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COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF CLAYTON AND THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION (Sergeants)

(April 1, 2012 – March 31, 2015)

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ARTICLE 1

Preamble

This agreement is made and entered into this 1st day of April 2012 by and between the City of Clayton (hereinafter referred to as the "Employer") and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the "Union" or the "OPBA"). 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 03-REP-06-0110. 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 Police Sergeants

Excluded: All others

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 OPBA and the regular monthly OPBA 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 OPBA from time to time in accordance with its Constitution and Bylaws. The OPBA shall certify to the Employer the amounts due and owing from the employees involved.

Section 3. The Employer shall deduct dues, initiation fees or assessments from the first pay in each calendar month. If an employee has no pay due on that date such amounts shall be deducted from the next or subsequent pay.

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 OPBA within thirty (30) days from the date of making said deductions.

Section 5. The OPBA 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 OPBA shall indemnify the Employer for any such liabilities or damages that may arise.

Section 6. The Employer will furnish the OPBA 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 members of the bargaining unit, as identified in Article 2 of this Agreement, shall either (1) maintain their membership in the OPBA, (2) become members of the OPBA, or (3) pay a service fee to the OPBA in an amount not to exceed the monthly dues for membership in the OPBA, as a condition of employment, all in accordance with Ohio Rev. Code Sec. 4117.09. In the event that a service fee is to be charged to a member of the bargaining unit, the Employer shall deduct such fee in the same manner as dues are deducted as specified in Sections 1-7 above.

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 affairs of the Employer are retained by the Employer including the right to determine how many employees it

will employ or retain in various capacities and the size and composition of working forces. This includes but is not limited to the hiring, selection, transfer, assignment and layoff, discipline and discharge of employees, the exercise of all functions of government granted to the Employer by the laws of the State of Ohio, the determination from time to time as to what services the Employer shall perform, the method of performing said services, and the size and composition of the work force.

Section 2. 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 Police Chief 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, sitdown, 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 reasonable work rules, policies and procedures to regulate employees in the performance of their job. 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. 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 director, 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 which may result in disciplinary action must be in writing and signed by the complainant or substantiated by independent investigation. The officer will be notified of the complaint by management upon commencement of an investigation. The notification to the officer may be delayed in the event that the matter involves bona fide investigation of criminal conduct by the officer. Prior to any questioning of the officer, the officer 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. Unfounded and non-substantiated complaints shall be removed, upon request of the employee, from the employee's personnel file at the end of each six month evaluation period.

Section 6. 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 7. 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. Verbal Counseling Verbal counseling is defined as an exchange between a supervisor and an employee where the intent is to give notice to the employee that his/her actions are deemed improper and/or inadequate and to provide the employee with tools and/or suggestions for improving performance. The purpose of the counseling is to achieve improved performance to acceptable standards without the necessity of disciplinary action being imposed. Records of verbal counseling are not considered to be "discipline" and are not a required part of the progressive disciplinary process. They may, however, be considered in disciplinary proceedings for a period of six (6) months after issuance unless further discipline involving the matter has commenced during that six (6) month period. Employees will receive copies of any documented verbal counselings that are maintained in any form by the Employer.

B. Oral Reprimand. An oral reprimand shall be expunged from any file maintained by the Employer after six (6) months, at the employee's request, provided that no further discipline of the same or similar nature is imposed within six (6) months of the oral reprimand.

C. Written Reprimand. A written reprimand shall be expunged from any file maintained by the Employer after 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.

D. Suspension/Reduction. A suspension or reduction shall be expunged from any file maintained by the Employer, at the employee's request, after 2 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 files -- personnel or otherwise -- that as of the effective date of this Agreement have been identified and are readily accessible to the employee for inspection upon request.

Section 8. The commencement of the taking of disciplinary action[1] 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 Police officials above the rank of Sergeant whichever is the earlier. In the event that the Police Chief determines that additional investigation into a potential disciplinary matter is warranted the Chief may extend the above referenced time periods by an additional sixty (60) days upon notice to the employee and the Union representative. 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 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 OPBA 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 Lieutenant. The Lieutenant 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

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[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 Chief and the employee being disciplined.

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 Lieutenant 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 Chief of Police or his/her designee within seven (7) calendar days after receipt of the answer from the immediate supervisor.

Step 2. The Chief of Police, 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 Chief of Police 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 Chief of Police.

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 Attorney. 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 Attorney. 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. 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 3. The award of the arbitrator shall be based exclusively on the evidence presented at the arbitration hearing.

Section 4. 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 5. 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. Departmental seniority shall be defined as the duration of time an employee has been employed on a full-time basis with the Police 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 an employee's particular classification, ie., Patrol Officer or Sergeant. 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 the 6 and 9 month intervals. Newly

promoted employees to the position of Sergeant shall serve a promotional probationary period of six (6) months which may be extended by the City for an additional six (6) months with prior notice to the employee and Union. Evaluations shall be conducted at 3 month intervals during this promotional probationary period. An employee shall be entitled, during the probationary period to processing of grievances which only concern matters not related to discipline or job performance evaluations.

Section 3. Seniority. For departmental seniority purposes the date of hire is the determining factor. For classification seniority the date of promotion is the determining factor. Where the dates of hire are the same the employee's actual starting date 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. Inability to work regular full time duty (resulting from work-related injury or illness compensated by workers compensation) in excess of 12 months. Said period may be extended an additional 6 months if the employee remains on workers compensation temporary total disability and the employee's physician certifies that the employee will be able to return to work without restriction within that 6 month period.
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. The total number of active part-time and reserve officers shall be reduced to ten (10) before any full-time officers are affected.

Section 3. The Employer shall layoff two (2) part-time employees for every (1) full-time bargaining unit employee laid off.

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 according to lowest classification seniority first, provided that the employee(s) retained have the immediate skill and ability to perform the jobs to which they will be assigned. When an employee is removed from the Sergeant classification within the Department as a result of a lay-off, the employee shall have the right to displace (bump) an employee in a lower classification position (i.e., Patrol Officer) with less departmental seniority, providing that the employee can perform the available work.

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.

Section 8. Laid off full-time employees shall be on a preferential hire list for part-time employment and shall be placed in an auxiliary unpaid status.

ARTICLE 14
Subcontracting

The Employer shall not subcontract out duties normally performed by the bargaining unit which causes layoff except for legitimate operational needs. In the event the Employer expects to undertake subcontracting it will give reasonable notice to the Union (no less than thirty (30) days absent an emergency) and meet to consider alternative approaches. The final decision shall be the Employer's however, subject to the Union's right to grieve.

ARTICLE 15
Outside Employment

All outside employment must be initially approved by the Police Chief whose decision shall be final and not subject to the grievance procedure. In the event any activity of the employee during said outside employment results in discipline by the Employer said discipline shall be subject to the grievance procedure.

ARTICLE 16
Scheduling

Section 1. Shift assignments will be made annually based upon shift bidding. Between December 1 and December 10 of each year employees will bid on available shifts. Assignments to shifts will be made by seniority and announced by December 15 of each year. Once shift assignments are made each employee shall be permitted to select any two (2) consecutive days off with the final approval of the Chief which shall not be unreasonably denied. At the employee's request, one of the two (2) consecutive days off shall be a Saturday or Sunday. New shift assignments shall become effective as of January 1 of the following year. The Employer shall prepare the shift schedule on a quarterly basis. All requests for vacation, comp. time usage, (if known in advance) and schooling shall be received 30 days in advance. Long term vacation (1 week or more) should be requested and scheduled earlier if possible. In the event of conflicts, the earlier request shall prevail. The schedule will be posted 2 weeks in advance of the commencement of the quarterly period.

Section 2. Vacancies after the third shift may be filled at the Employer's discretion as to the use of full-time, part-time etc. or long term changes in shift schedules.

Section 3. In the event of long-term (more than 3 shifts) changes in shift schedules made necessary by extended absence (sick, injury, etc.) schedule changes shall be implemented as soon as the need is known by the Employer and first offered to

employees with the highest seniority and if not effected imposed upon employees with the lowest seniority. It is understood that long term schedule changes must cover

Employer requirements concerning having special skills and years of experience on each shift. In the event this schedule revision causes a material disruption, the Union and City may agree to advance the time for all employees to bid on shift assignments.

Section 4. The Chief or his designate has the discretion to permit an employee to take vacation time off with shorter notice.

ARTICLE 17
Tuition Assistance

Bargaining members are eligible to participate in 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.

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 Police Department.

The City reserves the right to discontinue this program, on a city wide basis, if there is a substantial drop in available funding. However, any class already approved will be honored through its completion.

ARTICLE 18
Overtime

Section 1. Eligibility. Full-time employees shall be eligible for overtime pay after their hours of work (including all hours for which they are in a paid status) exceed 165 during a 28 day period. A normal work shift shall consist of 8.25 hours/day. Overtime pay shall be calculated at time and one-half.

Section 2. Comp. Time. The employee may elect to have some or all overtime hours worked credited as compensatory time ("comp time"). Employees may not earn more than two hundred forty seven and ½ (247.5) hours annually. Comp time may be utilized with reasonable advance notice provided the departmental scheduling and operational needs are not unduly disrupted. Employees must notify the Police Chief, by November 15, annually of the number of comp time hours that the employee wishes to use or carry over into the next year. Any hours not designated to the Police Chief by November 15 will be paid to the employee on the first pay date in December. No employee may carry over more than eighty two and 1/2 (82.5) comp time hours into the next calendar year. All comp time hours to the employee's credit shall be paid at the time of separation.

Section 3 - Reasonable efforts shall be made by the Employer and Union to utilize procedures so that voluntary overtime opportunities are assigned in rotation starting with highest seniority first and rotating so that all employees eventually have an opportunity to obtain voluntary overtime assignments.

ARTICLE 19
Shift Assignment

During the first six (6) months of a newly promoted Sergeant's tenure in that position, the Chief or his designee shall have the right to assign the employee to such shifts as are necessary to provide necessary experience and training. Thereafter, subject to the Employer's requirements that each shift be properly covered with personnel who possess specialized skills (eg. EV Tech) employees shall be entitled to annually bid on Road Patrol shift assignments. Provided Employer requirements are met, classification seniority shall govern shift assignments. Assignments to other than Road Patrol shifts shall be at the Employer's discretion.

ARTICLE 20
Residency Requirement

There shall be no requirement as to where an employee will live so long as he is within 25 miles of the municipal boundaries.

ARTICLE 21
Holidays

Section 1. Employees shall be entitled to twelve (12) holidays per calendar year. Each holiday shall be paid at 8.25 hours of paid time off, which may be taken anytime during the calendar year, with prior authorization and according to current staffing criteria. Holidays shall not be carried over into a different calendar year and shall not entail premium pay. The following list specifies the traditional holidays recognized by the city, which are included in the 12 paid holidays. When requesting a day off with pay, as a Holiday, the employee shall complete the standard leave request form and holidays used will be tracked on an annual basis.

HOLIDAY	WHEN CELEBRATED
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 4th Thursday in November
Christmas Eve	December 24
Christmas Day	December 25
New Years Eve	December 31
Floating Holiday	

Section 2. At separation of employment, any holiday used but not yet earned shall be reimbursed to the city in any final pay-out. Any holiday earned but not utilized prior to separation, within the calendar year, shall be paid at straight time rates as part of the final employee pay out.

Section 3. If critical staffing levels were to occur for an unusually long duration and time off were continually denied, unused holidays shall be paid at a straight time rate with the last full pay in December.

Section 4. In the event that the City grants an additional holiday to its other non-union employees (City Wide), the employees covered by this Agreement shall receive such additional holiday

ARTICLE 22
Vacation Leave

Section 1. As used in these policies the word "vacation leave" shall mean a period of time during which a regular employee is not required to report for work but for which time they are paid at their regular rate of pay; and a "week of vacation leave" is five (5) regular work days of 8.25 hours each.

Section 2. Vacation leave is calculated in the following manner:

1 year of service but less than 5 years	10 days vacation
5 years of service but less than 10 years	15 days vacation
10 years of service but less than 15 years	18 days vacation
15 years of service or more	20 days vacation

Eligible employees shall accrue earned vacation leave on that employee's anniversary date in accordance with the schedule above. Accrual shall be evidenced per pay period in accordance with the City's payroll practice, but where there exists a discrepancy, the provisions of this Article 21 shall prevail.

Section 3. Accumulated vacation time may be carried over from one year to the next year in accordance with the City's Personnel Practices Manual.

Section 4. Any and all vacation leave must be approved by the Chief or his designate upon written request by the employee. Approval shall not be unreasonably withheld. If a conflict arises over two requests for leave, then the approval shall be made on 1) date of submittal and then 2) by seniority. An employee may reschedule his vacation with reasonable advance notice to the Chief or designee provided no scheduling conflicts result.

Section 5. Each employee who leaves the employment of the Employer for any reason will receive full payment for earned but unused vacation time. In the event of death of the employee such payment shall be paid to the employee's beneficiary or estate.

Section 6. Vacation time must be used in increments of no less than 4 hours.

ARTICLE 23
Health Insurance

The City will continue to provide health insurance coverage under the City's group medical insurance policy 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 all coverage options.

2. Employee shall pay 7% of the premium for all coverage options.

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, 2009 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, 2010 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, 2011 shall pay 20% of the premium for the basic policy. (single, spouse, dependent children and family coverage) and the City will pay 80%.

For purposes of this Article 23, the term "hired" shall include being hired full-time as a Sergeant or being hired full-time as a Patrol Officer with the Clayton Police Department. Being promoted from Patrol Officer to Sergeant shall not be treated as a new date of "hire".

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.

It is understood and agreed by the parties that notwithstanding any future recommendation by the Health Insurance Subcommittee of the City's AEC (Active Employee Committee) current full-time employees as of April 1, 2009 shall not be required to pay more than 7% of the premium for health insurance coverage options during the term of this Agreement.

ARTICLE 24
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 during non–duty hours, shall receive compensation at the rate of time and one-half for a minimum of two hours. If the court appearance exceeds two hours, the employee will be compensated at time

and one –half rate for all time exceeding the two hour minimum. Any compensation received from the court shall be endorsed and turned over to the Employer.

The two hour minimum shall not apply if the court time commences or is concluded within thirty (30) minutes of the employee's shift. Any court time that is connected to an employees shift will be paid at the appropriate rate for the actual hours worked.

ARTICLE 25
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.

Section 2. Such leave shall be at the discretion of the Chief or his designee. No employee is guaranteed any minimum amount nor is there a restriction on a maximum amount of leave however the Chief will make reasonable efforts to equalize the available training among the officers. It is agreed, however, that paid leave shall be provided for courses required for mandatory recertification.

Section 3. Where attendance at a conference, seminar, course or similar educational function is required by the Chief 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 Police 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 Chief. Budget and scheduling requirements shall also be considered.

Section 5. The Employer will provide at least twenty (20) hours of "in-service" training to employees during each twelve (12) month period. 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 26
Compassionate Leave

Section 1. Paid leave shall be granted to an employee 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, mother-in-law, father-in-law, daughter-in-law, son-in-law, grandchildren, sister-in-law, brother-in-law.

Section 2. Five (5) working days of 8.25 hours each off for the death of a spouse or child (including stepchildren). All other deaths shall be three (3) days off.

Section 3. Additional time off, using accumulated sick leave may be granted on a case by case basis, subject to the Chief's approval.

ARTICLE 27
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, not working his regular shift assignment. Should the Employer elect to assign an employee to light duty with the consent of the employee's physician (which assignment shall not be made if it would jeopardize an employee's eligibility for workers compensation) the employee shall continue to earn sick leave.

Section 2. Employees shall accrue sick leave at the rate of l.25 days/month. For purposes of usage a "day" is applied as follows:

Work Schedule	Day
41.25 hr./week	8.25 hours

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);

(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. Sick leave absences of three (3) consecutive work days shall be supported by the employee with a written statement from his doctor. 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 (a) two (2) hours for employees who begin work earlier than 7:30 A.M. or (b) four (4) hours for all other employees 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 Employees with 10 years of accrued service 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.

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 12 month period, employees who have completed their probationary period may contribute up to 40.00 hours of their accrued sick leave to other employees of the City of Clayton who have exhausted their accrued leave (sick, vacation and comp. time) and they or their spouse or child are stricken with catastrophic or life threatening illness or injury. The receipt of said sick leave by an employee shall not extend their retained seniority or insurance retention under Article 12.

Section 14. Attendance Bonus Employees may "cash out" one sick day for one day's normal pay, if the employee does not utilize any sick time during a consecutive six (6) month period commencing January 1 through June 30 and July 1 through December 31. Employees may elect to utilize unpaid sick leave in lieu of paid sick leave for purposes that qualify under the Family Medical Leave Act and still remain eligible for the Attendance Bonus under this Section.

ARTICLE 28
Injury Leave

Section 1. Any full-time employee who incurs an injury on the job shall be eligible for injury leave of absence in accordance with the following provisions.

Section 2. Employees applying for injury leave must submit a request in writing to the Chief for processing unless physically incapable of doing so.

Section 3. Since all employees are covered under the benefits provided by the Bureau of Workers' Compensation, payment from the Bureau for all approved medical and surgical treatment, compensation for lost work time and other benefits will be provided as determined by the state law.

Section 4. The Employer may require the employee at any time during the injury leave to present a certificate by a licensed physician certifying that such employee is not available for gainful employment due to such injury.

Section 5. The employee returning from injury leave of absence must submit a doctor's statement verifying the employee's ability to return to his regular job functions.

Section 6. An employee returning from injury leave of absence shall be placed in his former job, if in existence at his then current pay rate or if not in existence, shall be offered a substantially equivalent service position to which his seniority, skill, ability and physical fitness make him eligible. If an employee is on injury leave in excess of nine (9) months his job may be filled by a permanent replacement who may not be displaced if his seniority is higher than that of the injured employee upon return to work.

Section 7. While on injury leave of absence the employee's seniority will continue to accumulate until the earlier of (a) eighteen (18) months, (b) such time as he would have retired or (c) is determined by the State, Federal Government or private insurance carrier to be "totally and permanently disabled."

Section 7-A. The City may upon thirty (30) day's prior notice to the Union institute a "light duty" policy whereby employees that might otherwise have to receive benefits under lost wage claims from the Bureau of Workers Compensation can be returned to duties commensurate with their physical capabilities at their then applicable wage rate. 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.

Section 8. Injury Leave Benefits.

(1) Provided an employee is eligible for lost time worker's compensation benefits the injured employee shall receive "Injury Leave Benefits" equal to his wage benefits for a period not to exceed 90 calendar days for each industrial injury or occupational disease. Weekly "injury leave benefits" will not be charged against a bargaining unit member's accumulated sick leave. Should the disability exceed the 90 day injury leave benefit, the bargaining unit member will be in the receipt of Worker's Compensation benefits and may at his option, elect to receive supplemental benefits equal to 33 1/3% of his base pay. Such supplemental benefits paid shall be charged against the employee's accumulated sick leave at the rate of 1/3 day for each day of supplemental benefits paid until all accumulated sick leave of the employee is used. Thereafter, no additional supplemental benefit shall be paid.

(2) During the time a bargaining unit member is receiving "injury leave benefits" he shall sign an agreement to be furnished by the Employer assigning to the Employer any and all benefits he shall receive from Worker's Compensation for the period "injury leave benefits" are received and further stating that in the event he is finally determined not to be eligible for Worker's Compensation benefits, he will reimburse the Employer for all "injury leave benefits" paid. The reimbursement may be accomplished by the equivalent reduction of accrued of sick leave, if available.

(3) Upon request of the Employer an employee must provide medical proof, including a current diagnosis and prognosis, substantiating the period of disability requested. At any time, the Employer reserves the right to have an employee examined by a physician of its choice and at its expense to confirm the medical diagnosis, prognosis and/or period of disability, so long as the examination does not interfere with treatment and/or does not endanger the bargaining unit member's life. 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 borne by the employer.

(4) Any bargaining unit member injured on the job will file a written accident or injury form with the Chief or his designee within 48 hours of the incident or as soon as the bargaining unit member is physically able to do so. Failure without good cause of a bargaining unit member to comply with this section shall be grounds for the Employer to deny injury leave or supplemental benefits.

Section 9. While an employee is receiving injury leave benefits and so long as an employee continues to use accrued sick leave the Employer will maintain medical insurance coverage.

Section 10. Except as provided herein after exhaustion of injury leave benefits and accrued sick leave or other paid leave, injury leave shall be deemed an unpaid status.

Section 11. FMLA. All leave used under this Article shall be counted as leave taken to which an employee may be eligible under the Family Medical Leave Act.

ARTICLE 29
WAGES

Section 1. Wages

The hourly rate will increase by 1.5%, effective 1/1/12, and a wage re-opener shall occur for 2013 and again for 2014, in accordance with Article 31.

	Step 1	Step 2	Step 3	Step 4
Current	29.00	30.12	31.31	33.60
1/1/12 (1.5%)	29.44	30.57	31.78	34.10

The above stated wage steps will be applied exclusively to the rank of Sergeant. The first step is established for the purpose of providing a starting wage for probationary sergeants. Sergeants shall remain in that grade until such time as they successfully complete the probationary period. On the first pay period after successful completion of the probationary period the Step two (2) wage rate will be effectuated. Employees are eligible for subsequent step increases on their promotional anniversary date and on an annual basis thereafter, until top step is achieved.

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 federal and state tax purposes (but not for Medicare or Clayton Income Tax) will be computed on the employee gross pay after PERS contributions are deducted.

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, 2012 through March 31, 2015. Either party may reopen this Agreement for the purpose of negotiating wages only, for calendar year 2013 by filing a Notice To Negotiate with the State Employment Relations Board prior to October 1, 2012.

Either party may reopen this Agreement for the purpose of negotiating wages only, for calendar year 2014 by filing a Notice To Negotiate with the State Employment Relations Board prior to October 1, 2013.

All negotiations under the reopener shall be conducted in accordance with the notice and dispute resolution procedures contained in Chapter 4117 of the Ohio Revised Code.

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ARTICLE 32
Personal Property and Uniform Allowance

Section 1. All employees are expected to leave their personal property at home or the Police Station while on duty. Eyeglasses and personal property (excluding motor vehicles) which are used with the written approval of the Chief of Police and which are destroyed or stolen while the employee is on duty shall be reimbursed by the Employer at the fair market value.

Section 2. Personal property as follows shall be automatically approved. All other items shall be at the Employer's discretion:

1. Eyeglasses/contacts/sunglasses (if non-prescription but shatter-resistant not to exceed $60.00 in value)
2. Dentures/braces/retainers/hearing aids
3. Watch (not to exceed $50.00 in value)

Thefts from an employee's locker shall not be reimbursed. Losses due to an employee's negligence shall not be reimbursed.

Section 3. Uniform Allowance. The Employer shall pay an annual uniform allowance of $800.00/ employee to be used consistent with existing City policy for items approved by the Chief. $400.00 of said allowance shall be payable on March 1 and $400.00 on September 1. Said allowance shall be used for purchasing all approved uniform items. Additionally the Employer shall pay for the purchase/rebuild or replacement of a ballistic vest (Threat Level II-A) on an as-needed basis. Consistent with the wear and tear experienced in connection with the undertaking of police functions, employees are expected to exercise appropriate care for said uniform and other City funded articles.

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 Police Chief.

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.

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.

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 engage in duties as a police officer, 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 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 permitted and/or 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 members 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 two (2) 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 Police Chief 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 Chief 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, two (2) separate specimens will be taken. The specimens shall be delivered to the Employer's testing facility and, if requested by the employee, a third sample shall be taken at the same time and the third shall 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 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 in the third container 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 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 require the employee to participate in any rehabilitation that is covered by the employee's health insurance or EAP. Depending upon the nature and severity of the offense, discipline resulting from the positive findings of confirmatory sample testing for controlled substances and/or harmful intoxicants may be immediately imposed or reasonably deferred pending rehabilitation of the individual. Discipline resulting from the positive findings of confirmatory sample testing for beer, wine or intoxicating liquor shall be deferred on the first occasion pending rehabilitation of the individual unless said use resulted in loss or damage to City property or liability of the City to a third party. An employee who participates 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 and the circumstances surrounding the incident are of such severity and egregiousness that immediate discipline is reasonable and appropriate, or if the employee refuses to undergo rehabilitation, or if he fails to complete a program of rehabilitation or if he tests positive during random tests within twelve (12) months after his/her return to work from such a program, the employee shall be subject to disciplinary action. 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. Only 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 more than once.

Q. An employee who refuses to take or does not take a substance test administered pursuant to this Article and is only suspended may not return to duty until he/she has passed a substance test administered under this Article.

R. 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.

S. 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.

T. 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.

U. 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.

V. 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

A supervisor acting on reasonable suspicion or if detected by random testing will give the employee who is using prescription medication according to the dosage prescribed and for appropriate medical treatment purposes the opportunity to explain the circumstances of obtaining the prescription if prescribed to someone other than the user. If the prescription is lawfully filled and used according to the dosage prescribed and is used for a reasonable medical treatment purpose the explanation will serve as an affirmative defense.

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
Promotions

Vacancies in positions above the rank of Sergeant shall be posted for at least two (2) weeks to allow existing employees to indicate their interest in said position.

FOR THE CITY OF CLAYTON

City Manager

Public Safety Director

FOR THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Approved as to form:

Clayton Law Director

Date: 2-23-12

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

Date: 2/28/12

Clayton Finance Director