

**CITY OF CLAYTON**

**and**

**CLAYTON PROFESSIONAL FIREFIGHTERS**

**IAFF LOCAL 4379**

**COLLECTIVE BARGAINING AGREEMENT**

**APRIL 1, 2019 to MARCH 31, 2022**

## TABLE OF CONTENTS

ARTICLE 1 Preamble .....	2
ARTICLE Recognition .....	2
ARTICLE 3 Dues Deduction/Fair Share .....	2
ARTICLE 4 Non-Discrimination .....	4
ARTICLE 5 Management Rights.....	4
ARTICLE 6 Labor-Management Relations .....	5
ARTICLE 7 No Strike/No Lockout.....	5
ARTICLE 8 Policies and Procedures .....	5
ARTICLE 9 Employee Rights.....	6
ARTICLE 10 Grievance Procedures.....	7
ARTICLE 11 Arbitration.....	9
ARTICLE 12 Seniority, Probation and Retention of Health Insurance.....	9
ARTICLE 13 Lay-Off/Recall.....	11
ARTICLE 14 Subcontracting.....	12
ARTICLE 15 Outside Employment .....	12
ARTICLE 16 Scheduling.....	12
ARTICLE 17 Overtime .....	12
ARTICLE 18 Residency Requirement.....	13
ARTICLE 19 Tuition Assistance .....	13
ARTICLE 20 Holidays.....	14
ARTICLE 21 Employee Leave .....	14
ARTICLE 22 Health Insurance .....	16
ARTICLE 24 Educational Leave .....	16
ARTICLE 25 Extended Sick Leave.....	17
ARTICLE 26 Injury Leave and Light Duty .....	18
ARTICLE 27 Wages .....	21
ARTICLE 28 Trade Policy and Other Compensated Time .....	21
ARTICLE 29 Effect of Laws and Savings Closure.....	22
ARTICLE 30 Duration .....	22
ARTICLE 31 Uniforms .....	22
ARTICLE 32 Employee Assistance Plan and Substance Testing.....	23
ARTICLE 33 Preemption of Statutory Provisions.....	30
APPENDIX A Creation and promotion of the Classified Position of Fire Lieutenant.....	30

## **ARTICLE 1 Preamble**

This agreement is made and entered into this \_\_\_\_\_ day of April 2019 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"). To promote the rights and wellbeing 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 Lieutenants, full-time firefighter/paramedics and full-time firefighter/EMTs, who voluntarily sign the dues deduction form.

Excluded: Fire Chief, Battalion Chiefs, career members who do not voluntarily sign dues deduction form 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:

- a. 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;
- b. Direct, supervise, evaluate, or hire employees;
- c. Maintain and improve the efficiency and effectiveness of governmental operations;
- d. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- e. Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- f. Determine the adequacy of the work force;
- g. Determine the overall mission of the employer as a unit of government;
- h. Effectively manage the work force;
- i. 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 Fire 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, 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 pre-disciplinary 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 (twenty-four) hours after the time the employee is notified of the discipline and the pre-disciplinary 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 action <sup>1</sup> 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 Fire Chief whichever is the earlier. In the event that the Fire Chief determines that additional investigation into a potential disciplinary matter is warranted the Fire Chief 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 documents as may constitute "public records" under R.C. §149.43 which are being utilized in connection with said disciplinary proceedings.

## ARTICLE 10 Grievance Procedures

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.

---

<sup>1</sup>"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 Fire Chief and the employee being disciplined.

**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 Fire Chief. The Fire 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 Fire 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 City Manager or his/her designee within seven (7) calendar days after receipt of the answer from the Fire Chief.

**Step 2.** 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 and lowest EMS certification level first, provided that the employee(s) retained have the immediate skill and ability to perform the jobs to which they will be assigned. '

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 thirty (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 Fire Chief 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 two hundred twelve (212) during a twenty-eight (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 fifty-three (53) during a seven (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. The employee must clock-in (creating a time clock entry) appropriately using the correct reason for the overtime (i.e. late or early call or shift coverage,

etc.). Time worked outside of a regular shift that is treated as overtime shall not be "pyramided" when computing overtime on hours worked in excess of fifty-three (53) or two hundred twelve (212).

Section 2 Filling Vacancies. When a full-time Battalion Chief is unable to work as a result of illness or scheduled time off and the Fire Chief is not on duty, the City may assign a Lieutenant to the duties of "Acting Battalion Chief". The position of Fire Lieutenant is not eligible for backfill nor will the Lieutenant be eligible for acting pay until after the completion of one (1) shift or partial shift for each occurrence. Acting pay is an increase in the hourly rate by 6%.

For training purposes, Lieutenants may be permitted to perform the duties of Battalion Chief while under the supervision of a Battalion Chief or the Fire Chief. If a Lieutenant is acting in the capacity of Battalion Chief for the purpose of gaining experience or training, the Lieutenant shall not receive any increase in hourly rate while performing said duties. When a full-time member is unable to work as a result of illness or scheduled time off and another full-time member is not assigned to the same shift, another full-time member will be offered the opportunity to fill in on an overtime basis for the hours spanning between 1630 to 0730 hours when the Fire Chief is not on duty. If the Fire Chief is not working due to days off or holiday, the full-time member shall be offered the entire shift. If another full-time member 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 member meeting the needed qualifications 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.

#### **ARTICLE 18 Residency Requirements**

All employees shall be required to live in a contiguous county to Montgomery (Preble, Darke, Miami, Green, Warren and Butler County).

#### **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:

<u>Grade</u>	<u>Work Related</u>
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 calculated at the forty (40) hour rate for each of the eleven (11) holidays as listed below, subject to adjustments outlined in the following sections. For the six (6) holidays falling between January 1 and November 11 (New Year's Day, Martin L. King Day, Memorial Day, Independence Day, Labor Day and Veteran's Day), holiday pay shall be paid to employees in one lump check in the second pay period of November. For the five (5) holidays that fall between November 12 and December 31 (Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve), holiday pay shall be included in compensation for the pay period in which the paid holiday falls.

**Section 2.** An employee whose regular assigned work shift falls primarily within any of the designated holidays stated in Section 1 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.

#### **ARTICLE 21 Employee Leave**

**Section 1.** On January 1 of each year employees will be granted leave time according to the following schedule:

	EL Days	EL Hours	ESL Hours
Year 0 (Hire date – 12/31)	5.83	140	112
Years 1 & 2	5.83	140	112
Years 3 & 4	6.83	164	112
Years 5 & 6	8.33	200	112
Years 7 & 8	8.83	212	112
Years 9 & 10	9.83	236	112
Years 11 & 12	11.33	272	112
Years 13 & 14	12.29	295	112
Year 15 & above	12.33	296	112

Eligible employees shall accrue and manage their paid leave time as Employee Leave time. This time can be used for personal business, vacations, leisure time, and illness. Employees shall also be provided and are able to accumulate Extended Sick Leave (ESL), which can be used for extended or major incidents/illnesses lasting more than 16 consecutive hours. Examples include, but are not limited to, pregnancy, injury, exposure to contagious disease and illness or it can be used for shorter term illnesses of employees who have exhausted their EL.

Leave time will be credited to employees with less than one (1) year of service in two (2) installments, with the first installment occurring on January 1 and the second installment occurring on July 1. Employees that begin employment on days other than January 1 or July 1 will receive a prorated amount of leave time based on their initial date of service and its proximity to the preceding credit disbursement date. The second installment will consist of 50% of the employee's yearly leave.

The scheduling of Employee Leave shall be at the discretion of the Fire Chief or their designee with the expectation that an employee should normally submit the leave request in advance in a time equal to the amount of time being requested off, unless the employee is requesting time off due to illness or injury. The City Manager must approve any request for leave which exceed four (4) twenty (24) hour shifts.

The Fire Chief may require that an employee produce a physician's statement of illness or injury and/or a release to return to regular duty for patterned or excessive usage or suspected abuse of leave.

Section 2. Any employee who resigns, terminates or retires from the Department shall be paid in a lump sum for all earned but unused Employee Leave 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 Employee Leave shall be paid in a lump sum to the employee's next of kin or estate as designated by the employee.

Section 3. Employee Leave shall be taken at a time approved by the Fire Chief 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. Employee leave may not be requested for the day of, the day before or day after any of the six (6) major holidays.

- New Year's Day (Major Holiday)
- Independence Day (Major Holiday)
- Thanksgiving Day (Major Holiday)
- Christmas Eve (Major Holiday)
- Christmas Day (Major Holiday)
- New Year's Eve (Major Holiday)

Time off for extenuating circumstances may be granted by the Fire Chief on a case by case basis, but the eight (8) hours of holiday pay shall be forfeit.

Section 4. Refer to the City of Clayton Personnel Manual for the complete policies pertaining to leave benefits, compassionate leave, and injury leave.

#### **ARTICLE 22 Health Insurance**

Section 1. 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:

- a. For employees hired before April 1, 2010, the City shall pay 90% of the medical insurance premium, and employees shall pay 10%.
- b. For employees hired on or after April 1, 2010, the City shall pay 80% of the medical insurance premium, and employees shall pay 20%.

In the event the employee contribution for health insurance premiums are reduced for any non-union employee or any other bargaining unit, the members covered under this agreement shall be treated equally to other employee groups, and their health insurance premium contribution shall not be increased.

Section 2. In the event the City continues to offer a High Deductible Health Plan during the life of this agreement, the City will fund bargaining unit member's Health Savings Accounts (HSAs) according to the policies established in the City Personnel Manual and will maintain at least the same level of funding as provided in 2019 during the life of the agreement.

Section 3. In the event that the insurance carrier adopts Member Level Rating, and as a result, individual employees' insurance premiums increase, the employee shall be fully responsible for the increase in premium. Member Level Rating is the process of calculating health insurance premium costs separately for each family member for his or her coverage based on pre-defined criteria such as plan benefits and coverage levels, geographic location, age, tobacco use, etc.

#### **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 eight (8) hour day/forty (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 Fire Chief or his designee. No employee is guaranteed any minimum amount nor is there a restriction on a maximum amount of leave however the Fire Chief 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 Fire 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 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 Fire Chief. 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 Extended Sick Leave**

Section 1. If the Employer has reasonable and documented cause to believe that an employee is mentally or physically unable to perform the required duties, the Employer may require the Employee to take an examination to determine his/her physical or mental capacity to perform the required duties. The 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 the required duties or that his/her condition jeopardizes his/her 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/she may, at their 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 2. 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 3. Employees who remain absent on Extended Sick Leave (ESL) leave beyond the number of accrued ESL hours will have their continued absence charged to Employee Leave (EL) unless they request otherwise.

Section 4. In the event of an employee's early retirement by reason of medical disability accrued ESL 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 5. Approved Uses: Refer to City of Clayton Personnel Manual.

Section 6 Conversion at Retirement. Employees with ten (10) years of accrued service shall be entitled to convert up to nine hundred sixty (960) hours of their accrued ESL at PERS or PFDPF approved retirement on a 1 to 4 basis for a total payout not to exceed two hundred forty (240) hours.

Section 7 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 8. Sick Leave Donation: Refer to City of Clayton Personnel Manual.

Section 9. Refer to City of Clayton Personnel Manual for complete Extended Sick Leave Policy.

#### **ARTICLE 26 Injury Leave and Light Duty**

- 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/her job duties due to an injury or illness that occurs in the discharge or performance of his/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 (i.e. hospitalization), and his/her supervisor shall notify the Fire Chief 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 Fire Chief and HR Administrator 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 Fire Chief to see a medical care provider. (See Section C below regarding immediate reporting of serious accidents.)
- c. Should the Fire Chief 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 HR Administrator.
- d. In the event of serious job-related injury or illness, the injured employee's supervisor shall notify the Fire Chief and HR Administrator immediately, so that, if necessary, an investigation may be initiated.
- e. The Fire Chief 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/her medical care provider or the State, regarding a Workers' Compensation claim must be immediately forwarded to the HR Administrator.
- 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. 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 ninety (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 ninety (90) day injury leave benefit, the bargaining unit member will be in the receipt of Worker's Compensation benefits and may at his/her option, elect to receive supplemental benefits equal to 33 1/3% of his/her 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.

During the time a bargaining unit member is receiving "injury leave benefits" he/she 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/she is finally determined not to be eligible for Worker's Compensation benefits, he/she 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.

- 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/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. When a full-time member sustains an on-duty injury or is placed on light-duty, due to either an on or off-duty circumstance, and is unable to work their regularly assigned shift hours (24/48) and no other full-time member is on duty for the same shift, each

full-time member meeting the needed qualifications shall be offered the opportunity to fill the assigned hours of the vacant shifts. The overtime opportunity will be extended from the time of injury through the next six (6) calendar days, seven days total. If the overtime is declined by the eligible full-time members it may be offered to part-time personnel or filled in any manner deemed appropriate by the Fire Chief.

**ARTICLE 27 Wages**

2019

.5% (additional COL) retroactive to first full pay in January 2019

2020

2% (COL increase)

If the Police Union receives a higher COL increase than 2% the Fire Union will receive the same COL increase

2021

Reopener (for wages only 2021 and 2022)

The following are the wage steps unless an employee had/has a step increase withheld due to disciplinary or unsatisfactory performance in two (2) or more areas of the employee’s performance evaluation.

Firefighter/Paramedic

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
2019	\$16.70	\$18.04	\$19.39	\$20.72	\$22.07	\$23.41	\$24.03
2020	\$17.04	\$18.40	\$19.77	\$21.14	\$22.51	\$23.87	\$24.41
2021	Reopener						

Firefighter/EMT

Will receive the top out pay that a part-time firefighter/paramedic receives.

**ARTICLE 28 Trade Policy and Other Compensated Time**

Section 1 Trade. Employees may trade hours or shifts with another employee with the approval of the Fire Chief. The trades cannot be unreasonably denied but will not be counted for purposes of computing overtime.

Section 2 Call-Out Pay. An employee called out by the Fire Chief or his/her 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.

Section 4 Compensated Time. All bargaining members with ten (10) years or less of full-time service with the Clayton Fire Department, are eligible to carry over seventy-two (72) hours of compensatory time. Any hours in excess of seventy-two (72) that are not used by November 30<sup>th</sup> or not scheduled to be used by December 31<sup>st</sup> will be paid out according to City policy.

#### **ARTICLE 29 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 30 Duration**

This agreement shall be in effect from April 1, 2019 through March 31, 2022.

#### **ARTICLE 31 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 (only once every three (3) years due to size changes unless there are extenuating circumstance that must be approved by the Fire Chief) and approved by the rank of Battalion 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 Fire Chief will not be approved for wear.

b. Minimum of Items Provided

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

**Pants:** Total of three (3)

**Shirts:** Three (3) SS T-shirts, three (3) LS T-Shirts, three (3) SS polo shirts, three (3) LS Polo Shirts and three (3) pullovers

**Miscellaneous:** One (1) each

Jacket

Shoes or boots (Not to exceed \$150 annually or \$300 every other year)

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 32 Employee Assistance Plan and Substance Testing**

Section 1 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 2. 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 Fire Chief.

#### Section 3. 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 RC. 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.<sup>3</sup>

#### Section 4. 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.

---

<sup>3</sup> The parties agree that Random Testing may be implemented for the Fire/EMS Department.

Section 5 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 6 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 (1) after having consumed alcohol within the prior six hours; (2) after having consumed, ingested or inhaled any controlled substance or harmful intoxicant; (3) 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; (4) while having an alcohol concentration of four-hundredths of one per cent or more; and/or (5) 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 7 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 (i.e. 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 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 Fire 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, 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.

- m. Rehabilitation programs shall be available for employees who voluntarily come forward to request participation at least forty-eight (48) hours prior to the imposition of a random test or forty-eight (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.
- n. 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 (i.e. DUI, insubordination, etc.)
- o. 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.
- p. 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.
- q. 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.

- r. 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.
- s. 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.
- t. 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.
- u. 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.
- v. 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.
- w. A proper chain of custody shall be maintained on all specimens taken.

Section 8 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 33 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.

#### **APPENDIX A Creation and promotion of the Classified Position of Fire Lieutenant**

An internal process for the promotion of three (3) Lieutenants will be completed no later than June 1, 2020. All full-time firefighter/paramedics, meeting the job requirements shall be eligible to apply and compete, but the top three candidates must receive a passing grade to receive the promotion.

Compensation for the lieutenant position shall be a one thousand dollars (\$1,000) annual stipend to be paid in the first full pay check of December each year, in addition to the wages paid at the current pay step for each bargaining member.

A job description for the position shall be made available at the time of posting.

During the life of the contract: There will not be a wage scale for the position, nor will there be a reopener on the amount of the stipend. Fire Lieutenants are subject to mandatory overtime/call-in if a Battalion Chief is not available for duty.

THE CITY OF CLAYTON

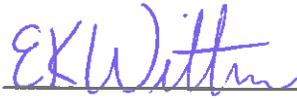
CLAYTON PROFESSIONAL  
FIREFIGHTER ASSOCIATION  
IAFF LOCAL 4379

  
Richard Rose, City Manager

  
Matthew Maurer, Union Representative

  
Brian Garver, Fire Chief

  
Matthew Bakan, Union Representative

  
Elaine Wittman, Assistant to the City Manager

  
John Stevens, Union Representative

Date: 4-20-19

Approved as to Form:  
  
Martina Dillon, Clayton Law Director

Date: 4-20-19

**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

Date: 4-30-19