

Fire Protection Agreement

THIS AGREEMENT, made this ____ day of December, 2018 between the TOWN BOARD OF THE TOWN OF NEW LEBANON, Columbia County, New York (hereinafter, the "Town"), and LEBANON VALLEY PROTECTIVE ASSOCIATION INC., of the Town of New Lebanon, Columbia County, New York (hereinafter, the "Association").

WITNESSETH, WHEREAS, there has been duly established in the Town of New Lebanon Fire Protection District #1, embracing territory in said Town as such territory is more fully described in the resolution establishing such district and duly adopted by the Town Board of the Town of New Lebanon on July 9, 1941 and the said resolution establishing the aforesaid district having been duly recorded in the office of the Clerk of the County of Columbia and whereas following a public hearing duly called, the said Town duly authorized a contract with the Association to the Town of New Lebanon Fire Protection District #1, upon the term and conditions herein set forth, and whereas the contract has been duly authorized by the Association:

NOW THEREFORE, the parties hereto covenant and agree as follows:

1. The term of this Agreement shall be one (1) year to commence on the 1st day of January 2019 and to end at 11:59:59 p.m. on the 31st day of December, 2019. Notwithstanding the foregoing, the provisions of paragraphs 3 and 15, below, shall survive the expiration of the term set forth herein, except as agreed otherwise in writing by the Town and the Association.
2. In consideration for the Association furnishing fire protection, including the use of any apparatus or equipment necessary thereto, in the Town of New Lebanon Fire Protection District #1, in accordance with the provisions set forth in this Agreement, the Town shall

pay the sum of ONE HUNDRED FIFTY-NINE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$159,500.00), said amount to be paid in four (4) installments as follows:

- a. on or before February 15, 2019: \$62,375.00
- b. on or before May 15, 2019: \$32,375.00
- c. on or before August 15, 2019: \$32,375.00
- d. on or before November 15, 2019: \$32,375.00

The sums due and payable by the Town hereunder shall be conditioned upon the timely performance by the Association of its obligations in accordance with this Agreement. All sums paid pursuant to any provision of this Agreement shall be a charge upon the Town of New Lebanon Fire Protection District #1, and said sum shall be levied upon the taxable property in the Town of New Lebanon Fire Protection District #1 and collected with the town taxes.

3. Restricted Contingency Account.

- a. The Association shall establish a separate bank account in its name (hereinafter, the "Restricted Contingency Account") and, on or before March 1, 2019, shall deposit therein the initial sum of \$30,000.00 from the total amount to be paid to the Association under paragraph 2(a), above. In addition, if the Association's actual operating expenses for fiscal year 2019 are less than \$129,500.00, the Association shall, on or before February 28, 2020, deposit into the Restricted Contingency Account an additional amount equal to the difference between \$129,500.00 and the Association's actual operating expenses for fiscal year 2019.
- b. Funds deposited into such Restricted Contingency Account shall not be used or

disbursed except pursuant to paragraph 3(b)(i), 3(b)(ii), 3(b)(iii), or 3(b)(iv),
below, as applicable:

- i. The Association may submit a written request to the Town Board seeking Town Board approval for the Association to use funds in the Restricted Contingency Account to pay any specified unexpected or unbudgeted costs or expenses. The Town Board may, in its sole and absolute discretion, approve, approve in part, or deny such request. In the event the Town Board denies such request, the Association shall not be permitted to use funds in the Restricted Contingency Account as requested. In the event the Town Board approves such request in whole or in part, such approval shall be by written resolution, and the Association shall be permitted to use funds in the Restricted Contingency Account only as authorized by such resolution.
- ii. In situations where seeking Town Board approval pursuant to paragraph 3(b)(i), above, is not practicable in light of emergent circumstances, the Association may seek the approval of the Town Supervisor to use funds in the Restricted Contingency Account to pay any specified unexpected or unbudgeted cost or expense. The Town Supervisor may approve, approve in part, or deny such request. In the event the Town Supervisor denies such request, the Association shall not be permitted to use funds in the Restricted Contingency Account as requested unless the Town Board determines otherwise by resolution. In the event the Town Supervisor approves such request in whole or in part, which approval may be

provided orally, the Association shall be permitted to use funds in the Restricted Contingency Account only as authorized by the Town Supervisor. The parties agree that any oral decision by the Town Supervisor to approve, approve in part, or disapprove a request hereunder shall be memorialized in writing or electronically as soon as practicable thereafter. In the event the Association uses funds in the Restricted Contingency Account as permitted under this paragraph 3(b)(ii), the Association shall be required to replenish the Restricted Contingency Account on or before the next successive December 15 following the Town Supervisor's approval by depositing therein an amount equal to that amount which was expended from such fund under this paragraph 3(b)(ii), unless provided otherwise in a Town Board resolution.

- iii. In the event the Town and the Association have executed an agreement on or before December 31, 2019 pursuant to which the Association agrees to furnish fire protection in the Town of New Lebanon Fire Protection District #1 for a term commencing on January 1, 2020, the Association shall be permitted to use funds in the Restricted Contingency Account for the payment of operating expenses that become due and payable between January 1, 2020 and February 29, 2020. In the event the Association uses funds in the Restricted Contingency Account as permitted under this paragraph 3(b)(iii), the Association shall be required to replenish the Restricted Contingency Account on or before December 15, 2020 by depositing therein an amount equal to that amount which was expended

from such account under this paragraph 3(b)(iii).

- iv. In the event the Town and the Association have not executed an agreement on or before December 31, 2019 pursuant to which the Association agrees to furnish fire protection in the Town of New Lebanon Fire Protection District #1 for a term commencing on January 1, 2020, the Association shall, on or before February 28, 2020, pay to the Town the full balance of the Restricted Contingency Account. For purposes of this paragraph 3(b)(iv), the “full balance of the Restricted Contingency Account” shall mean the sum of the following amounts: (i) all amounts that are actually on deposit in the Restricted Contingency Account; (ii) all amounts, if any, that were withdrawn from the Restricted Contingency Account in violation of the terms of this Agreement; and (iii) all other amounts that have not been deposited in the Restricted Contingency Account but that are, under the terms of this Agreement, required to be deposited in the Restricted Contingency Account.
 - c. The Town and the Association may agree in writing to modify the terms and conditions applicable to the Restricted Contingency Account in the same manner authorized by applicable law to enter into or amend this Agreement.
 - d. The Town, the Town Board, the Town Supervisor, and all of the Town’s officials, agents, and employees shall not be liable to the Association or any third party for any decisions made or not made relating to the use of funds deposited in the Restricted Contingency Account.
4. The Association shall, at all times during the period of the Agreement, be subject to call

for attendance upon any fire or other emergency occurring within the area set forth herein, and when notified by any person by alarm, telephone call, radio or otherwise of a fire or other emergency within the areas set forth herein, the Association shall respond with and attend upon the fire or other emergency without delay with the equipment owned by the Association and personnel required to save lives and property involved in said fire or other emergency and to effect the prompt extinguishment of said fire or mitigation of said emergency. Upon arrival at the scene of the fire or other emergency, the Association shall proceed diligently to apply its apparatus, equipment and personnel in any and every way necessary to save lives and property involved and to effect the prompt extinguishment of said fire or mitigation of said emergency.

5. The geographic area within which the Association shall be required to furnish fire protection or emergency mitigation for is hereby defined as: the entire geographic area embraced by the official boundary lines of the Town of New Lebanon.
6. Except as otherwise permitted by law, should any loss or damage whatever be sustained to the fire apparatus or other equipment of the Association answering, attending, or returning from a call in the area set forth in this Agreement or from any other area, whether sustained in the Town of New Lebanon Fire Protection District #1, or outside thereof, and irrespective of the cause thereof, the amount of such loss or damage shall be paid by the Association, and the Association hereby agrees to hold the Town harmless from any and all claims that may arise from any such loss or damage. Neither the Town of New Lebanon nor the Town of New Lebanon Fire Protection District #1 shall be responsible for any loss or damage to any vehicles or equipment owned by any of the firefighters, agents, servants or employees of the Association. The Association shall be responsible for paying the cost

of any and all materials of any and every kind and nature used by the Association, its firefighters, agents, servants or employees in connection with the answering, attendance upon, or returning from any calls, and the Association shall hold the Town harmless from any and all claims for any of these costs.

7. Volunteer Firefighters' Benefit Law Section 30 shall govern liability for all claims authorized by law for medical expenses, loss of wages, compensation, benefits or claims arising by reason of the injury or death of a firefighter, agent, servant or employee sustained while answering attending upon or returning from a call.
8. Neither the Town of New Lebanon nor the Town of New Lebanon Fire Protection District#1 shall be responsible to the other for any loss, injury or damage to persons or property unless injury or damage is caused by the actionable negligence of the Town of New Lebanon, the Town of New Lebanon Fire Protection District #1 or either of their duly authorized agents, servants or employees.
9. During the term of this Agreement, the Association shall at its sole cost and expense, keep and maintain general public liability insurance protecting and indemnifying the Town of New Lebanon, the Town of New Lebanon Fire Protection District #1, and the Association against any and all claims for damages to persons or property or loss of life in connection with any actions of the Association, its firefighters, agents, agents, servants or employees. The limits of liability shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) in respect to bodily injury or death to any one person, not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) property damage and not less than a THREE MILLION DOLLAR (\$3,000,000.00) umbrella liability policy covering claims beyond the general liability amounts otherwise provide for herein. Such insurance shall be written by

a company authorized to engage in the business of general liability insurance in the State of New York, and proof of insurance shall be delivered to the Town, customer certificates, evidence of such paid-up insurance, which certificates will be issued by the insurance company and shows the Town as an additional insured.

10. The Town agrees that the Association will respond to calls for mutual aid assistance per current mutual aid plans, agreements and regulations in contiguous counties and as necessary during periods of activation of the New York State Fire Mobilization and Mutual Aid Plan. These agreements will also permit mutual aid assistance to departments in the State of Massachusetts. The Association will also accept and receive mutual aid per the same plans, agreements and regulations.
11. The Town and the Association agree that the methods, means, and decisions as to how service shall be rendered in the Town of New Lebanon Fire District #1 are the sole discretion of the officers or members of the Association or their mutual aid partners, as the case may be, on the scene of a fire or other emergency except that said methods, means and decisions shall be in compliance with New York State and United States Laws and regulations promulgated thereunder and shall be performed with due care under the circumstance.
12. The Association agrees that the Town Board shall, at a mutually agreed upon time, have access to any and all fire protection buildings, equipment and tools for the purpose of inspection.
13. The Town and the Association hereby agree that they will use their best efforts at all times in cooperating to extinguish fires and mitigate any other emergencies causing damage or bodily harm in the Town of New Lebanon Fire Protection District #1.

14. The Association also agrees to the following terms:
- a. Negotiations between the Town and the Association to enter into an agreement pursuant to which the Association agrees to furnish fire protection in the Town of New Lebanon Fire Protection District #1 for a term commencing on January 1, 2020 shall begin no later than July 15, 2019 by the Association filing with the Town Board the statement required pursuant to NYS Town Law Section 184 (1-a)(a) itemizing the estimated costs of the Association attributable to the provision of services under the prospective contract. In addition to providing the information required under Section 184 (1-a)(a), such statement shall itemize amounts that are attributable to the Association's Asset Management/Replacement Plans for fire apparatus, fire equipment and buildings.
 - b. The Association shall provide the following documents and information on before July 15, 2019:
 - i. All documents and information required under NYS Town Law Section 184.
 - ii. A copy of the Annual Treasurer's Report for the end of the previous fiscal year.
 - iii. The Association's compiled financial statements for the most recent completed fiscal year.
 - iv. Asset Management/Replacement Plans for fire apparatus, fire equipment and buildings, which will include inventories of existing assets, together with both a current and long-term plan for maintenance and replacement of assets. The budget request submitted by the Association shall include a

separate line to support the plan. The proposed asset management/Replacement plan shall specifically include an inventory of Trucks, equipment and real property.

- v. Detailed income and expenses from fundraising activities for all fundraising conducted during 2018.
- vi. Updated membership roster to include for each member, the member's name, physical address and category of membership, and including
 - 1. Non-resident applications/requests for all members that are not residents of the Town of New Lebanon
 - 2. Training records
- vii. List of Line Officers
- viii. List of Company Officers including Board of Directors
- ix. The Association agrees to provide the most current copy of the following records:
 - 1. Code of Ethics and Association By-Laws
 - 2. ISO Rating
- c. The Association will provide monthly reporting including:
 - i. Budget versus Actual Year to Date expenses and summaries of Contractual and Non-Contractual Funds, including capital funds. Current Capital Funds will be divided up by major project category and each fund will have a specific definition of what it is to be used for. The balance in each fund, together with any changes, will be included in the monthly reporting documents.

- ii. Monthly report of Association activity, to be provided to the Town one week in advance of the Town's regular Town Board meeting when meeting dates allow and as soon as possible if meeting dates do not allow for a full week, to include the following information broken down by type of activity (Emergency calls, Drills/training, and Miscellaneous): date, description of activity, name of each member attending the activity with their classification (A,B,C), and personnel hours, total number of personnel and total number of personnel hours.
- 15. The Association shall provide regular bank statements reflecting activity in the Restricted Contingency Account. Upon written demand from the Town Board, the Association shall be required to provide an accounting of the Restricted Contingency Account and to provide any documentation or information as may be deemed necessary by the Town Board or its designee to substantiate the revenue and expense activity in the Restricted Contingency Account.
- 16. The Association will provide the above and any other financial information which the Town Board may reasonably request to adequately document cash and property tax balances, incomes or cash flows, which may be used to support budget requests.
- 17. The Association agrees to maintain the following documents and make them available upon written request of the Town:
 - a. Drivers lists
 - b. Company meeting minutes
 - c. Vehicle maintenance records and check sheets
 - d. Pump Test records

- e. Hose Test records
- f. Ladder Test records
- g. Self-Contained Breathing Apparatus (SCBA) Test records

18. The Town and the Association agree that this contract may be amended at any time during the term of the contract so long as both parties mutually agree on the terms and conditions of the amendment. The amendment shall be provided in writing and comply with procedures prescribed by the Town Law of the State of New York.
19. The Town and Association agree to cooperate to provide any and all necessary and relevant additional information to the other in a timely manner, upon written request, in order to promote and satisfy the needs of each other for the protection and benefit of the Town of New Lebanon.
20. The Association by and through its authorized representative(s) agrees to meet with such Town Board members as may be designated by the Town Board on a monthly basis to discuss the Association's operations, the Association's compliance with State Law requirements, and such other matters as the Town may request.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this day in the year first above written, and the Association have caused its corporate seals to be hereunto affixed and these presents to be signed by duly authorized officers of the day and year first written above.

**LEBANON VALLEY PROTECTIVE
ASSOCIATION, INC.**

TOWN OF NEW LEBANON

By: _____

By: _____

Edward Godfroy, President

Colleen Teal, Supervisor