quarterly beginning with the selection of an insurance brokerage firm and continuing through the completed plan renewal process. The committee members shall be provided with copies of all prepared reports or documents utilized in the renewal process. Either the City or any member of the committee may request an additional meeting at any time.

The purpose of the committee is to provide the City with suggestions regarding health care services and concerns with current coverage. The committee may discuss, and by majority agreement, issue recommendations regarding a change in benefit levels including, but not limited to, deductibles, co-pays, out-of-pocket maximums, prescription drug coverage, possible changes in providers, etc. However, the committee is not responsible for selecting the health care provider or determining the level of benefits. Recommendations from the committee on such shall not be binding on the Administration. Any changes in health care benefits shall continue to be subject to good faith bargaining and agreement by the parties. All City employees are to share in any cost reductions achieved by the committee.

ARTICLE 19

PAYMENTS DURING DISABILITY PERIODS

19.01 An employee, covered by this Agreement, who may be disabled as the result of a traumatic injury suffered in the discharge or performance of his duty shall be entitled to receive regular compensation during such period of disability but in no case for a period longer than six (6) months; provided, however, that any employee making claim for such compensation, as provided in this Article, shall reimburse to the Employer any temporary, total disability benefits received from Workers' Compensation and, at the request of the Chief, submit to a physical examination by a physician chosen by the employee from three (3) physicians licensed to practice in the State of Ohio and designated by the Employer.

In the event such physician finds that such employee is able to resume assigned duties, the compensation provided for herein shall cease. The cost of examination and opinion shall be borne by the Employer.

The compensation provided for in this Article is exclusive of Sick Leave and shall in no way affect the Sick Leave accumulated pursuant to other provisions of this Agreement. If the period of disability exceeds six (6) months, the employee shall use accumulated Sick Leave and sign a waiver assigning to the City any allowable Workers' Compensation temporary, total benefits received. Nothing herein shall be deemed to amend, impair or repeal any law establishing and maintaining any fire disability or pension fund.

ARTICLE 20

PAYMENTS UPON DEATH

20.01 Upon the death of an employee, all sums earned and accrued pursuant to this Agreement shall be paid, in order as allowed by law, to: a) the next of kin, b) other beneficiary(ies) designated by such deceased employee, or c) the estate of such deceased employee.

ARTICLE 21

SICK LEAVE

21.01 Sick Leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee; 2) exposure by the employee to a contagious disease communicable to other employees; and/or 3) illness or injury in the immediate family of the employee as defined in paragraph 24.07 below or 4) the maternity confinement of a spouse.

21.02 All employees shall earn Sick Leave at the rate of one (1), twenty-four (24) hour tour of duty per month during which such employee actually performed physical work or was absent by reason of Leave granted elsewhere in this Agreement, with the exception of Leave Without Pay. An employee may accumulate Sick Leave to an unlimited amount.

21.03 An employee, who is to be absent on Sick Leave, shall notify the Employer of such absence and the reason therefore at least one (1) hour before the start of the tour of duty on each day of absence, unless hospitalized.

21.04 Sick Leave may be used in segments of not less than one-half (1/2) of a twenty-four (24) hour tour of duty.

21.05 In the event an employee is absent for more than two (2) consecutive regularly-scheduled tours of duty or more than four (4) regularly-scheduled tours of duty in any one (1) month by reason of illness, the Chief may require appropriate and satisfactory proof as to the reason for such absence before the absence(s) may be charged against accumulated Sick Leave. In addition, the Chief may require of any employee claiming Sick Leave, as set out in this paragraph, a statement from a physician licensed to practice medicine in the State of Ohio indicating the ability of such employee to return to active duty in the capacity which was left by reason of such illness. The cost of such examination and opinion shall be borne by the Employer.

If the employee fails to submit appropriate and satisfactory proof of illness or, if required, fails to submit a statement as to physical fitness for returning to duty, any absence relating thereto shall be considered an Unauthorized Leave Without Pay.

21.06 Any abuse of Sick Leave shall be just and sufficient cause for a disciplinary action, including dismissal.

21.07 When the use of Sick Leave is due to illness or injury in the immediate family, the term "immediate family" shall be defined to include all persons related to the employee in the first degree by consanguinity or affinity or one (1) other person not included in this definition.

21.08 An employee, who leaves the service of the Employer voluntarily and who has not less than ten (10) years of continuous employment with the said Employer or an employee who has qualified for retirement benefits under the Ohio Police and Firemen's Disability and Pension Fund without regard to the number of years of consecutive service with the Employer, shall be entitled to receive a payment equal to the hourly rate of pay at the time of separation and multiplied by one-third (1/3) of the total number of accumulated but unused sick tours of duty earned by such employee, providing that such resulting numbers of tours of duty to be paid shall not exceed seventeen (17) twenty-four (24) hour tours of duty; but; provided further, that an employee who has twenty (20) years of accumulative service with the City of Berea shall be entitled to receive, upon separation, the compensation set out in this paragraph without regard to the seventeen (17) twenty-four (24) hours tour of duty limitations but not to exceed sixty-three (63) twenty-four (24) hours tour of duty. The payments outlined above shall be paid in three equal annual installments; the first occurring on the date of the employee's retirement and/or voluntary termination; the second payment occurring on the first anniversary date of the employee's retirement and the third payment occurring on the second anniversary date of the employee's retirement. All payments will be made at the pay rate in effect for such employee at the time of separation. All employees will be paid at the rate of their class/rank in which they retired and at the class/rank's current year pay rate (Exhibit A, B or C). In addition, all employees will get a memo upon separation/retirement guaranteeing this benefit to them upon separation/retirement.

21.09 An employee with twenty (20) or more years' service with the Employer may elect to sell back to the Employer up to twelve (12), twenty-four (24) hour tours of duty of such employee's accumulated Sick Leave in any one calendar year. For each one (1) tour of duty sold back, one (1) tour of duty Sick Leave shall be deducted from such employee's accumulated Sick Leave and such employee shall be entitled to receive a cash payment equal to the hourly rate of pay at the time of such sell back multiplied by one-third (1/3) of the total number of Sick Leave tours sold back.

Each payment shall be due and payable on the second pay date in the month of January of each year. All payments made to employees, by reason of this Article, shall be made in one (1) draft separate and distinct from the regular bi-weekly salary payments.

ARTICLE 22 **VACATION LEAVE**

22.01 Each employee is entitled to annual Vacation Leave with pay according to the following schedule, based on continuous employment with the City:

- a. Two (2) weeks in the calendar year in which the employee completes one, two, three and four years' service; and thereafter.
- b. Three (3) weeks in the calendar year in which the employee completes five, six, seven, eight, nine and ten years' service; and thereafter.
- c. Four (4) weeks in the calendar year in which the employee completes eleven, twelve, thirteen, fourteen, fifteen and sixteen years' service; and thereafter.
- d. Five (5) weeks in the calendar year in which the employee completes seventeen, eighteen, nineteen and twenty years' service; and thereafter.
- e. Six (6) weeks in the calendar year in which the employee completes twenty-one (21) or more years' service with the employer.

22.02 For the purpose of calculating Vacation Leave, only such time as the employee has in continuous service with the City of Berea shall be utilized and no credit for previous employment other than with the City of Berea shall be given; provided, however, that any part-time service with the City of Berea shall be credited toward Vacation Leave on a pro rata basis.

22.03 Vacation Leave shall be scheduled, to the extent possible, on days chosen by the employee, but with the prior approval of the immediate supervisor or the Chief, and on the condition that no two (2) members of the same shift may schedule Vacation Leave on the same date. The immediate supervisor or the Chief shall be notified by January 1 of each year of Vacation Leave or Holiday Leave which each employee schedules for that year. By December 1 of each year, employees shall be notified by the Chief of any shift transfers which may affect the future scheduling of Vacation Leave or Holiday Leave by said employees. Vacation Leave shall be scheduled up to two (2) consecutive weeks at a time according to rank, and seniority within rank, as defined in paragraph 8.05.

22.04 Vacation Leave shall be taken in increments of not less than one (1) week, Sunday through Saturday.

22.05 In the event that an emergency requires that the beginning of a scheduled Vacation Leave be postponed, the employee shall receive that portion of the Vacation Leave thus postponed added to the end of the Vacation Leave as previously scheduled.

22.06 Vacation Leave shall not be carried over from one (1) calendar year to the next calendar year, other than such Vacation Leave which has begun in the year of scheduling, except in extraordinary circumstances, and only then upon the recommendation of the Chief and the approval of the Mayor.

22.07 "Continuous Employment" for the purpose of calculating Vacation Leave shall not be deemed to be interrupted by absence on Sick Leave or other absence on Leave authorized by the Employer pursuant to the Agreement, provided the employee returns to full-time active employment with the Employer on or before the expiration of such Leave.

22.08 Upon retirement of an employee of the Division, such retiree shall receive, in cash money, compensation for any unused Vacation Leave which would be due such retiree for the year in which such retirement takes place, without reference to any pro-ration due to retirement at a time earlier than a full year.

22.09 Upon the separation from service of any employee, for any reason whatsoever, any and all Vacation Leave then unused which has accrued to the benefit of such employee during the calendar year of such separation, or carried over from previous years, shall be paid in cash money immediately upon such separation. Any Vacation Leave to be paid in cash money pursuant to the provision of this paragraph shall be considered paid in full as of the date of separation from service, and no date of separation from service shall be moved forward in time by reason of Vacation Leave. All employees separated from service from the City for any reason whatsoever shall be deemed to leave the employment of the City as of the date of their final physical presence as an employee at an assigned duty in the service of the City.

ARTICLE 23 HOLIDAY LEAVE AND DROP PROGRAM

23.01 All employees shall receive the following City approved and recognized holidays:

New Year's Day; Martin Luther King's Birthday; Presidents' Day; Good Friday; Memorial Day; Fourth of July; Labor Day; Veterans' Day; Thanksgiving, Christmas Eve and Christmas Day

The employee and the City recognize that the Fire Station must be manned twenty-four (24) hours a day for three hundred sixty-five (365) days a year regardless of the City-approved and recognized holidays set forth.

The employees and the City hereby agree that the employees shall receive holiday leave, with regular compensation, in the amount of seven (7), twenty-four (24) hour tours of duty, which shall

be scheduled on days chosen by the employee; provided, however, that the employee shall have obtained prior approval of the Chief, and that no two (2) members of the same shift shall schedule holiday leave on the same date.

It is further agreed that the employee shall receive, with regular compensation, an additional four (4), twenty-four (24) hour tours of duty to be scheduled on days chosen by the employee, provided notice is given to the Chief no later than 8 p.m. on the day before the tour of duty, to which the Leave will apply, begins. Exceptions to the notification requirement include cases of exigent emergencies that were not known prior to the original cut-off date/time and said emergency requires the immediate attention of the employee. The City retains the right to request evidence of the nature of the emergency.

The four (4) above holidays shall be taken in increments of not less than one fourth (1/4) of a twenty-four (24) hour tour of duty.

23.02 Holiday Leave shall be scheduled after all Vacation Leave has been apportioned as in paragraph 22.04 above and shall be selected, not more than two (2) holiday tours per employee choice, according to rank, and seniority within rank, as defined in paragraph 8.05 above.

23.03 All Holiday Leave not taken prior to December 1 of each year, nor scheduled to be taken prior to the end of such year, shall be compensated in cash money not later than January of the following year at the preceding December rate of pay, and such payment in cash money shall be separate and distinct from any other regular compensation to be received.

23.04 Upon separation from service or retirement of an employee of the Division, such employee shall receive, in cash money, compensation for any unused Holiday Leave which has accrued to the benefit of that employee.

23.05 Any employee of the Division eligible to enter the Ohio Police and Fireman Pension Fund authorized DROP Program, pursuant to all rules and regulations of the Ohio Police and Fireman Pension Fund, may apply to the City to receive in cash money, compensation for accrued Holiday Leave prior to their application to enter the DROP Program. The employee shall make written application on a form prescribed by the City to the Chief at least 30 days prior to the anticipated date of application to the DROP Program. The City will make payment for such accrued Holiday Leave in accordance with this Section within 45 days of the receipt of the written application. In the years of active employment following the employee's application to receive compensation pursuant to this Section, and in the year of separation from employment with the City, all payments made for unused Holiday Leave shall be made in accordance with Sections 23.03 and 23.04, respectively.

ARTICLE 24

PERSONAL LEAVE

24.01 Each employee shall earn Personal Leave with pay at the rate of one-fourth (1/4) of a twenty-four (24) hour tour of duty for each calendar month of service completed, provided that the employee has actually worked and been physically present at all times during the regular work

period scheduled for such employee, or been absent by reason of Leave granted elsewhere in this Agreement, with the exception of Sick Leave.

24.02 Personal Leave shall be scheduled on days chosen by the employee with prior notification to the Chief by 8 p.m. on the day before the tour of duty to which the Leave will apply begins. Exceptions to the notification requirement include cases of exigent emergencies that were not known prior to the original cut-off date/time and said emergency requires the immediate attention of the employee. The City retains the right to request evidence of the nature of the emergency.

24.03 Personal Leave may be carried over from one calendar year to the next; provided, however, that no employee shall accumulate a total amount of Personal Leave in excess of six (6) tours of duty.

24.04 Personal Leave shall be taken in increments of not less than one-fourth (1/4) of a twenty-four (24) hour tour of duty.

24.05 Upon involuntary separation from service, or voluntary separation from service with less than two (2) weeks' advance notice, an employer shall forfeit any unused Personal Leave. Upon any other separation from service, or retirement of an employee of the Division, such employee shall receive, in cash money, compensation for any unused Personal Leave which has accrued to the benefit of that employee up to a maximum of three (3), twenty-four (24) hour tours of duty.

ARTICLE 25

FUNERAL LEAVE

25.01 All employees shall be granted Funeral Leave according to the following schedule, to wit:

- a. Upon the death of a family member, other than set forth in subparagraph (b) & (c) below, two (2) tours of duty.
Family members shall be defined as follows: parents, grandchildren, parents-in-law, brothers, sisters.
- b. Upon the death of a spouse or a natural or stepchild, three (3) tours of duty.
- c. Upon the death of grandparents and spouse's grandparents, one (1) tour of duty.
- d. Upon the death of a person not listed above, the Chief, in his discretion, may allow a reasonable period of time of Sick Leave to attend the funeral.

25.02 In the event that an employee requires Funeral Leave in addition to the time set out in 25.01 above, such employee may utilize any and all accumulated unused Holiday Leave or Vacation Leave without regard to the previous scheduling of the same.

ARTICLE 26

MILITARY LEAVE

26.01 All employees who are Members of the Ohio National Guard, the Ohio Military Reserve, the Ohio Naval Militia, or other reserve components of the Armed Forces of the United States of America, shall be entitled to Military Leave from their respective duties for such times as they are on field training, or active duty, for a cumulative period not to exceed thirty (30) days in any calendar year. Application for Military Leave must be submitted to the Chief at least thirty (30) days in advance of the proposed Leave.

26.02 If compensation by any Military Authority, given during the period of Leave is less than the regular compensation which would have been given by the "City of Berea for such period, the employee shall be paid by the Employer the difference in cash money between the regular pay and the military pay. Should the military compensation exceed the regular compensation from the City of Berea, the employee shall reimburse the City with such differentials in cash money.

ARTICLE 27

JURY DUTY LEAVE

27.01 Any employee, who is called for Jury Duty either federal, county or municipal, shall suffer no loss in regular compensation or other benefits granted by this Agreement.

ARTICLE 28

VOTING LEAVE

28.01 An employee, who is a registered voter and who is assigned to a tour of duty on Election Day, shall be granted a reasonable time off to exercise the right to vote; provided, however, that the Chief determines that no emergency circumstances requires the attendance of such employee. The time off granted herein for the purpose of voting shall not entail any loss of wages or other benefits granted in this Agreement.

ARTICLE 29

LEAVE WITHOUT PAY

29.01 An employee may be granted a Leave Without Pay for a period not to exceed one (1) year for sickness, disability, educational development or other reasons found to be in the mutual interests of the Employer and the employee. Such Leave Without Pay must be approved by the Chief and the Mayor and ratified by the Board of Control.

ARTICLE 30

UNAUTHORIZED LEAVE

30.01 Employees absent from work without authorization shall be considered on Unauthorized Leave. An Unauthorized Leave for a period more than two (2) consecutive assigned tours of duty or more than two (2) consecutive assigned eight (8) hour working days shall be considered as an automatic resignation from service with the City.

ARTICLE 31

GRIEVANCE PROCEDURE

31.01 All employees have the right to present a grievance in accordance with the procedures provided herein, free from any interference, coercion, restraint, discrimination or reprisal. It is the intent and purpose of the parties to this Agreement that all grievances shall be settled, if possible, at the lowest step of this Grievance Procedure.

31.02 For the purposes of this Grievance Procedure, the terms used are defined as follows:

- a. Grievance: A "grievance" is a dispute or controversy arising from the application or interpretation of the specific and express written provisions of this Agreement.
- b. Aggrieved Party: The "aggrieved party" is an employee or group of employees within the Bargaining Unit, or the Union, who may file a grievance.
- c. Party in Interest: A "party in interest" is any employee named in a grievance who is not the aggrieved party.
- d. Days: A "day" is a calendar day, excluding Saturdays, Sundays and Holidays recognized by the Government of the United States of America.

31.03 The following procedures shall control the administration of this Grievance Procedure:

- a. Except at Step 1, a grievance shall identify the aggrieved party; the Article of this Agreement aggrieved; the time and place of all alleged events or conditions constituting the grievance the identity of the party alleged to have caused the grievance, if known to the aggrieved party; and a general explanation of the grievance.
- b. Except at Step 1, all decisions made upon any grievance shall be rendered in writing at each step of the Grievance Procedure with copies to the aggrieved party and any representative.
- c. If a grievance concerns more than one (1) employee, it may initially be submitted at Step 3.
- d. All matters concerning the filing of grievances shall be conducted during non-working hours, unless otherwise authorized by the Employer.
- e. Any employee having a grievance may discuss the matter informally with the appropriate superior office and have the same informally adjusted without the intervention of the Union; provided, however, that the adjustment is acceptable to the employee. In the event that a grievance is adjusted without formal determination, such adjustment shall not be deemed to create a binding precedent for future proceedings on other similar matters.
- f. This Grievance Procedure does not require an employee to pursue the remedies herein provided and does not impair or limit the right of an employee to pursue any other remedies available under law. An employee who pursues any other available remedy,

other than provided by this Grievance Procedure, shall automatically have waived all remedies provided by this Grievance Procedure.

- g. The time provisions herein are considered to be of the essence and any grievance not filed within the specified time limits shall be void.
- h. This procedure shall not be used for the purpose of changing, amending, modifying or altering any of the provisions of this Agreement.

31.04 All grievances are administered according to the following Grievance Procedure:

Step 1

An employee who may have a grievance shall notify the immediate supervisor of such grievance, in writing, within five (5) days of the occurrence of the facts giving rise to the same. The supervisor shall schedule an informal meeting with the employee within five (5) days of the date of filing the grievance by the employee for the purpose of discussing the dispute and resolving the same informally. The supervisor shall verbally report the determination resultant from such informal meeting to the employee within five (5) days thereafter.

Step 2

In the event that an employee initiating a grievance is not satisfied with the decision rendered by means of Step 1 above, the employee may give written notice of the grievance to the Chief within five (5) days from the date of the decision rendered in Step 1 above. Within ten (10) days after such written notice to the Chief, the Chief shall hold a formal hearing upon such grievance, and the Chief may invite any persons whom he may deem necessary for the fair and impartial determination of the grievance. Within fifteen (15) days from the date of such hearing, the Chief shall issue a written decision upon the grievance with a copy to the aggrieved party.

Step 3:

In the event an employee initiating a grievance is not satisfied with the decision rendered by means of Step 2 above, the employee may give written notice of the grievance to the Director of Public Safety within five (5) days from the date of the decision rendered in Step 2 above. Within ten (10) days after such written notice to the Director of Public Safety, the Director of Public Safety shall hold a formal hearing upon such grievance. The Director of Public Safety may invite any other party necessary to provide information required for the rendering of a fair and equitable decision. Within fifteen (15) days from the date of such hearing, the Director of Public Safety shall issue a written decision upon such grievance with copies to the aggrieved party and all parties present at each hearing.

ARTICLE 32

ARBITRATION PROCEDURE

32.01 If a grievance is unresolved by the Grievance Procedure, the Union may submit the grievance to arbitration not less than ten (10) days following the completion of the Grievance Procedure. Within ten (10) days thereafter, the parties shall meet to attempt to mutually agree upon an Arbitrator. If agreement is not reached, the party instituting the grievance shall request of the American Arbitration Association a list of three (3) arbitrators, from which list each party will strike one (1) name and the remaining arbitrator shall hear and determine the grievance.

32.02 The Arbitrator has no authority to alter the specific terms of this Agreement or to make any award requiring the commission of any act prohibited by law or to make any award that itself is contrary to law or violates any of the terms and conditions of this Agreement.

32.03 The Arbitrator shall not decide more than one (1) grievance on the same hearing day(s), except by mutual written agreement of the parties.

32.04 The Arbitration hearing(s) shall be conducted pursuant to the "Rules of Voluntary Arbitration" of the American Arbitration Association.

32.05 The fees and expenses of the Arbitrator and the cost of the hearing room, if any, are assessed against the party losing the grievance or split equally between the parties upon a split award. All other expenses shall be borne by the party incurring them. Neither party shall be responsible for any of the expenses incurred by the other party.

32.06 The decision of the Arbitrator, and any awards made, shall be in writing and delivered within thirty (30) calendar days from the final days of hearing, unless extended by agreement. The decision of the Arbitrator shall be final and binding upon the parties.

32.07 The Union agrees to indemnify and hold the Employer harmless against any and all claims, demands, suits or other forms of liability that may arise out of any determination that the Union may have failed to fairly represent a member of the Bargaining Unit during the exercise of any rights provided by the Grievance and Arbitration Procedures.

ARTICLE 33

DISCIPLINARY PROCEDURE

33.01 This procedure shall only apply to all non-probationary employees covered by this Agreement.

33.02 The following disciplinary actions can be taken against an employee for just cause:

- a. Non-Appealable Disciplinary Action
 - 1) Counseling

b. Appealable Disciplinary Actions

- 1) Written reprimand (through the Mayor's level);
- 2) Suspension for three or less days;
- 3) Suspension for four or more days;
- 4) Demotion;
- 5) Termination.

33.03 The following administrative procedures shall apply to disciplinary actions:

a. The Employer, the employee involved and the Union are encouraged to settle disciplinary matters informally. All parties shall extend a good faith effort to settle the matter at the earliest possible time. Employer is encouraged to hold an informal meeting with the employee for the purpose of discussing the matter prior to the formal presentation of written charges. At this meeting, the specific nature of the matter will be addressed and the Employer may offer a proposed disciplinary penalty. The employee must be advised before the meeting that she/he is entitled to representation by the Union or counsel during initial discussion.

b. If a mutually agreeable settlement is not reached at this informal meeting, the Employer will, within seven (7) days, prepare a formal Notice of Discipline and present it to the employee. A copy will also be given to the Union. If no informal hearing is held, the Employer may just prepare a Notice of Discipline and present it to the employee and the Union.

- 1) The date the Notice of Discipline was issued;
- 2) The specific acts for which discipline is being imposed;
- 3) The penalty proposed;
- 4) The following statement of employee rights:

All employees shall have the following rights:

An employee shall be entitled to representation by a Union representative or counsel at each step of the disciplinary procedure. Except in cases of counseling, an employee may appeal disciplinary action to the Fire Chief within seven (7) days of receiving the Notice.

No recording device or stenographic or other record shall be used during the questioning of an employee unless the employee is advised in advance that a transcript is being made and is thereafter supplied a copy of the record, at least thirty (30) days prior to the date of any related hearing. The cost of the transcript will be borne by the party requesting the copy of the transcript.

An employee shall not be coerced, intimidated or suffer any reprisals either directly or indirectly that may adversely affect his hours, wages or working conditions as the result of the exercise of his rights under this procedure.

Where the Employer seeks as a penalty the imposition of any suspension without pay, demotion or removal from service, the Notice of Discipline shall be served in person or by registered or certified mail, return receipt requested.

An employee may resign following the service of a Notice of Discipline. Any such resignation will be processed in accordance with the tenets of this Agreement and the employee's employment shall be terminated.

c. Upon receipt of the Notice of Discipline, the employee may choose to accept the proposed discipline or to file an appeal with the Fire Chief within seven (7) days. The employee's appeal shall start at Step 2 of the Grievance Procedure set forth in Paragraph 31.04 and proceed in accordance with Paragraph 31.04 and, if further appealed by the Union, in accordance with Article 32.

33.04 Discipline shall not be implemented until either:

- a. The matter is settled; or
- b. The employee fails to file an appeal under this procedure within the timeframe provided by this procedure; or
- c. The penalty is imposed after a pre-disciplinary hearing by the Mayor or his designee; or
- d. The penalty is upheld by the arbitrator or a different penalty is determined by the arbitrator.

33.05 A disciplinary matter may be settled at any time. The terms of the settlement shall be agreed to in writing by the Employer, Employee and the Union. An employee executing a settlement shall be notified of the right to have a Union representative or to decline any such representation. In the event any employee declines Union representation, the Union shall have a right to be present. A settlement entered into by an employee or the Union on his behalf, shall be final and binding on all parties.

33.06 An employee may be suspended with pay at any time during the process if the Employer, at its sole discretion, determines the employee's continued presence at the job represents a potential danger to person or property, or would interfere with the Employer's operations. A suspension without pay, demotion or discharge may be imposed once the disciplinary action is not challenged or after Step 2 of the Grievance Procedure.

ARTICLE 34 **CONFORMITY TO LAW**

34.01 This Agreement shall be subject to, and subordinated to, any applicable present and future federal and state laws and the invalidity of any provision(s) of this Agreement by reason of any such existing or future law shall not affect the validity of the surviving provisions.

34.02 If the enactment of legislation, or a determination by a court of final and competent jurisdiction (whether in a proceeding between the within parties, or in one not between the parties but controlling by reason of the facts) renders any portion of this Agreement invalid or unenforceable, such legislation or decision shall not affect the validity of the surviving provisions of this Agreement, which shall remain in full force and effect as if such invalid provision(s) thereof had not been included herein.

ARTICLE 35 **DURATION**

35.01 This Agreement shall become effective at 12:01 a.m., January 1, 2019, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2021. In the event that this Agreement shall be executed at a date later than January 1, 2019, all terms and conditions herein contained shall be retroactive to January 1, 2019, and any and all sums accrued by virtue of this Agreement shall be paid to all employees covered hereunder not later than two (2) pay periods following the date of execution hereof.

ARTICLE 36 **HEADINGS**

36.01 It is understood and agreed that the use of Headings before Articles and Sections is for convenience only and that no Heading shall be used in the interpretation of said Article or Section nor effect any interpretation of any Article or Section.

ARTICLE 37 **OBLIGATION TO NEGOTIATE**

37.01 The Employer and the Union acknowledge that during negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of Collective Bargaining negotiations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

37.02 For the life of this Agreement, the Employer and the Union each agree that neither shall be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, nor with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time of the negotiations and execution of this Agreement.

ARTICLE 38 **MISCELLANEOUS**

38.01 The Employer shall provide to all employees covered by this Agreement benefits similar to those provided to all other employees of the City pursuant to Resolution No. 85-85, regarding the

Police and Firemen's Pension Fund contribution pick-up, subject to approval of all appropriate taxing authorities.

38.02 The Employer shall provide payroll deductions from the compensation of all employees who designate such deductions payable to the Cleveland Firefighters' Credit Union, the Berea School Employees' Credit Union and the Ohio Public Employees Deferred Compensation Program. The Employer shall indemnify the employees against any liability arising out of the failure of the Employer to make timely deposits of the funds so deducted.

38.03 The Employer shall pay the cost of all books, fees, tuition and other related expenses in the event that an employee is required to attend courses, seminars or other work-related training.

38.04 The Employer shall provide the Union with adequate bulletin board space located in the Division of Fire. The Union shall be responsible for the care, maintenance and replacement of the bulletin board. The Employer shall have the right to remove any material not in conformance with paragraph 38.05 below.

38.05 No notices, memoranda, posters or other forms of communication are to be posted on the bulletin board established in paragraph 38.04 above that contain any defamatory, political (other than Union politics), or controversial material, or any material critical of the Employer or any employee of the Employer.

38.06 This Agreement constitutes the entire understanding and agreement of the parties hereto, and no oral statements of any kind shall vary the express written conditions hereof. No Ordinances or other laws established by the Employer, now or in the future, shall be controlling or applicable to the matters herein negotiated between the parties. This Agreement is the sole governing instrument regulating the conduct of the Employer and the employee in relation to each other, and no Ordinance or other law of the Employer are applicable to the Employer-employee relationship established in this Agreement.

38.07 In the event that on or after the date of execution of this Agreement, the Council of the City of Berea and/or the Berea Civil Service Commission, in their sole discretion, amends or enacts legislation, rules or regulations having the effect of creating new opportunities to earn extra credit points on promotional examinations, the Parties to this Agreement concur that eligible employees shall be provided a reasonable period of time to take whatever steps are necessary to become eligible to earn the new extra credit points.

ARTICLE 39

FAMILY MEDICAL LEAVE

39.01 Employees may request and be granted time off without pay pursuant to the Family Medical Leave Act of 1993. Such time off without pay shall not exceed twelve (12) weeks in any twelve (12) month period. Leave under this provision shall be computed when first approved. During such Leave the employee shall continue to receive health care insurance.

39.02 The Employer may require an employee to use accrued vacation, holiday or accumulated sick leave which shall be inclusive of the twelve (12) weeks of Family Medical Leave. The Employer shall not require an employee who has forty (40) hours or less of vacation or sick leave to exhaust such vacation time or sick leave time which shall constitute separate banks of time under this provision.

39.03 A husband and wife employed by the City of Berea, in any position or capacity, are eligible for FMLA Leave up to a combined total of twelve (12) weeks of leave during the twelve-month period referenced in Section 39.01 if the leave is taken:

1. For the birth of the employee's son or daughter or to care for the child after birth;
2. For placement of a son or daughter with the employee for adoption or foster care, to to care for the child after placement; or
3. To care for the employee's parent with a serious health condition.

ARTICLE 40

REGIONALIZATION/CONSOLIDATION

40.01 In the event the Employer enters into an Agreement to regionalize or consolidate fire services, the Employer will, in good faith and in using their best efforts, negotiate for employment within the regionalized/consolidated fire service for all current Bargaining Unit members and within that negotiation, request the Bargaining Unit members maintain their existing seniority, rank and rank in seniority. Nothing in Article 40 shall be construed to prohibit the Employer/City from entering into any agreement to regionalize/consolidate fire services.

ARTICLE 41

SUBSTANCE TESTING AND ASSISTANCE

41.01 All employees are subject to drug and alcohol testing pursuant to the policy attached as Exhibit C.

ARTICLE 42

FITNESS FOR DUTY

42.01 Should reasonable cause exist that an active duty employee is not "fit for duty," the Employer may place that employee on paid administrative leave pending completion of the fitness for duty evaluation process.

- a) "Reasonable cause" shall be based on objective observation(s) that the employee may not be fit to perform the essential job duties of the regular position or that the employee poses a danger to himself/herself or others. Personal opinions, mere suspicion or suspicion based upon hearsay does not constitute reasonable cause.

- b) "Fit for duty" shall be defined as being physically and mentally able to perform the essential functions of his regular position, as described in the written job description for his position, with or without a reasonable accommodation such that the employee does not pose a danger to himself or others in doing so. (Material changes to a position's written job description must be reasonable.)
- c) "Physician" shall be defined as a licensed doctor of medicine or osteopathy who has completed residency training in an accredited medical training program and/or is American Boards of Medical Specialties (ABMS) or American Osteopathic Association (AOA) board certified or international equivalent, and has familiarity with the Employer's fire services, including current job descriptions, physiological and psychological demands of firefighters, etc.

42.02 The initial fitness for duty evaluation will be performed by a physician selected and paid for by the Employer. Prior to any evaluation, the Employer will supply the evaluating physician with the current written job description for the employee's position and documentation detailing the facts indicating the employee is not sufficiently fit to perform his or her essential job duties. Copies of all documentation provided to the physician shall be simultaneously provided to the employee subject to testing. Following the evaluation, the physician shall provide the Employer and the employee a written report detailing the physician's determination of the employee's fitness for duty, including specification of any reasonable accommodations that could be made, if necessary. The employee shall be entitled to copies of an evaluation results and documentation associated with the evaluation.

42.03 The employee shall have the right to submit to a fitness for duty evaluation by a physician of the employee's choice at any time. Costs associated with the fitness for duty evaluation by a physician of the employee's choice shall be paid by the employee. The employee shall notify the Employer in writing of the employee's intent to submit to a fitness for duty evaluation by the employee's physician, or the existence of a conflicting fitness for duty determination by the employee's physician, within ten (10) days of receipt of the Employer's physician's fitness for duty report. A copy of the employee's physician's written report on the employee's fitness for duty shall be provided to the Employer.

42.04 In the event the second fitness for duty evaluation (employee physician evaluation) indicates the employee is sufficiently fit to perform his or her essential job duties, the Employer shall return the employee to his regular position. However, if the Employer demonstrates a reasonable basis to conclude the second fitness for duty evaluation is in error, the Employer may request the employee undergo a third evaluation regarding the employee's fitness for duty. The third evaluation shall be performed by a qualified physician mutually agreed upon by the Employer's physician and the Employee's physician, with the cost of the third evaluation split equally between the Employer and the employee. The same information provided to the physicians conducting the first and second fitness for duty evaluations shall be provided to the third-party physician and shared simultaneously with the Employer and the employee. The employee shall remain on paid administrative leave pending the outcome of the third evaluation. To the extent possible, the third fitness for duty evaluation should be completed within sixty (60) calendar days after the third-party

physician is notified of his/her selection to provide the third opinion. Within a reasonable time period thereafter, the third-party physician's written report shall be provided to the Employer and the employee simultaneously and shall state the third-party physician's determination concerning whether the employee is sufficiently fit to perform his or her essential job duties.

42.05 If the Employer's physician in the initial fitness for duty evaluation determines the employee is not fit for duty and the employee does not contest the determination, or if the third party physician determines the employee is not fit for duty, the employee may be placed on unpaid leave and may utilize all leave available to him under the Agreement or law while taking the prescribed steps, if any, to return to fit for duty status. If the employee exhausts the available leave prior to being cleared to return to duty by the third-party physician, the Employer may initiate discharge proceedings, with the understanding that any discharge must be for just cause.

42.06 In the event the Employer suspends or discharges the employee on the grounds that the employee has been determined not fit for duty, the employee may contest the suspension or termination by (1) filing a grievance under this Agreement's terms; or by (2) availing himself of available state or federal administrative or court remedies. In the event an employee chooses to contest the Employer's decision to temporarily suspend or terminate his employment by state or federal administrative/court remedies, the employee shall be deemed to have waived his right to file a grievance contesting the suspension or termination under the terms of this Agreement.

ARTICLE 43

STATION MAINTENANCE & SAFETY

43.01 The Employer shall maintain the Berea Fire Station facility, 2 Prospect Street; Berea, Ohio 44017, in good repair. Any matters requiring additional maintenance and repair shall be addressed timely. The Employer shall provide a continuous supply of towels, soap and bathroom tissue for the personal use of the employees. The Employer shall also provide for the repair and/or replacement of the following equipment, to wit: oven, microwave oven, range, dining table and chairs, disposal, toaster, electric coffee maker, four refrigerators, silverware, dishes, pots, pans and cooking utensils. The Employer shall also provide for the repair and/or replacement of all living area furniture, beds and bedding located in the Berea Fire Station facility on or before November 30, 1986. The Employer shall also provide necessary cleaning equipment and cleaning supplies.

43.02 There shall be a Joint Maintenance and Safety Committee composed of two (2) Employer representatives and two (2) Union representatives, with each party selecting their respective representatives. The Joint Committee shall:

- i. Meet at the request of either party (within 10 calendar days of the request) to perform inspections of fire department facilities, apparatus, protective equipment, protective clothing and devices to ensure that the facilities, apparatus, equipment and other fire station conditions are properly functioning, in order, and are not in any way hazardous or posing a health risk to fire station personnel.
- ii. Make written recommendations for the correction of any unsafe, unsanitary and/or not properly functioning equipment, devices and/or other conditions.

43.03 Disputes or disagreements concerning maintaining functional, safe and/or sanitary conditions and/or equipment in the fire station and fire station quarters beyond the standards set forth in 43.01 shall not be subject to the Grievance or Arbitration procedures set forth in this Agreement.

ARTICLE 44

EXECUTION

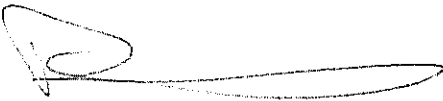
44.01 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on this _____ day of _____, 2019.

FOR THE UNION:

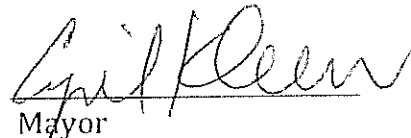
FOR THE EMPLOYER:

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL 1836, AFL-CIO**

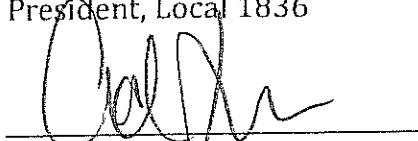
CITY OF BEREA



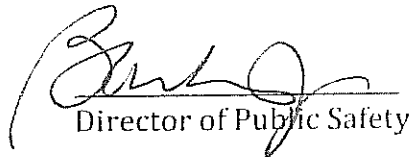
President, Local 1836



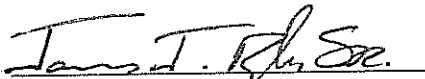
Mayor



Member, Local 1836



Director of Public Safety



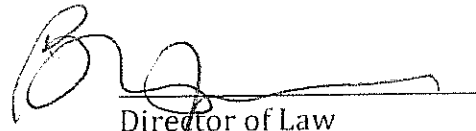
Member, Local 1836



Chief, Division of Fire



Member, Local 1836



Director of Law

Member, Local 1836

EXHIBIT A - 2019 FIRE WAGES

- Wage Increase 3%
- OT is paid at rate of 1.94%

- Paramedic pay increases an additional 2% in payroll period beginning June 20, 2019
- Wages paid at hourly rate

CADETS

	2019 through 6/29/2019	2019 annual through 6/29/2019		2019 beginning 6/30/2019	2019 annual beginning 6/30/2019
Basic wage	21.70	\$58,329		21.70	\$58,329
Basic wage with EMT	22.35	\$60,076		22.35	\$60,076
Basic wage with Paramedic	23.47	\$63,087		23.94	\$64,350
	OT rate through 6/29/2019			OT rate beginning 6/30/2019	
Basic OT	42.10			42.10	
Basic OT with EMT	43.36			43.36	
Basic OT with Paramedic	45.53			46.44	

FIREFIGHTERS

	2019 through 6/29/2019	2019 annual through 6/29/2019		2019 beginning 6/30/2019	2019 annual beginning 6/30/2019
Basic wage					
Basic wage with EMT					
Basic wage with Paramedic	26.38	\$70,909		26.91	\$72,334
	OT rate through 6/29/2019			OT rate beginning 6/30/2019	
Basic OT					
Basic OT with EMT					
Basic OT with Paramedic	51.18			52.21	

SENIOR FIREFIGHTERS

	2019 through 6/29/2019	2019 annual through 6/29/2019		2019 beginning 6/30/2019	2019 annual beginning 6/30/2019
Basic wage	26.97	\$72,495		26.97	\$72,495
Basic wage with EMT	27.79	\$74,699		27.79	\$74,699
Basic wage with Paramedic	29.19	\$78,462		29.77	\$80,021
	OT rate through 6/29/2019			OT rate beginning 6/30/2019	
Basic OT	52.32			52.32	
Basic OT with EMT	53.91			53.91	
Basic OT with Paramedic	56.63			57.75	

LIEUTENANTS

	2019 through 6/29/2019	2019 annual through 6/29/2019		2019 beginning 6/30/2019	2019 annual beginning 6/30/2019
Basic wage					
Basic wage with EMT	29.93	\$80,451		29.93	\$80,451
Basic wage with Paramedic	31.38	\$84,349		32.01	\$86,042
	OT rate through 6/29/2019			OT rate beginning 6/30/2019	
Basic OT					
Basic OT with EMT	58.06			58.06	
Basic OT with Paramedic	60.88			62.10	

CAPTAINS

	2019 through 6/29/2019	2019 annual through 6/29/2019		2019 beginning 6/30/2019	2019 annual beginning 6/30/2019
Basic wage					
Basic wage with EMT	31.99	\$85,989		31.99	\$85,989.12
Basic wage with Paramedic	33.59	\$90,289		34.26	\$92,090
	OT rate through 6/29/2019			OT rate beginning 6/30/2019	
Basic OT					
Basic OT with EMT	62.06			62.06	
Basic OT with Paramedic	65.16			66.46	

EXHIBIT B – 2020 - 2021 Fire Wages

- Wage increase 2%
- OT is paid at rate of 1.94%
- Paramedic pay increases an additional .5% in payroll period beginning June 20, 2019
- Wages paid on hourly basis

CADETS

	2020 hourly	2020 annual		2021 hourly	2021 annual
Basic wage	22.13	\$59,485		22.57	\$60,668
Basic wage with EMT	22.80	\$61,286		23.26	\$62,522
Basic wage with Paramedic	24.54	\$65,963		25.03	\$67,280
	OT rate 2020			OT rate 2021	
Basic OT	42.93			43.79	
Basic OT with EMT	44.23			45.12	
Basic OT with Paramedic	47.61			48.56	

FIREFIGHTERS

	2020	2020 annual		2021	2021 annual
Basic wage					
Basic wage with EMT					
Basic wage with Paramedic	27.58	\$74,135		28.13	\$75,613
	OT rate 2020	2020 annual		OT rate 2021	2021 annual
Basic OT					
Basic OT with EMT					
Basic OT with Paramedic	53.51			54.57	

SENIOR FIREFIGHTERS

	2020	2020 annual		2021	2021 annual
Basic wage	27.51	\$73,946		28.06	\$75,425
Basic wage with EMT	28.35	\$76,204		28.92	\$77,736
Basic wage with Paramedic	30.51	\$82,010		31.12	\$83,650
	OT rate 2020			OT rate 2021	
Basic OT	53.37			54.44	
Basic OT with EMT	55.00			56.10	
Basic OT with Paramedic	59.19			60.37	

LIEUTENANTS

	2020	2020 annual		2021	2021 annual
Basic wage					
Basic wage with EMT	30.53	\$82,064		31.14	\$83,704
Basic wage with Paramedic	32.81	\$88,193		33.47	\$89,967
	OT rate 2020			OT rate 2021	
Basic OT					
Basic OT with EMT	59.23			60.41	
Basic OT with Paramedic	63.65			64.93	

CAPTAINS

	2020	2020 annual		2021	2021 annual
Basic wage					
Basic wage with EMT	32.63	\$87,709		33.28	\$89,456
Basic wage with Paramedic	35.12	\$94,402		35.82	\$96,284
	OT rate 2020			OT rate 2021	
Basic OT					
Basic OT with EMT	63.30			64.56	
Basic OT with Paramedic	68.13			69.49	

EXHIBIT C: SUBSTANCE ABUSE TESTING AND ASSISTANCE POLICY

I. Situations Under Which an Employee or Prospective Employee May Be Tested

A. Pre-Employment Drug Testing

1. As part of the City's employment procedures, all applicants will be required to undergo a post-offer, pre-employment drug test/screening that is conducted by a contractor designated by the City. Any offer of employment is contingent upon, among other things, satisfactory completion of this test/screening.

B. Reasonable Suspicion Testing

1. Reasonable suspicion that an employee used or is using a controlled substance or alcohol in an unlawful or abusive manner may be based upon, but not limited to:
 - a. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence or withdrawal of a drug or alcohol;
 - b. A pattern of abnormal conduct or erratic behavior;
 - c. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use or trafficking;
 - d. Information provided by reliable and/or credible sources;
 - e. Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practice.

C. Post-Incident Testing

1. An "incident" is defined as an occurrence
 - a. Involving a city-owned vehicle or a privately-owned vehicle operated while conducting city business, which results in:
 - 1) A fatality; or
 - 2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - 3) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle or where damage to any property, real or personal, exceeds \$500.

- b. Involving any act(s) of an act of violence committed by an Employee against another person. An "act of violence" is an assault, as defined in Ohio Revised Code 2903.13.

D. Follow up Testing after Return to Work from Assessment or Treatment

1. This type of testing occurs at the point an employee who has previously tested positive returns to work.
2. The return-to-work test is required before the employee is allowed to return. Once an employee passes the drug and/or alcohol test and returns to duty, there may be additional tests conducted over a period of at least one year. Any employee with a second positive test result will be terminated.

II. Testing Procedures

A. In general

1. The City will use a testing site that affords visual and aural privacy, to the individual being tested sufficient to prevent unauthorized persons from seeing or hearing test results. This site will have available all of the necessary equipment, personnel, and materials for breath and drug testing. The City's alcohol and drug testing sites are located at Southwest General Hospital and/or its satellite Urticaria Centers; however other sites meeting the criteria set forth within may perform any test in the event that as a result of an accident, medical attention is sought at another suitable medical facility.
2. Any employee required to submit to an alcohol and/or drug test will be required to provide positive identification.
3. All alcohol and/or drug screening tests shall be conducted by medical laboratories meeting the standards of the National Institute of Drug Abuse and the National Institutes of Health. All urine specimens to be tested for the presence of controlled substances will be analyzed by a laboratory certified under the DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs. All drug tests required by the City will therefore be shipped for analysis to a NIDA certified laboratory. No test shall be considered positive until it has been confirmed by a gas Chromatography/Mass Spectrometry full scan test or its equivalent.
4. The costs of testing required by the employer shall be paid by the employer.

B. Results

1. Alcohol testing: A positive result of blood alcohol concentration of .04% or above shall entitle the Employer to proceed with sanctions as set forth in this agreement.
2. Controlled substance test result
 - a. Initial Screen: All urine specimens will be initially tested for the use of controlled substances by an immunoassay screen, which will eliminate negative urine specimens from further consideration. Any positive test results in an initial test will be subject to confirmation through an additional, more precise and accurate testing methodology.

The cut-off level set forth below will be used for the initial screening of specimens to determine whether they are negative for the following drugs:

- 1) Marijuana metabolites-50 ng/ml
- 2) Cocaine metabolites -300 ng/ml
- 3) Opiate metabolites-300 ng/ml *
*(25 ng/ml if immunoassay specific for free morphine)
- 4) Phencyclidine-25 ng/ml
- 5) Amphetamines -1,000 ng/ml

- b. Confirmatory tests: Any urine specimen identified as positive on the initial test screen will be confirmed by a second analytical procedure independent from the initial test and which uses a different chemical technique and procedure. Gas chromatography/mass spectrometry will be used to confirm initial positive test results.

The cut-off levels set forth below will be used to establish the existence of a "confirmed positive" test result:

- 1) Marijuana metabolites- 15 ng/ml
(Delta 9.-tetrahydrocannabinol 1-9-carboxylic acid)
- 2) Cocaine metabolites - 150 ng/ml
(Benzoylcegonine)
- 3) Opiates
Codeine-300 ng/ml Morphine -300 ng/ml
- 4) Phencyclidine -25 ng/ml
- 5) Amphetamines
Amphetamine -500 ng/ml
Methamphetamine - 500 ng/ml (specimen must also contain amphetamine at a concentration of 200 ng/ml or greater)

- c. All confirmed positive and negative test results will be reported by the laboratory to a Medical Review Officer before they are communicated to the City.

To ensure that every employee who might be subjected to drug and alcohol testing by the City is treated in a fair and impartial manner, the City has retained the services of a Medical Review Officer (MRO). The MRO is a licensed physician with knowledge of substances abuse disorders who will review and interpret positive test results from the laboratory. The MRO will also review the chain of custody to ensure that it is sufficient and complete on its face and may request quantification of the test results from the lab.

III. Employees' Rights Related to An Initial Positive Test Result

- A. In the event of a positive result, the MRO will contact the employee directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. The employee will be given an opportunity to explain the findings to the MRO prior to the issuance of a report of a positive test result to the City. The MRO can request information on recent medical history and on medications taken within the last thirty days by the employee. In the event that the MRO finds support in the explanation offered by the employee, the employee may be asked to provide documentary evidence to support the employee's position.
- B. If the MRO has made reasonable, but unsuccessful efforts at contacting the individual, the MRO may contact the City in order to communicate said results. In all cases, the City shall not be informed of a positive test result until the employee has been informed or reasonable efforts have been made to inform the employee.
- C. In the event of a positive result, the employee has the right to have the sample split and tested by another DHHS-certified laboratory. Said request must be made to the MRO within 72 hours of notice to the employee that the test was positive. The cost of the test under this section is the responsibility of the employee.

IV. Rehabilitation/Discipline

- A. If the testing required has produced a positive result, the City may take disciplinary action and/or may require the employee to participate in any rehabilitation or detoxification program that is covered by the employee's health insurance. The City will not otherwise pay the costs of a rehabilitation program not covered by the employee's health insurance. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick time, vacation leave, and any other paid leave days for a period of the program. If no such leave credits are available, the employee may apply for unpaid leave.
- B. If a rehabilitation or detoxification program is offered, the employee will not be permitted to return to the workplace until the employee demonstrates through a retest that he or she is no longer abusing any substance. Such employee may be subject to random testing upon return to work for a period of one (1) year from the date of return to work. As a condition of their continued employment, the employee must remain alcohol and drug free. Any employee in a rehabilitation or detoxification program in accordance with this Agreement will not lose any seniority or benefits.
- C. If the employee is referred to a rehabilitation or detoxification program, the City will be informed whether the employee is attending sessions and actively participating but will not receive information about the specifics of the counseling.
- D. The City will hold all employees accountable in terms of substance use but also supports rehabilitation.
 - 1. Those employees who come forward voluntarily to identify that they have a substance use problem will receive the City's support and assistance and will not be subject to disciplinary action. However, if an employee has a substance use problem and does not come forward, and the employee then tests positive for drug or alcohol use in violation of this Policy, the City reserves the right to take appropriate action, which may include referral to treatment, suspension without pay and/or termination. In all cases, the City reserves the right to take appropriate disciplinary action for other acts of misconduct which may be related to the use of alcohol and/or drugs.

2. The City agrees that in the absence of other acts of misconduct, an employee testing positive for the first time for alcohol and/or other legally prescribed or over-the-counter medications will be referred to a rehabilitation program.
3. There is a presumption that an employee who is found guilty or pleads no contest to a criminal offense related to substance use that occurs on City property or in a City vehicle or while conducting City business, will be terminated.
4. In all other cases, whether an employee who tests positive will be allowed to sign a "last-chance" agreement to seek assistance aimed at changing substance use behavior will be determined individually based on such factors as quality of performance, length of service, willingness to acknowledge a problem and seek help and whether the use of any alcohol and/or drugs occurred while conducting City business.
5. An employee's failure to cooperate in the implementation of this policy may be subject to disciplinary action.

V. Confidentiality

- A. To protect the confidentiality of employees, all records of drug and alcohol testing will be stored separately and apart from the employee's general personnel documents. Access to these records shall be limited to designated City officials. Those designated City officials that shall have access to these records are charged with the responsibility of maintaining the confidentiality of these records in accordance with state and federal law. Any breach of confidentiality concerning these records may result in disciplinary action, up to including termination.