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STATE EMPLOYMENT
RELATIONS BOARD

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CITY OF CLAYTON

and

**CLAYTON PROFESSIONAL FIREFIGHTERS
IAFF LOCAL 4379**

**COLLECTIVE BARGAINING AGREEMENT
(Fire and EMS)**

(April 1, 2008 to March 31, 2011)

08-MED-02-0083

1742-05

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ARTICLE 1
Preamble

This agreement is made and entered into this 15th day of May, 2008 by and between the City of Clayton (hereinafter referred to as the "Employer") and the Clayton Professional Firefighters, IAFF Local 4379 (hereinafter referred to as the "Union" or the "IAFF"). In order to promote the rights and well being of the City, its citizens and the bargaining unit employees, the City and the Union agree as follows:

ARTICLE 2
Recognition

Section 1. The Employer recognizes the Union as the sole and exclusive representative of all employees in the bargaining unit as described in SERB case number 04-REP-07-0126. The term "employee" or "employees" as used in this agreement shall refer to the full time paid employees assigned to the following classification:

Included: All full-time shift captains and firefighter/paramedics

Excluded: Public Safety Director, Chief, Assistant Chief and all other employees of the employer.

Section 2. Any reference to employees in this agreement shall include both sexes: Whenever the male gender is used, it shall be construed to include male and female.

Section 3. The Union has sole and exclusive bargaining rights under this agreement with respect to wages, hours, or terms and other conditions of employment.

ARTICLE 3
Dues Deduction/Fair Share

Section 1. During the term of this Agreement, the Employer shall deduct initiation fees, assessments levied by the IAFF and the regular monthly IAFF dues from the wages of those employees who have voluntarily signed dues deduction authorization forms permitting said deductions.

Section 2. The initiation fees, dues or assessments so deducted shall be in the amounts established by the IAFF from time to time in accordance with its Constitution and Bylaws. The IAFF shall certify to the Employer the amounts due and owing from the employees involved.

Section 3. These dues will be deducted from payroll on a bi-monthly basis. In the event that an employee has no pay due on a particular date, the amount will be deducted on the next pay thereafter.

Section 4. A check in the amount of the total dues withheld from those employees authorizing a dues deduction shall be tendered to the treasurer of the IAFF within thirty (30) days from the date of making said deductions.

Section 5. The IAFF hereby agrees to hold the Employer harmless from any and all liabilities or damages which may arise from the performance of its obligations under Article 3 and the IAFF shall indemnify the Employer for any such liabilities or damages that may arise.

Section 6. The Employer will furnish the IAFF with a list of all employees in the classifications covered by this Agreement indicating their starting date of employment. Such list will be furnished no less than annually and will be supplemented by the names of all new employees as hired.

Section 7. Employees desiring to withdraw their payroll deduction authorization will notify the City and the Union in writing at least 30 days prior to the termination of the dues deduction.

Section 8. All employees who are not members of the Union, shall pay to the Union, through payroll deduction, a fair share fee as provided for and determined by the provisions of Section 4117.09(C) of the Ohio Revised Code. The fair share fee is automatic and does not require any employee to become or remain a member of the Union, nor shall the fair share fee exceed the dues paid by members of the Union. The Union will certify to the City the amount of the fair share fee. The fair share fee shall not be used to finance political and/or ideological activity. The fair share fee is strictly to finance the proportionate share of the cost of collective bargaining, contract administration and pursuing matters directly affecting wages, hours and other terms and conditions of employment of the employees. The City shall implement the fair share deductions subject to the provisions of this section. The Union represents to the City that it has in place a rebate and challenge procedure which complies with Section 4117.09(C) of the Ohio Revised Code, federal law, and any judicial decisions interpreting such laws. The Union agrees to abide by all rules and decisions of the State Employment Relations Board or the courts in regard to the fair share fee deductions.

Section 9. Employees who are members of and adhere to established and traditional tenets and teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization, as set forth in Section 4117.09(C), Ohio Revised Code, shall have such alternative contribution rights as are provided by law under such conditions and in accordance with such procedures as are required by law. Upon request from the Union, the Employee shall provide evidence of such membership, tenets and teachings of such religion.

Section 10. The Union shall indemnify and save the City harmless against any and all claims that shall arise out of or by reason of action taken by the City pursuant to the fair share fee provision of this Agreement.

ARTICLE 4
Non-Discrimination

Neither the Employer nor the Union shall discriminate against any employee due to his membership or lack of membership in the Union. The provisions of this agreement shall be applied equally to each employee in the bargaining unit without discrimination as to sex, race, color, creed, national origin, handicap or political affiliation. The Union shall share equally with the Employer the responsibility for applying this provision of the agreement.

ARTICLE 5
Management Rights

Section 1. Management's Reserved Rights. Except as otherwise limited by the terms of this Agreement, the management and direction of the operations of the Department are retained by the City. This includes but is not limited to the City's rights and responsibilities to:

- (1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
- (2) Direct, supervise, evaluate, or hire employees;
- (3) Maintain and improve the efficiency and effectiveness of governmental operations;
- (4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- (5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- (6) Determine the adequacy of the work force;
- (7) Determine the overall mission of the employer as a unit of government;
- (8) Effectively manage the work force;
- (9) Take actions to carry out the mission of the public employer as a governmental unit.

Section 2. Work Rules The City retains the right to implement work rules to govern the operation of the Department provided said rules do not conflict with any specific rights and obligations set forth in this Agreement or the provisions of Ohio Revised Code Chapter 4117.

Section 3. Acknowledgment. This Agreement represents the entire agreement of the parties and shall supersede all previous agreements, written or oral. The parties acknowledge that, during the negotiations which resulted in 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, and that all of the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore except as otherwise provided in this Agreement, the Employer and the Union, for the life of this Agreement and any extension, each voluntarily and unqualifiedly waive the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement.

ARTICLE 6 Labor-Management Relations

Section 1. In the interest of sound Labor-Management relations, the Public Safety Director and/or his designee may meet with not more than three (3) representatives of the Union periodically to discuss pending problems and to promote a more harmonious labor-management relationship. This Article shall not substitute for the grievance and arbitration provisions of this Agreement.

ARTICLE 7 No Strike/No Lockout

Section 1. No Strike/No Lockout. Neither the Union nor any employee shall strike nor shall the Employer impose any "lockout" of any employees during the term or extended term of this Agreement.

Section 2. Violation. Any violation of this Article by an employee or employees shall constitute cause for discharge or discipline consistent with Ohio Rev. Code Chapter 4117 of the employee or employees who participate therein.

Section 3. Union Must Stop Violation. In the event of any violation of this Article, the Union will immediately take whatever steps are necessary to attempt to terminate said strike, slowdown, sit-down, work stoppage or other concerted activities which interrupt operations or picketing in violation of the Agreement.

ARTICLE 8
Policies and Procedures

The Employer has the right to establish work rules, policies and procedures to regulate employees in the performance of their job. In the event of a conflict between the terms of this Agreement and any policies, procedures and/or work rules, the Agreement shall prevail. To the extent any work rules, policies, and procedures have been or will become reduced to writing, each shall be posted at a conspicuous location at the Department. The Union shall be provided with a copy of the same. Except in cases of emergency the Union shall receive a copy of said rule, policy or procedure 14 days prior to its effective date.

ARTICLE 9
Employee Rights

Section 1. Discipline shall be applied in a corrective, progressive and uniform manner consistent with the City of Clayton Personnel Practices Manual effective November 7, 1999. Progressive discipline shall take into account the nature of the violation, the employee's prior history of discipline and the employee's record of performance and conduct.

Section 2. Employees may be disciplined for just cause. In the event that an employee is to be given disciplinary action for behavior or conduct which warrants time-off, suspension or removal, a predisciplinary conference between the employer and the employee and the union representative, or his designee, shall be arranged. This conference shall be scheduled not earlier than 24 hours after the time the employee is notified of the discipline and the predisciplinary conference. The employee may have a union steward or an employee representative plus the staff representative present at the predisciplinary conference. The employee shall be responsible to notify the steward or staff representative. The employer may have additional personnel present at the predisciplinary conference.

Section 3. A non-probationary employee who receives disciplinary action subsequent to the predisciplinary conference referenced above shall be given written notice regarding the reasons for the disciplinary action.

Section 4. Complaints from third parties may result in disciplinary action. The employee will be notified of the complaint upon commencement of an investigation. The notification to the employee may be delayed in the event that the matter involves bona fide investigation of criminal conduct by the employee. Prior to any questioning of the employee, the employee will be notified of his right to be represented by legal counsel and apprised of his "Garrity" rights concerning statements made by him.

Section 5. Employees may review their personnel file at reasonable times upon written request. Employees may request, through their supervisor that the individual responsible for their personnel file remove inaccurate materials from their file. If the

individual declines the request, the employee shall have the right to have a memorandum attached to the document in question, stating the employee's concerns.

Section 6. All actions of record will be maintained in each employee's personnel file throughout his period of employment, with the exception that any of the following records will be removed from the file upon the request of the employee, according to the following schedule:

A. Oral Reprimand. An oral reprimand shall be expunged from any file maintained by the Employer after twelve (12) months, at the employee's request, provided that no further discipline of the same or similar nature is imposed within twelve (12) months of the oral reprimand.

B. Written Reprimand. A written reprimand shall be expunged from any file maintained by the Employer after twelve (12) months, at the employee's request, provided that no further discipline of the same or similar nature is imposed within twelve (12) months of the written reprimand.

C. Suspension/Reduction. A suspension or reduction shall be expunged from any file maintained by the Employer, at the employee's request, after three (3) years of the suspension or reduction.

No records regarding prior discipline or performance evaluation may be used in connection with disciplinary or promotion/retention related matters unless such records are maintained in personnel files that as of the effective date of this Agreement have been identified and are readily accessible to the employee for inspection upon request.

Section 7. The commencement of the taking of disciplinary action¹ or notification that asserted charges/complaints are unfounded shall occur within (a) fourteen (14) calendar days after the completion of an investigation of the matter or (b) within thirty (30) days after the incident at issue first comes to the attention of the Public Safety Director whichever is the earlier. In the event that the Public Safety Director determines that additional investigation into a potential disciplinary matter is warranted the Public Safety Director may extend the above referenced time periods by an additional sixty (60) days upon notice to the employee and the Union representative. The parties may agree to mutually extend the period for an additional ninety (90) days upon notice to the employee. Upon the commencement of disciplinary action, and reasonably prior to any hearing(s) conducted therewith, the employee shall be entitled to copies of such internal

¹"The commencement of the taking of disciplinary action" can include a notice of referral to the City Manager for suspension or discharge, (ii) the notice of discipline being immediately imposed, (iii) the notice of the scheduling of a pre-disciplinary conference; or (iv) the notice of discipline to be imposed at a reasonable date in the future. Once the discipline is determined it shall be imposed within thirty (30) days unless otherwise extended by mutual agreement of the Public Safety Director and the employee being disciplined.

documents as may constitute "public records" under R.C. §149.43 which are being utilized in connection with said disciplinary proceedings.

ARTICLE 10
Grievance Procedure

Section 1. A grievance, under this Agreement, is a written dispute, claim, or complaint arising under or during the term of this Agreement, and filed by either an authorized representative of the IAFF or an employee in the bargaining unit. Grievances are limited to matters of interpretation or application of express provisions of this Agreement, including, but not limited to wages, benefits and working conditions.

Section 2. Timeliness of Grievance. All grievances must be filed in writing, within seven (7) calendar days after occurrence of the circumstances giving rise to the grievance. Otherwise, the right to file a grievance is forfeited and no grievance shall be deemed to exist.

Section 3. Procedure. Any employee having a complaint shall first take up the matter with his/her immediate supervisor. If no satisfactory answer or disposition is received within one (1) working day, the complaint shall be processed as follows:

Step 1. The employee and/or his/her representative shall within the seven (7) calendar day period as set forth in Section 2 above, reduce the complaint to written form, stating all facts in detail, the contract sections alleged to be violated, and the remedy sought to resolve this grievance. This shall be submitted to the Assistant Chief. The Asst. Chief shall within seven (7) calendar days (14 additional days in unusual circumstances with notice to the Union) after receipt of the grievance, schedule a meeting time and date, mutually convenient between himself/herself, the grievant, and his/her representative to provide an opportunity for the grievant to fully present the facts surrounding the filing of the grievance. Within seven (7) calendar days after such meeting, the Asst. Chief or his/her designee will respond, in writing, answering the grievance. A copy will be provided to the grievant, and his/her representative. If the grievance answer is not satisfactory, the grievant may file the grievance with the Public Safety Director or his/her designee within seven (7) calendar days after receipt of the answer from the immediate supervisor.

Step 2. The Public Safety Director, shall within seven (7) calendar days after receipt of the grievance, schedule a meeting time and date, mutually convenient between himself/herself, the grievant, and his/her representative to provide an opportunity for the grievant to fully present the facts surrounding the filing of the grievance. Within seven (7) calendar days after such meeting, the Public Safety Director or his/her designee will respond, in writing, answering the grievance. A copy will be provided to the grievant and his/her representative. If the grievance answer is not satisfactory, the Union may file the grievance with the City Manager within seven (7) calendar days after receipt of the answer from the Public Safety Director.

Step 3. Within seven (7) calendar days after a receipt of the grievance, the City Manager will schedule a meeting mutually convenient between themselves, the grievant, his/her representative and the Union. Both Employer and the Union shall have the right to have witnesses necessary to the grievance, appear at the meeting. The meeting is to provide an opportunity for the Union to fully present the facts surrounding the filing of the grievance. Within seven (7) calendar days, the Employer will respond, in writing answering the grievance. A copy will be provided to the grievant, his/her representative and the Union. If at this step the grievance remains unresolved, it may be submitted to arbitration as hereinafter provided for in this Agreement. Notice of appeal to arbitrate must be filed with the Employer within seven (7) calendar days after receipt of their answer, otherwise the grievance shall be deemed to be resolved.

Section 4. Any and all grievances resolved in any Step of the Grievance Procedure as contained in this Agreement shall be final and binding on the Employer, the Union and all bargaining unit employees involved in the particular grievance.

Section 5. Grievances shall be processed from one Step to the next within the time limit prescribed in each of the Steps. Any grievance upon which a disposition is not made by the Employer within the time limit prescribed or any extension which may be agreed to will automatically be referred to the next Step in the Grievance Procedure. The time limit to run from the date when the time for disposition expired. Any grievance not carried to the next Step by the Union within the prescribed time limits or such extension which may be agreed to, shall be automatically closed upon the basis of the last written disposition.

Section 6. It is agreed that the time limits imposed, under this article, may be waived or extended by mutual agreement in writing. Further, any Step of the Grievance Procedure may be waived by mutual agreement in writing.

ARTICLE 11 Arbitration

Section 1. The Union must notify the Employer in writing of a desire to submit an issue(s) to arbitration within seven (7) calendar days from the date the written disposition was given under the last Step of the Grievance Procedure. In the event the Union shall fail to serve such written notice, the matter shall be considered closed on the basis of the last written disposition made. After receipt of a notice to submit a grievance to arbitration, the parties shall, within five (5) working days or within a longer period mutually agreed to, jointly submit the matter to the Federal Mediation & Conciliation Service requesting that an arbitrator be selected with assistance and under the voluntary rules of the Federal Mediation & Conciliation Service.

Section 2. All documents provided to the Union in response to records requests to prepare for arbitration shall be accurate, complete and up to date.

Section 3. The arbitrator shall have no power to add to or subtract from or modify any of the terms of this Agreement and any award issued by the arbitrator shall not be contrary to law.

Section 4. The award of the arbitrator shall be based exclusively on the evidence presented at the arbitration hearing.

Section 5. The expense of the arbitrator shall be shared equally by the parties. Each party shall make arrangements for and pay the expense of witnesses which are called by them.

Section 6. The decision of the arbitrator shall be final and binding on the Union, bargaining unit employees, and the City.

ARTICLE 12 Seniority, Probation and Retention of Health Insurance

Section 1. Seniority Defined. Seniority shall be defined as the duration of time an employee has been employed on a full-time basis with the Fire/EMS Department (whether Randolph Township or Clayton). Classification seniority shall be defined as the duration of time an employee has been employed on a full-time basis in a particular classification, i.e., "captain". Absent a specific grant in this Agreement, the retention of seniority during layoff or leave of absence does not automatically entitle an employee to receive benefits provided to employees on the active payroll and working their regular shift assignments.

Section 2. Probationary Period. New employees shall serve a probationary period not to exceed one (1) year subject to the Employer's then existing probationary requirements which shall include evaluations at six (6) month intervals. Informal evaluations shall be more frequent. An employee shall be entitled, during the probationary period to processing of grievances but shall not have the right to challenge probationary release through arbitration. Newly promoted employees shall serve a promotional probationary period of six (6) months, which can be extended with notice to the Union and employee for an additional six (6) months.

Section 3. Seniority. For seniority purposes the date of hire is the determining factor. Where the dates of hire are the same the employee's actual starting date shall control. If dates of two (2) employees are identical, the ranking on the hiring eligibility list shall control.

Section 4. Termination of Seniority An employee's seniority shall cease and his re-employment rights terminated upon any of the following:

- a. Resignation or "Quit";
- b. Termination which is not modified or reversed through grievance or arbitration;
- c. Retirement (Based upon years of service and/or retirement disability);

- d. Layoff in excess of 24 months or the amount of their accrued seniority, whichever is shorter;
- e. Absence from work (resulting from work-related injury or illness compensated by workers compensation) in excess of 18 months;
- f. Absence from work (resulting from non-work related injury or illness or FMLA approved reason) in excess of retained sick leave or six (6) months whichever is longer, except that after that period the employee shall be retained on a preferential rehire list for their existing job and wage rate for new job openings for a period up to an additional 6 months. If hired during that period the employee shall return with their existing seniority.

These periods may be extended at the Employer's sole discretion.

Section 5. Continuation of Insurance Employees shall continue to be eligible for health insurance coverage as follows:

- a. After resignation or quit - as determined by COBRA;
- b. During layoff for a period of three (3) months after which as determined by COBRA;
- c. During military leave in excess of 31 days - as determined by COBRA and USERRA.
- d. During absence from work (resulting from work-related injury or illness compensated by workers compensation) for a maximum of retained sick leave or 18 months, whichever is longer.
- e. Absence from work (resulting from non-work related injury or illness or FMLA approved reason) for a maximum of retained sick leave or 6 months whichever is longer.

These periods may be extended at the Employer's sole discretion.

ARTICLE 13 Lay-Off/Recall

Section 1. Whenever it is determined that a layoff is reasonably necessary, the following procedures will apply.

Section 2. All bargaining unit employees in an initial probationary period working in positions affected by the layoff will be assigned to other appropriate positions if available, or, if no other positions are available, shall be laid off prior to displacing any full-time regular employees.

Section 3. Staffing In the event that economic conditions require the layoff of full-time personnel, it is agreed as follows:

- A. No layoff shall reduce full-time personnel below three (3) employees working 24/48 schedules.

B. If the City desires to reduce the employee's below three (3), the City must be declared in fiscal emergency by the auditor of state and reopen the contract to negotiate such changes, subject to fact-finding and conciliation if the parties are unable to agree.

Section 4. When it is determined by the Employer that regular full-time employees must be laid off, the employees affected will be laid off within 6 months and according to lowest seniority first, provided that the employee(s) retained have the immediate skill and ability to perform the jobs to which they will be assigned.

In the event of a layoff, the City shall layoff part-time employees to bring the ratio of part-time employees to full-time employees to 4 to 1 and thereafter maintain a ratio of at least one (1) full-time employee to each four (4) part-time employees.

Section 5. No new bargaining unit employees shall be hired until all employees who have been laid off with recall rights have been given the opportunity to return to work. Laid-off employees will be notified by registered mail at their last known address to return to work within fourteen (14) calendar days of the date of notification. Failure to report within the time limit will remove them from the recall list. Employees on layoff are responsible for advising the Employer of their current address.

Section 6. Employees will retain their seniority for a period of twenty-four (24) months or the amount of their accrued seniority whichever is shorter, and may be reinstated during this period. Employees will be recalled in reverse order of their layoff subject to their skill and ability to perform the job to which they are recalled.

Section 7. Upon layoff, an employee shall be paid for accrued but unused vacation and compensatory time. Such payment shall be included with the employee's last regular pay check.

ARTICLE 14 Subcontracting

The City retains the right at its discretion to subcontract work to third parties however subcontracting that results in layoffs must be for valid operational needs, economic benefit and overall efficiency. In the event that the Employer contemplates the subcontracting of work from the Fire/EMS Department to an outside third party that would result in the layoff of any employee covered by this Agreement, the Employer shall provide at least 30 days prior written notice to the Union and meet with the Union upon request to examine alternatives to the proposed subcontracting and the effects upon the affected employee(s). Provided that valid operational needs, economic benefit and/or overall efficiency is the basis for the layoff, the City's decision shall be final.

ARTICLE 15
Outside Employment

All outside employment must be approved by the Public Safety Director which shall not be unreasonably denied.

ARTICLE 16
Scheduling

Section 1. Employees who work a 24/48 shift shall be entitled to bid for available shifts between December 1 and December 10. Shift assignment shall be based upon seniority provided that in the event more than one (1) employee is assigned to a shift, the City may assign employees to particular shifts for purposes of overall productivity, training and efficiency.

ARTICLE 17
Overtime

Section 1. Overtime. Employees whose duties include firefighting/suppression who work 24/48 hour shifts shall be eligible for overtime pay after their hours of work exceed 212 during a 28 day period. Employees whose duties include firefighting/suppression who work other than 24/48 hour shifts shall be eligible for overtime pay after their hours of work exceed 53 during a 7 day period. All other employees whose duties do not include firefighting/suppression shall be eligible for overtime pay subject to applicable requirements under the FLSA (Fair Labor Standards Act).

All time worked outside of an employee's regular shift shall be paid at overtime rates unless "flexed" with the employee's consent or subject to shift trades with another employee with employee and city consent. Time worked outside of a regular shift that is treated as overtime shall not be "pyramided"² when computing overtime on hours worked in excess of 53 or 212.

Section 2. Filling Vacancies. When a full-time Captain is unable to work as a result of illness or scheduled time off and the Assistant Fire Chief is not on duty, the City may assign a full-time Firefighter/Paramedic working that shift to the duties of "Acting Captain" and increase his/her hourly rate by 6% for all hours worked in that position for up to twelve (12) hours. In the event that the absence is for more than twelve (12) hours, or if an Acting Captain is not designated, the other full-time Captains will be offered the opportunity to fill in on an overtime basis for the hours spanning between 1630 to 0730 hours when the Assistant Fire Chief is not on duty. If the Assistant Fire Chief is not working due to days off or holiday, the Captain shall be offered the entire shift. If another Captain is unable to fill the shift, an offer to fill the slot will be extended

² Hours may not be counted twice in computing overtime. If treated as overtime because worked outside of a regular shift they cannot also be counted in computing overtime for hours worked in excess of 53 or 212.

to qualified part-time employees. If a part-time member of the staff is unable to fill the slot, the Captain with the least departmental seniority will be required to work the hours. The provision of this paragraph will not apply in cases of extended injury or position vacancies for periods in excess of six (6) weeks.

When a full time Firefighter/Paramedic is unable to work as a result of illness or scheduled time off, the other full-time Firefighter/paramedics will be offered the opportunity to fill in on an overtime basis for the hours spanning between 1630 to 0730 hours when the Assistant Fire Chief is not on duty. If the Assistant Fire Chief is not working due to days off or holiday, the full-time Firefighter/Paramedic shall be offered the entire shift. If another full-time Firefighter/Paramedic is unable to fill the shift, an offer to fill the slot will be extended to qualified part-time employees. If a part-time member of the staff is unable to fill the slot, the full-time Firefighter/Paramedic with the least departmental seniority will be required to work the hours. The provision of this paragraph will not apply in cases of extended injury or position vacancies for periods in excess of six (6) weeks.

Employees designated as Acting Captains who are working the shift as a "trade" must cancel and reschedule the traded hours worked.

ARTICLE 18
Residency Requirement

Section 1. All employees shall be required to reside within 20 miles of the City limits.

ARTICLE 19
Tuition Assistance

Subject to budgetary constraints, the City will establish a City-Wide Tuition Reimbursement Program for full time employees to further their potential by attending any accredited school or institution in a work related degree program. The annual maximum tuition reimbursement shall be \$1500.00. Work related courses or classes and college degree course reimbursement shall be at 100% to the \$1500.00 maximum in accordance with established City policies. So long as the degree is work related, all courses leading to that degree will be eligible for reimbursement. Once a class is approved, the approval shall not be subsequently withdrawn.

Reimbursement shall be as follows:

Grade	Work Related
A	100%
B	75%
C	50%

Pass in Pass/Fail 50%

To be eligible to apply for minimum reimbursement, the employee must receive a passing grade in the course and agree in writing to return said payment to the Employer if he/she does not remain an employee for a period of 24 months and authorize deduction of such payment from his/her final paycheck(s). The repayment amount may be prorated based on the total months of employment following the reimbursement. To be deemed "work related" the degree must directly improve the employee's value to the Department in his/her present position or enhance an employee's chances for advancement to another position within the Clayton Fire/EMS Department.

ARTICLE 20
Holidays

Section 1. Employees shall receive 8 hours of holiday pay computed at 40 hour rates³ for all of the following holidays, payable in a lump sum check in the first pay period of November:

<u>HOLIDAY</u>	<u>WHEN CELEBRATED</u>
New Years Day	January 1
Martin L. King Day	3rd Monday, in January
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving	Day after 4 th Thursday in November
Christmas Eve	December 24
Christmas Day	December 25
New Years Eve	December 31

Section 2. An employee whose regular assigned work shift falls primarily within any of the above designated holidays shall be compensated for all hours worked during the shift at one and one half times the employee's 24-48 shift hourly wage rate.

Section 3. Each employee shall receive one (1) floating holiday per year paid at 24 hours straight time (using 24/48 rates) on a day mutually agreed by the City and employee.

³ The 40 hour rate is computed by multiplying the applicable wage rate listed at Article 28 by 2920 hours and then dividing the result by 2080 hours.

ARTICLE 21
Vacation Leave

Section 1. Each full-time employee working a 40 hour shift shall earn and be entitled to a paid vacation in accordance with the following schedule:

<u>Length of Service</u>	<u>Annual Vacation</u>	<u>Accrual Rate per Pay Period</u>
After 1 year, but less than 5 years	80 hours	3.077 hours
After 5 years, but less 10 years	120 hours	4.615 hours
After 10 years, but less than 15 years	140 hours	5.385 hours
After 15 years continuous service	160 hours	6.154 hours

Section 1. Each full-time employee working a 24/48 shift shall earn and be entitled to a paid vacation in accordance with the following schedule:

<u>Length of Service</u>	<u>Annual Vacation</u>	<u>Accrual Rate per Pay Period</u>
After 1 year, but less than 5 years	120 hours	4.615 hours
After 5 years, but less 10 years	168 hours	6.461 hours
After 10 years, but less than 15 years	192 hours	7.384 hours
After 15 years continuous service	216 hours	8.307 hours

Section 2. Any employee who resigns, terminates or retires from the Department shall be paid in a lump sum for all earned but unused vacation payable on an hour for hour basis at the employee's then base hourly rate. In the event of the death of an employee all earned but unused vacation shall be paid in a lump sum to the employee's next of kin or estate as designated by the employee.

Section 3. Vacation time shall be taken at a time approved by the Public Safety Director or his designee. Employees shall receive timely notice of the approval of their requested vacation leave (usually within 72 hours) and said approval shall not be unreasonably withheld.

Section 4. Employees who anticipate accruing in excess of 216 vacation hours as of December 31 of each year shall notify the Asst. Fire Chief no later than September 1. Thereafter reasonable efforts shall be made by the Employee and City to schedule vacation to reduce the balance to 216 hours or less by year end. If the employee is unable to take accrued vacation because of scheduling problems resulting in City's denial of request, reasonable efforts shall be undertaken to permit the employee to take vacation within the next 60 days to reduce the accrued balance to 216 hours.

ARTICLE 22
Health Insurance

The City will continue to provide health insurance coverage under the City's group medical insurance policy as provided to all non-unionized City employees. Payment of the health insurance premium shall be as follows for employees hired on or before the effective date of this Agreement :

1. City will pay 93% of the premium for the basic policy (single, spouse, dependent children and family coverage)
2. Employee shall pay 7% of the premium for the basic policy. (single, spouse, dependent children and family coverage)

Employees hired after the effective date of this Agreement shall be subject to the following percentages provided the same restrictions apply to new hires not otherwise subject to collective bargaining agreements:

Employees hired after April 1, 2008 shall pay 15% of the premium for the basic policy. (single, spouse, dependent children and family coverage) and the City will pay 85%.

Employees hired after April 1, 2009 shall pay 17% of the premium for the basic policy. (single, spouse, dependent children and family coverage) and the City will pay 83%.

Employees hired after April 1, 2010 shall pay 20% of the premium for the basic policy. (single, spouse, dependent children and family coverage) and the City will pay 80%.

In the event that the City offers other insurance benefits or coverage options to non-union employees, the City will make such benefits and coverage options available to employees covered herein on the same terms and conditions as are offered to non-union employees.

ARTICLE 23
Jury Duty/Court Time

Section 1. Jury Duty. Any employee required to serve on a jury before a court empowered by law to require such service shall be released from duty with sufficient time to clean up and appear and be paid his regular full pay for hours he would otherwise have worked provided that compensation received for jury duty shall be endorsed and turned over to the Employer.

Section 2. Court Time. An employee required to appear before a court, legislative committee, judicial or quasi-judicial body as a witness in response to a subpoena, to testify concerning work related matters shall receive at least a minimum of

2 hours pay. Any compensation received shall be endorsed and turned over to the Employer.

ARTICLE 24 Educational Leave

Section 1. Bargaining unit members may be granted leave with pay for educational purposes to attend conferences, seminars, briefing sessions, or other functions of similar nature that are intended to improve, maintain, or upgrade the employee's certifications, skill, and professional ability. In the event an employee is assigned to training for two (2) or more successive days, he/she may be placed in an 8 hour day/40 hour per week pay status and subject to the overtime eligibility provisions of Article 17, Section 1.

Section 2. Such leave shall be at the discretion of the Public Safety Director or his designee. No employee is guaranteed any minimum amount nor is there a restriction on a maximum amount of leave however the Public Safety Director will make reasonable efforts to equalize the available training among the department employees. It is agreed, however, that all time spent for courses required by the state of Ohio for mandatory recertification shall be considered time worked subject to overtime requirements.

Section 3. Where attendance at a conference, seminar, course or similar educational function is required by the Public Safety Director all course fees, registration costs, and course material costs shall be paid by the City.

Section 4. It is understood that Employer decisions on making training available are based on the needs and requirements of the Fire/EMS Department. The Employer will attempt to send employees to at least one (1) training class per year but said class must be of material benefit to the Employer as reasonably determined by the Public Service Director. Budget and scheduling requirements shall also be considered.

Section 5. The Employer will provide "in-service" training to employees. Scheduling shall be at the Department's discretion however reasonable efforts will be undertaken to make training available to all employees notwithstanding their shift assignments and to spread the training throughout the year.

ARTICLE 25 Compassionate Leave

Section 1. An employee shall be entitled to use paid leave when a death occurs in the immediate family. Immediate family shall be defined as the employee's mother, father, guardian, spouse, child, stepchild, brother, sister, grandparents, grandparents-in-law, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, sister-in-law, brother-in-law.

Section 2. Employees working a 24/48 shift shall be entitled to take 48 hours off for the death of a spouse or child (including stepchildren). All other deaths shall be 24 hours off. Employees working a 40 hour week shall be entitled to 40 hours off for the death of a spouse or child (including stepchildren). All other deaths shall be 24 hours off.

Section 3. Additional time off, using accumulated sick leave may be granted on a case by case basis, subject to the Public Safety Director's approval. An additional 24 hour shift charged to sick leave shall be provided in the event of the death of a spouse, child or stepchild.

Section 4. Compassionate leave as defined above at Section 1 and 2 shall not be deducted from vacation, sick or other accumulated paid leave.

ARTICLE 26 Sick Leave

Section 1. Sick leave for full-time employees begins to accrue from the first day of employment and may be used as necessary any time during the period of employment. Sick leave is not earned during periods of time in which the employee is in a non-pay status and not working his/her regular shift assignment or if the employee is using sick leave for a continuous period in excess of thirty (30) days. Should the Employer elect to assign an employee to light duty with the consent of the employee's physician the employee shall continue to earn sick leave.

Section 2. Employees shall accrue sick leave at the rate of 6.46 hours per pay period for a total of 168 hours per year.

Section 3. Employees are entitled to accumulate unused sick leave.

Section 4. Sick leave will be approved for the following uses and may be taken in hourly increments:

- (a) incapacitating illness (including maternity leave) and injury;
- (b) contagious diseases; or
- (c) medical or dental appointments (not to exceed three (3) hours unless excused by written permission of physician or dentist indicating that treatment rendered required employee to take off longer period).
- (d) such other illness related occurrences (e.g. serious illness of immediate family members which required the attendance of the employee) with Employer permission which shall not be unreasonably denied.

Section 5. If an employee is absent due to illness for more than 24 consecutive scheduled hours of duty, the employee may be required to supply a written statement from a doctor indicating that the employee was under doctor's care and is cleared to return to full duty. The employer may require similar statements for shorter periods of sick leave absence consistent with rules which may be adopted by the Employer to address excessive absenteeism.

Section 6. If the Employer has reasonable and documented cause to believe that an employee is mentally or physically unable to perform his required duties, he may require the employee to take an examination to determine his physical or mental capacity to perform their required duties, which exam will be scheduled at the earliest available date and time. The employer shall bear the cost of such exam.

If the examination determines that the employee is unable to perform his required duties or that his condition jeopardizes his or others health and safety, the employee must be transferred to another position or placed on sick leave.

If the employee disagrees with the results of a mental or physical examination, he may, at his own expense, obtain an examination and opinion from his own personal physician and if the respective results of the examination and/or opinion differ, the respective physicians shall select a third physician who shall examine the employee and render the final decision which shall be binding on both parties. The expense of the third physician shall be paid by the employer.

Section 7. Employees are required to notify their immediate supervisor or other designated persons within four (4) hours prior to their scheduled reporting time on their day(s) of absence unless emergency conditions or the absence of any personnel at the Department make such reporting impossible.

Section 8. Employees who remain absent on sick leave beyond the number of accrued hours of sick leave will have their continued absence charged to vacation leave unless they request otherwise.

Section 9. In the event of an employee's early retirement by reason of medical disability accrued sick leave will be paid to the employee. Except as provided at Section 11, employees will not be paid for their accrued, unused leave upon any other cessation of employment including but not limited to voluntary quit, termination or layoff.

Section 10. Approved Uses. Sick leave may not be used to supplement Workers' Compensation or other insurance benefits received by an employee for an injury or illness suffered on a non-City job worked by an employee except in such amounts as necessary to supplement the benefits so as to compensate the employee up to 100% of what he would otherwise have earned had the injury not occurred.

Section 11. Conversion at Retirement Effective immediately, employees with 10 years of accrued service (Township and Municipality) shall be entitled to convert up to 960 hours of their accrued sick leave at PERS or PFDPF approved retirement on a 1 to 4 basis for a total payout not to exceed 240 hours.

Section 12. FMLA. Paid leave taken under this Article shall be counted toward leave which may be taken by an employee under the Family Medical Leave Act.

Section 13. Sick Leave Donation During any rolling twelve month period, Employees with a balance of at least 288 hours (six weeks) in accrued sick leave may contribute a portion of their accrued sick leave to other employees of the City of Clayton who have exhausted all of their accrued leave benefits and they or their spouse or child are stricken with a catastrophic or life threatening illness or injury. At no time shall a member donate hours which would cause their sick leave balance to be reduced to less than 288 hours (six weeks).

ARTICLE 27 Injury Leave and Light Duty

Section 1. Injury Leave

A. Injury leave may be granted by the City Manager in lieu of Worker's Compensation lost income benefits. Such leave may be granted to an employee who becomes unable to perform his or her job duties due to an injury or illness that occurs in the discharge or performance of his or her official duties (job related injury or illness), except where such injury or illness is the result of causes which would result in disqualification under applicable Workers Compensation standards. The City shall review the employee's status at periodic (30-60 day) intervals and may at its option cause the employee to activate his Workers Compensation claim for lost wages and terminate further injury leave payments by the City. In that event the employee may supplement workers compensation payments received with use of the employee's accrued sick leave provided that the employee's total compensation from sick leave and workers compensation shall not exceed his then current equivalent pay rate.

B. Should an employee suffer a job related injury or illness he or she shall immediately report the incident to his or her supervisor unless physically unable to do so (eg., hospitalization), and his or her supervisor shall notify the Public Safety Director and complete a Report of Injury/Illness Form. This report shall be completed, regardless of the apparent seriousness of the job related injury or illness, and regardless whether medical attention is required. Such report shall be forwarded to the Public Safety Director and Personnel Director no later than twenty four (24) hours after being reported by the employee. An employee who suffers a job related injury or illness may be required by the Public Safety Director to see a medical care provider. (See Section C below regarding immediate reporting of serious accidents.)

C. Should the Public Safety Director require it or should an employee's job related injury or illness require medical attention, a Workers' Compensation medical claim form shall be completed by the attending physician. This completed report should be forwarded to the Ohio Bureau of Workers' Compensation through the Personnel Director.

D. In the event of serious job related injury or illness, the injured employee's supervisor shall notify the Public Safety Director and Personnel Director immediately, so that, if necessary, an investigation may be initiated.

E. The Public Safety Director must be advised and continually updated if an employee continues to be absent due to a work-related injury. Employees are responsible for providing their expected date of return to work (if known).

F. Any documents received from the injured employee, his or her medical care provider or the State, regarding a Workers' Compensation claim must be immediately forwarded to the Personnel Director.

G. Employees who suffer a job related injury or illness who are unable to continue working shall be paid at their regular rate of pay, for the balance of time left in their scheduled work shift.

H. Employees must use any combination of paid leave for the hours lost during the first seven (7) calendar days of absence. Consistent with procedures followed under Ohio Revised Code Section 4123.55, if the employee remains totally disabled and is prevented from working for an additional seven (7) calendar days, and the City has granted injury leave, the City will retroactively apply injury leave to the employee for the first seven (7) calendar days and re-credit the leave that was initially expended.

Injury leave shall be paid at the employee's normal hourly rate and will not be applied against any other paid leave that the employee has accrued.

I. In the case of injuries where there is a question as to the circumstances, employees may use any combination of paid or unpaid leave during the absence. At the time of injury or illness is determined to be job-related by the Bureau of Worker's Compensation/Industrial Commission and the City has elected to not appeal or the appeal process is exhausted, the employee's leave will be restored and injury leave substituted for the time absent, consistent with paragraph H.

J. Family and Medical leave will begin on the first day of injury leave for eligible employees. City contributions toward the cost of benefits shall be maintained during injury leave. Requests for additional injury leave will be considered on a case-by-case basis.

K. An employee returning from leave may be required to provide a physician's certification of his or her ability to return to work.

L. Employees may be required to submit to medical and/or psychological examination in order to determine the employee's capability to perform the essential functions of the employee's position with or without reasonable accommodation. Such examination shall be conducted by a licensed practitioner chosen by the City. The cost of such examination shall be paid by the City. If the employee disagrees with the results of a mental or physical examination, the employee may, at his/her own expense, obtain an examination and opinion from his/her own personal physician and if the respective results of the examination and/or opinion differ, the respective physicians shall select a third physician who shall examine the employee and render the final decision which shall be binding on both parties. The expense of the third physician shall be split by the City and employee.

Section 2. Light Duty

A. The City may institute a "light duty" policy whereby employees that might otherwise have to receive benefits under lost wage claims from the Bureau of Workers Compensation or injury leave under this Article can be returned to duties commensurate with their physical capabilities at their then applicable wage rate. Such light duty policy may be in addition to a Transitional Work Program provided for under workers compensation programs. Such light duty shall not prevent claims under applicable workers compensation laws for coverage of medical expenses. The City in its discretion may extend application of this light duty policy to employees who suffer illness or injury other than in the course and scope of their employment.

ARTICLE 28
Wages

Section 1. Wages

FF/PM	(Entry) <u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	
Current	13.30	13.85	14.81	15.73	16.34	
4/1/08	13.98	14.68	15.41	16.18	16.99	<i>(4% at Top Step and recalculation to maintain 5% between prior steps)</i>
4/1/09	14.37	15.08	15.83	16.63	17.46	<i>(2.75% across the board)</i>
4/1/10	14.77	15.50	16.27	17.09	17.94	<i>(2.75% across the board)</i>
FF/PM Captain	(Entry) <u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	

Current	15.10	16.03	16.66	17.24	17.85	
4/1/08	15.28	16.04	16.84	17.68	18.56	(4% at Top Step and recalculation to maintain 5% between prior steps)
4/1/09	15.70	16.48	17.30	18.17	19.07	(2.75% across the board)
4/1/10	16.13	16.93	17.78	18.67	19.59	(2.75% across the board)

All step increases shall occur with the first payroll period on or after January 1. All across the board increases shall occur with the first payroll period on or after April 1. Employees employed six months or longer shall advance from one Step to the next step on January 1 following their date of hire and yearly thereafter. Employees with less than six months must wait until the following January 1 to advance to the next step. The performance evaluation system will be mutually developed and agreed upon by both Management and the Union.

Section 2. PERS Pickup. The Employer agrees that wages will be structured for payroll purposes so that the Employee contribution will be deducted "pre-tax." Standard deductions for tax purposes will be computed on the employee gross pay after PERS or PFDPF is deducted.

Section 3. Equalized Paychecks. Effective with the payroll year beginning in January, 2009, employees working a 24/48 hour schedule shall receive equalized paychecks prepared as follows:

At the beginning of each payroll year the Finance Department shall prepare a salary sheet that lists each full-time employee, their applicable hourly rate, and their anticipated straight time earnings for that year which shall consist of the hourly rate multiplied by 2920 hours. Each employee's straight time earnings shall be divided by the number of bi-weekly payroll periods to compute a gross payroll amount for equalized paychecks. Employees shall receive such equalized paychecks, provided however, that at the end of each 28 day period described in Article 17 Overtime the City shall adjust the then applicable paycheck to reflect additional compensation for overtime worked during that 28 day period, or deduction for unpaid leave. See the following example:

Employee earning 18.56/hr would have anticipated yearly straight time earnings of \$54,195.20. Assuming 26 pay periods, his/her equalized gross paycheck would be \$2,084.43. Assuming he/she works 216 hours during an applicable 28 day cycle, the second of the two paychecks issued covering that 28 day period would include an additional amount of \$37.12 to reflect the 50% FLSA overtime adjustment for 4 hours of overtime worked.

ARTICLE 29
Trade Policy and Other Compensated Time

Section 1. Employees may trade hours or shifts with another employee with the approval of the Public Safety Director. The trades can not be unreasonably denied, but will not be counted for purposes of computing overtime.

Section 2. Call-out Pay An employee called out by the Public Safety Director or his designee shall receive a minimum of two (2) hours time for each call-out provided is not an extension of their scheduled shift.

Section 3. Training and Departmental Meetings. Trainings and departmental meetings during non-scheduled work hours shall be credited with a minimum of two (2) hours at applicable rates.

ARTICLE 30
Effect of Laws and Savings Clause

This Agreement is subject to all existing or future federal and state laws, rules and regulations and shall be interpreted whenever possible so as to comply fully with such laws and with any judicial decision interpreting them. In the event that any provision of this Agreement is found to be contrary to law by a court or other authority having jurisdiction, it shall be void, but the remainder of the Agreement shall remain in effect.

ARTICLE 31
Duration

This Agreement shall be in effect from April 1, 2008 through March 31, 2011.

ARTICLE 32
Uniforms

Section 1. The City of Clayton will provide uniforms for all bargaining members on a "quarter-master" system. Items shall be replaced on an as-needed basis and approved by the rank of Assistant Chief or above. For the purpose of this article, undergarments and socks will not be included. The City will provide the following:

A. Description of Uniform(s)

The City of Clayton will strive to maintain professional and functional uniforms for all of its membership. Any uniform (or piece of) that is not approved by the Director of Public Safety will not be approved for wear.

B. Uniform Committee

A uniform committee will be formed between the City of Clayton and the Clayton Professional Firefighter IAFF Local 4379 for the purposes of review, recommendation, and change to the approved uniforms. All recommendations are subject to final approval by the Director of Public Safety, who has the ultimate authority to select any and all uniform items.

C. Minimum of Items Provided

Dress Uniform: One (1) Class "A" uniform including footwear and hat.

Pants: Total of four (4)

Shirts: Five (5) or any combination totaling (5) winter wear shirts/sweatshirts and (5) summer wear shirts. The Department shall also furnish (5) tee shirts in addition to the summer and winter shirts.

Miscellaneous: One (1) each

- Jacket
- Shoes or boots
- Uniform Belt
- Winter hat
- Ball Cap

Section 2. Personal Property. Eyeglasses, hearing aids and dentures (full replacement value) and watches and non-prescription, shatter resistant sunglasses (not exceeding \$50) shall be replaced if damaged or destroyed while responding to fire and/or EMS calls.

ARTICLE 33

Employee Assistance Plan and Substance Testing

Section A. EAP Employer shall promptly establish an Employee Assistance Program ("EAP") to provide a counseling and/or referral service for employees who have continuing personal problems which may adversely affect their work performance. These problems may be financial, emotional, family, legal, or drug and alcohol related.

Section B. Referrals to treatment or counseling services may be initiated by the employee and/or supervisor through the EAP Coordinator. The EAP Coordinator will not be an employee of the Employer. All referrals are strictly confidential and unless otherwise prohibited by law, no records of referrals will be kept in the employee's personnel file to which public access is permitted. Unless referral is mandatory under the Employer's Substance Abuse Policy, EAP services are strictly voluntary, and participants in the program will still be required to meet existing performance standards, however, an employee's voluntary participation in an EAP program standing alone cannot be the basis of disciplinary action. Initial costs associated with preliminary

interviews, counseling and referral shall be borne by the Employer. Costs associated with any ongoing counseling or other professional services shall be the responsibility of the Employee unless otherwise covered by applicable health insurance programs. No professional type counseling will be conducted at the workplace nor performed by the Employer or other Employees. Supervisors will be briefed annually on how to properly respond to the employee who seeks assistance. Additional information may be obtained by contacting the designated EAP Coordinator or Public Safety Director.

Section C. Substance Testing - Definitions

- A. Employee means any bargaining unit member.
- B. Employer means the City of Clayton
- C. Controlled substance (also referred to herein as "illegal drugs") means a controlled substance as defined in R.C. Chapter 4506 (Commercial Driver's License Provisions) or as otherwise defined under applicable Federal or State law.
- D. Harmful Intoxicant means a substance defined at 2925.01(J) ORC or as otherwise defined under applicable Federal or State law.
- E. Conviction means a finding of guilt, [includes a plea of nolo contendere (no contest) or the imposition of a sentence, or both], by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
- F. Criminal drug statute means a federal, state or local criminal statute or ordinance involving the manufacture, distribution, dispensing, use or possession of any controlled substance or harmful intoxicant.
- G. Reasonable suspicion is defined as an apparent state of facts and/or circumstances found to exist on inquiry by the supervisor which would warrant a reasonable, prudent person to believe the employee was under the influence of a controlled substance, harmful intoxicant, beer, wine or intoxicating liquor.
- H. Random Testing is defined as selection of an employee for substance testing on an indiscriminate basis.⁴

Section D.: Drug Free Work-Place

- A. It is the Employer's policy to maintain a safe and productive "Drug Free" work-place for its employees; employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or harmful intoxicant.

⁴ The parties agree that Random Testing may be implemented for the Fire/EMS Department

- B. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or harmful intoxicant by any employee which takes place in the work-place is strictly prohibited and will result in criminal prosecution and employee discipline consistent with just cause.
- C. Any employee convicted of any federal or state criminal drug statute occurring in the work-place must cause the employer to be notified of that fact within five (5) calendar days of the conviction.
- D. Any employee who reports for duty in an altered or impaired condition which is the result in whole or in part of the illegal use of a controlled substance or harmful intoxicant or use of beer, wine or intoxicating liquor will be subject to disciplinary action. As set forth hereafter the employer may choose to hold disciplinary action in abeyance while an employee participates in drug and/or alcohol rehabilitation. The employee assistance will remain confidential and not be noted in the employee personnel file however the Employer shall maintain records concerning said referral and treatment that shall not be available to the public unless required under applicable law. This "Drug Free" work-place article shall apply to all bargaining unit members.

Section E: Distribution of Drug Free Work-Place Article

- A. All bargaining unit members will receive a copy of the Employer's Drug Free Work-Place Statement, Drug Free Work-Place Article and Drug Testing Article and will be required to sign for receipt of those copies, in which a copy of the signed article will become a permanent part of the employee's personnel file.
- B. All bargaining unit members will be given notice that the Employer reserves the right to order employees to submit to drug testing only with reasonable suspicion or randomly in accordance with this article of the collective bargaining agreement.

Section F: Employee Drug/Alcohol Testing

- A. In accordance with R.C. §4506.15, no employee shall operate equipment or drive a motor vehicle owned or leased by the Employer (a) after having consumed alcohol within the prior six hours; (b) after having consumed, ingested or inhaled any controlled substance or harmful intoxicant; (c) while having a measurable or detectable amount of alcohol or of a controlled substance or of a harmful intoxicant in his blood, breath or urine; (d) while having an alcohol concentration of four-hundredths of one per cent or more; and/or (e) while under the influence of a controlled substance or of a harmful intoxicant .

- B. In order to maintain a safe and healthy environment in which to work, the employer reserves the right as a condition of continued employment, the ordering of an employee to submit to examinations including blood or urine tests for illegal drugs and/or harmful intoxicants or the misuse of legal drugs and/or alcohol on a random basis or where there is reasonable suspicion that an employee's work performance is affected by the condition, or on a statistically random basis to the extent such random testing is required under applicable Federal and State law. Reasonable suspicion shall be determined by the employer or designee on the basis of reliable and verifiable information provided to him/her, including but not limited to descriptions of appearance, behavior, speech or breath odor. All reliable and verifiable information shall be made available to the employee's union representatives.
- C. This testing shall be conducted solely for administrative purposes. Results obtained shall be held in complete confidentiality and may not be used in criminal proceedings other than by subpoena from a judicial body.

Section G. Substance Testing.

To the extent that the Employer implements a Substance Testing Program that is applicable to employees covered by this Agreement the following minimal standards shall apply:

- A. All drug/alcohol screening tests shall be conducted by medical laboratories licensed by the State of Ohio or properly accredited by a recognized national organization (eg. the College of American Pathologists). The procedure utilized by the employer and testing laboratory shall include a chain of custody procedure and mass spectroscopy confirmation of any positive initial screening. The foregoing laboratory procedures shall be the protocol followed in this article, and shall be outlined in writing, concerning the collection of bodily fluids utilized for examination and testing. The samples collected shall be contained in separate containers for use in the following prescribed testing procedures. All separate containers shall be initialed by the member and the person taking the samples after sealing of the containers. Either party may have another representative present as a witness during the taking of the aforementioned samples at no loss of wages for any party.
- B. This protocol procedure shall be sent to the Union; and at its option and expense, the Union may send the protocol procedure to a board certified clinical pathologist for opinions as to the adequacy of the procedure. If the Union finds bona fide serious testing process flaws in the protocol, the Employer will communicate with and/or solicit other potential vendors to achieve an acceptable protocol that satisfies accepted industry standards.

- C. If the protocol is accepted by the Union, and no timely objection is made by the qualified expert for the Union, the designated vendor will be accepted and a collection point designated.
- D. The results of the testing shall be delivered only to the Public Safety Director and the employee tested. An employee whose confirmatory test result is positive shall have the right to request a certified copy of the testing results in which the vendor shall affirm that the test results were obtained using the approved protocol methods. The employee shall provide a release for disclosure of the testing results. A Union representative from the bargaining unit shall have a right to access to the results upon request to the Public Safety Director with the employee's written consent.
- E. Upon direct orders by the Employer pursuant to this Substance Testing Article, the employee shall, at the expense of the Employer submit to such test; and upon request, the employee will sign an appropriate release form authorizing withdrawal of blood or urine or the taking of hair samples and the release of the test result to the employer.
- F. Refusal by an employee to submit to the test under this Article, as ordered, or the refusal to sign a release form, as required, or the failure or refusal to provide either a specimen of urine or blood, or the taking of hair samples as ordered, shall constitute a presumption of a positive test result and may result in such employee's discipline. At the time of the taking of the original specimens, multiple specimens will be taken. Two of the specimens shall be delivered to separate testing facilities and an additional sample may be sent to a drug testing facility of the employee's choice. The employee's sample will be tested at the employee's request and expense. The testing facilities chosen shall have Liability Insurance to protect the employee from false readings of the specimens being tested. If the results of the two separate tests required by the Employer have not been returned within twenty (20) calendar days and the employee deems it necessary to have his/her specimen tested, the cost of such test shall be paid by the Employer. No employee shall suffer any loss of wages or accumulation of any type of leave while waiting for the results of any test or physician verification for his/her return to duty if the drug test returns indicate the employee was substance free.
- G. If the screening test is positive, a confirmatory test shall be conducted. The positive findings of the first confirmatory test may be followed by the employer desiring that the second sample be tested.
- H. In the event the second test confirms the results of the first test, the Employer may proceed with sanctions as set forth in this Article.
- I. In the event that the second test contradicts the results of the first test, the employer may request a third test at a laboratory from the list maintained by the

employer, approved by the employer and the Union. The results of this test, if positive, shall allow the employer to proceed with sanctions as set forth in this Article. If the results are negative, the employee shall be given the benefit of the doubt and no sanctions shall be imposed.

J. In the event that two tests are positive, the employee is entitled to have the sample tested at an approved laboratory, at the employee's expense. If this test were to come back negative, all of the testing procedures shall be investigated and a meeting with the member, union, and the Employer shall take place in order to decide if another test would benefit the accused. If possible or necessary another sample may be taken or retesting of the prior samples taken at the joint (50-50) expense of both the employee and the employer.

K. A list of at least two (2) testing laboratories shall be maintained by the employer. These laboratories shall conduct any testing directed by the employer. The employer shall obtain the approval of the Union as to any laboratories put on this list, which approval shall not be unreasonably withheld.

L. After two (2) positive test results are received as set forth above, the employer may impose discipline up to and including termination. Discipline resulting from the positive findings of confirmatory sample testing for controlled substances and/or harmful intoxicants may be immediately imposed or deferred at the City's discretion.

Rehabilitation programs shall be available for employees who voluntarily come forward to request participation at least 48 hours prior to the imposition of a random test or 48 hours prior to the occurrence of any other reason for testing, and at the City's discretion, in lieu of or in addition to discipline. An employee who volunteers to participate in a rehabilitation program shall be allowed to use sick leave, vacation leave, leave of absence and compensatory time for the program for the period of the rehabilitation. Upon successful completion of such program, and upon receiving results from a retest demonstrating that the employee is substance free the employee shall be returned to his/her former position. Any employee in the above-mentioned rehabilitation programs who is placed on medical leave of absence without pay because of a lack of accrued sick leave shall retain only such benefits and seniority as is provided under other applicable Articles of this Agreement.

M. If the screening test is positive or if he fails to complete a voluntary program of rehabilitation or if he tests positive during sporadic tests within twelve (12) months after his/her return to work from such a program, the employee shall be subject to immediate termination. Additionally an employee shall be subject to discipline for any violation of law or policy that occurs while on duty in conjunction with said substance or alcohol abuse (eg., DUI, insubordination, etc.)

- N. Costs of all drug/alcohol screening tests and confirmatory tests shall be borne by the employer except that any test initiated at the request of the employee or otherwise not mentioned shall be at the employee's expense.
- O. The employer may conduct three (3) sporadic tests for a period of twelve (12) months from the time of employee's return to work. However, drug/alcohol testing may be required of any employee, at any time, based upon reasonable suspicion or if randomly selected.
- P. For the purposes of implementing the provisions of this Article, each bargaining unit member who undergoes substance testing shall execute a medical release in order for the employer to obtain the results of the drug/alcohol screening testing. Except as otherwise provided by State or Federal law with regard to communicable diseases, or without further authorization of the employee, the releases referred to in this Article shall authorize only the release of examination results and progress reports pertaining to the drug screening test results. No other medical findings may be released without the express written permission of the employee.

The provisions of this Agreement shall not require the employer to offer a rehabilitation program to any employee as a result of a testing of positive on a substance test or refusal to take a test..

- Q. Any bargaining unit employee who has been ordered to undergo blood or urine or hair testing may, upon request, be accompanied to the testing site by a steward or co-worker. No test will be delayed due to the tardiness of the employee's representative or co-worker. The employee's steward or co-worker shall be given reasonable time to attend.
- R. Results of all tests administered pursuant to this Article shall constitute medical information and shall not constitute a public record unless otherwise provided under Ohio law. There will be equal and fair treatment to all bargaining unit employees.
- S. The reading and interpretation of the specimen results shall be done by a Medical Review Officer who shall be a licensed physician responsible for receiving laboratory results generated by an employer's substance testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information. This individual shall have documented scientific qualifications in analytical testing procedures.
- T. The employer and the certified laboratory shall develop and maintain a clear and well-documented procedure for collection, shipment, and accessing of specimens under this Article.

U. A proper chain of custody shall be maintained on all specimens taken.

Section H. Prescription Drug Use

The Employer does not prohibit employees from using prescription drugs, provided: (a) the prescription drugs are prescribed for medical reasons by a licensed medical practitioner with dosage frequency prescribed on the label; and (b) the employee's use of prescription drugs does not affect job performance, threaten the safety, property or reputation of other employees or the Employer or result in a criminal felony or misdemeanor incident while on duty.

The Employer reserves the right to apply the disciplinary procedures of this collective bargaining agreement, including requiring a drug and/or alcohol test, to any employee who uses prescription drugs in a manner which violates this rule.

ARTICLE 34 –
Preemption Of Statutory Provisions

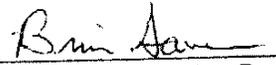
In accordance with Ohio Revised Code Section 4117.10, the parties hereto acknowledge that this Agreement specifically references the rights of employees covered herein which pertain to wages, hours and terms and conditions of employment.

THE CITY OF CLAYTON

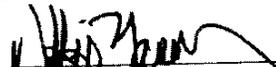
CLAYTON PROFESSIONAL
FIREFIGHTERS ASSOCIATION
IAFF LOCAL 4379



David Rowlands, City Manager



Brian Garver, Union Rep.



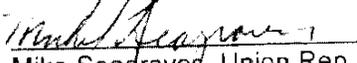
Debbie Adams, Asst. City Mgr.



Jim Ake, Union Rep.



Richard Rose, Public Safety Dir.



Mike Seagraves, Union Rep.

Dated: 5-21-08



William Quinn, IAFF
Representative

Dated: 5/21/08

Approved As To Form:



Clayton Law Director

CERTIFICATION

This shall certify that the funds required to meet the municipality's obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41



Kevin Schweitzer, Finance Director

Dated: 7/21/08

GOTTSCHLICH & PORTUNE LLP
Attorneys at Law

STATE EMPLOYMENT
RELATIONS BOARD

2009 MAR 23 A 9:50

ROBERT E. PORTUNE
Buzz@gplawdayton.com

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Dayton, Ohio 45402
Telephone 937-913-0200
Telephone: 937-824-2811
Facsimile: 937-824-2818

March 20, 2009

State Employment Relations Board
Research and Training Section
Att: Ms. Cherith Alexander
65 East State Street
12th Floor
Columbus, Ohio 43215-4213

Re: City of Clayton - OPBA (Patrol Officers 2009-2011)
City of Clayton - IAFF (FF/PM 2008-2011)

Dear Cheri:

The executed CBA's between the City of Clayton and the OPBA and IAFF are enclosed. We attempted to email you pdf versions but kept getting rejected as undeliverable. Let me know if you need anything further. Continued good wishes.

Sincerely,

Gottschlich & Portune, LLP



Robert E. Portune

Enclosure