

#48
3/25/2004

AGREEMENT
BETWEEN
THE CITY OF AUSTIN
AND
THE AUSTIN POLICE ASSOCIATION

_____, 200____ -- SEPTEMBER 26, 200____

TABLE OF CONTENTS

Article 1 – Preamble.....	1
Article 2 – Definitions	1
Article 3 – Recognition.....	2
Article 4 – Management Rights.....	3
Article 5 – Non-Discrimination	4
Article 6 – Union Dues, Check off and Indemnification.....	4
Article 7 – Wages and Benefits.....	5
Article 8 – Overtime, Call Back, Court Time, and On Call.....	9
Article 9 – Special Leave Provisions.....	11
Article 10 – Holidays and Vacation	12
Article 11 – Association Business Leave.....	12
Article 12 - Association Communication.....	14
Article 13 – Promotions	15
Article 14 – Initial hiring Process	24
Article 15 – Drug Testing	26
Article 16 – Citizen Oversight of the Austin Police Department	29
Article 17 – Protected Rights of Officers	42
Article 18 – Disciplinary Action and Appeals.....	45
Article 19 – Assignment Changes	51
Article 20 – Dispute Resolution Process.....	52
Article 21 – Term of Agreement	56
Article 22 – Termination of Agreement	58

Article 23 – Entire Agreement	59
Article 24 – Savings Clause	60

ARTICLE 1

PREAMBLE

Section 1. Date of Agreement.

This Agreement made, entered into, and first effective this 11th day of March, 2004, (unless specific provisions or Exhibit terms set forth a later effective date) by and between the CITY of Austin, Texas, hereinafter referred to as the "CITY," and the Austin Police ASSOCIATION, hereinafter referred to as the "ASSOCIATION," and its terms shall be effective only until the expiration date of the Agreement, or as stipulated in this Agreement.

Section 2. Purpose of Agreement

WHEREAS, the CITY has voluntarily endorsed the practices and procedures of the statutory meet and confer process as an orderly way of conducting its relations with its police officers, insofar as such practices and procedures are appropriate to the functions and obligations of the CITY to retain the rights to operate the CITY government effectively in a responsible and efficient manner; and

WHEREAS, the ASSOCIATION has pledged to support the service and mission of the Austin Police Department and to abide by the statutorily imposed no strike or work slow down obligations placed upon it; and

WHEREAS, it is the intent and purpose of the parties to set forth herein their entire Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE mutual covenants and agreements herein contained, the parties mutually agree as follows:

ARTICLE 2

DEFINITIONS

The following definitions apply to terms used in this Agreement, unless a different definition is required by the context in which the term is used.

1. "ASSOCIATION" means the Austin Police Association, and its officers and agents authorized to act on its behalf.
2. "Chief" means the Chief of Police of the Austin Police Department or his designee.
3. "Employer" or "CITY" means the City of Austin, Texas, the Austin Police Department and its officers, agents, managers, and others authorized to act on the CITY's behalf.

4. "HRD" means the City of Austin's Human Resources Department.
5. "Officer" means, all police officers, as the term is currently defined in Texas Local Government Code, Section 143.003 (5), and those hired under the provisions of this Agreement in the Austin Police Department, except the Head of the Department and, unless otherwise specified, Assistant Department Heads in the rank or classification immediately below that of the Department Head. The term also excludes cadets, civilian employees, retirees, and any other employees specifically exempted by the terms of this Agreement. Probationary officers are excluded from the coverage of Article 18 and cannot file grievances pursuant to Article 20 regarding disciplinary actions.
6. "Meet and Confer Statute" means Subchapter I of Chapter 143 of the Texas Local Government Code, Sections 143.301-143.313.
7. "Chapter 143" means Chapter 143 of the Texas Local Government Code.
8. "Authorized ASSOCIATION Representative" means a representative of the ASSOCIATION authorized by the ASSOCIATION's executive board to conduct business on behalf of the ASSOCIATION.
9. "Police Civil Service Commission" means the three (3) member Civil Service Commission appointed by the City Manager, pursuant to Section 143.006 of the Texas Local Government Code.
10. "Preemption." To the extent that any provision of this article conflicts with or changes Chapter 143 or any other statute, executive order, local ordinance, or rule, this Agreement shall supersede such provision, as authorized by Section 143.307 of the Texas Local Government Code.

ARTICLE 3

RECOGNITION

The CITY recognizes the ASSOCIATION as the sole and exclusive bargaining agent for all covered police officers, pursuant to Section 143.301 et seq. of Chapter 143, excluding the Police Chief, the Assistant Police Chiefs, and all civilian employees of the Police Department.

ARTICLE 4

MANAGEMENT RIGHTS

Section 1. Retained Rights – General

The CITY retains all inherent rights to manage the Police Department and its work force which it presently enjoys, subject to applicable federal and state statutes and local ordinances, resolutions, and rules, except as specifically provided in this Agreement. These rights include, but are not limited to: direction of the work force, including but not limited to, the right to hire; the right to discipline or discharge; the right to decide job qualifications for hiring; the right to lay-off or abolish positions; the right to make rules and regulations governing conduct and safety; the right to determine schedules of work together with the right to determine the methods, processes and manner of performing work; the determination of the size of the work force, and the assignment of work to officers within the department, including the right to transfer officers; the determination of policy affecting the selection of new officers; the right to establish the services and programs provided by the department, including the nature and level of such services and programs, as well as the type and quantity of resources allocated; the right to establish work performance measurement and standards; and the right to implement programs to increase the cost effectiveness of departmental operations.

Section 2. Retained Right of Independent Investigation.

The Chief of Police and the City Manager fully retain their rights to independently investigate police conduct.

Section 3. Public Report by Volunteer Citizen Panel or Independent Investigator

a) The provisions of Section 143.089(g) of the Texas Local Government Code are expressly modified to the extent necessary to permit public release of a final report prepared by an investigator who conducts an Independent Investigation authorized by the Chief of Police or City Manager concerning police conduct. An "Independent Investigation" does not include attorney-client work product or privileged material related to the defense of claims or suits against the City of Austin. The release of a Volunteer Citizen Panel (hereinafter "Panel") report is also authorized, subject to the limitations in this agreement.

b) The public release of information authorized by this Section shall not contain or reveal evidentiary facts, or other substantive investigative information from the file, except to the extent that such information is at the time of such release no longer protected from public disclosure by law, or is already public as a matter of fact by lawful or authorized means or by the officer's own release. For example, the names of officers in an investigation may not be released; but could be released if those officers have elected to enter the public debate and discuss their involvement, or if the public has been informed of identities by lawful or authorized means in the course of grand jury or other legal proceedings. Likewise, the name, identifying characteristics, or contact information

for any involved party or complainant shall not be released, except to the extent that such information is at the time of such release no longer protected from public disclosure by law, or is already public as a matter of fact by lawful or authorized means or by the officer's own release. The public statements authorized in this agreement are subject to review by the City of Austin Department of Law to insure compliance with this agreement and to determine whether the release of such information may be prohibited by any other law.

c) This Section shall apply to any Independent Investigation or citizen panel report whether completed prior to or after the effective date of this Agreement, and applies to every position and rank within the Austin Police Department.

ARTICLE 5

NON-DISCRIMINATION

Section 1. Discrimination Prohibited.

Neither the CITY nor the ASSOCIATION shall discriminate with regard to the implementation of any term or condition of this contract, against any officer covered by this Agreement in a manner which discrimination would violate any applicable federal or state law or any CITY ordinances on the basis of race, creed, color, national origin, age, sex, sexual orientation, or disability.

Section 2. Association Membership or Activity.

Neither the CITY nor the ASSOCIATION shall interfere with the right of officers covered by this Agreement to become or not become members of the ASSOCIATION, and there shall be no discrimination against such officers because of lawful ASSOCIATION membership or non-membership activity or status.

Section 3. Association Fair Representation.

The ASSOCIATION recognizes its responsibility as the exclusive representative under the meet and confer statute and agrees to fairly represent all officers in the Department covered by this Agreement.

ARTICLE 6

UNION DUES, CHECK OFF AND INDEMNIFICATION

Section 1. Dues Check Off.

Upon receipt of a signed authorization from an officer on a form supplied by the CITY, the dues and assessments that existed on the date of this Agreement, including but not necessarily limited to: APA dues, pagers, telephones, PAC, dues for Amigos en Azul and Texas Peace Officers Association, shall be deducted from such officer's pay. Officers who are already having dues deducted as of the execution date of this Agreement are not

required to submit a new dues deduction form. The dues deductions shall be remitted promptly to the treasurer of the ASSOCIATION. The ASSOCIATION agrees to defray the actual cost of making such deductions, not to exceed the per deduction amount paid by other employee associations. The City agrees to provide a list of those members for whom deductions are made each month. The ASSOCIATION may change the amount of the deduction for those employees who have authorized payroll deductions by providing the City with a letter, at least thirty (30) days in advance of the change, from the ASSOCIATION President advising the City that the amount has changed pursuant to the requirements of the ASSOCIATION's Constitution and Bylaws. The ASSOCIATION will promptly refund to the CITY any amount paid to the ASSOCIATION in error on account of this dues deduction provision. Additional assessments may be deducted by mutual agreement of the parties.

Section 2. Indemnification.

The ASSOCIATION shall jointly defend the provisions of this article on behalf of both parties, and shall indemnify the CITY and any departments of the CITY and hold it harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any actions taken by the CITY or any department of the CITY for any purpose of complying with provisions of this article. The Association shall be entitled to select and direct counsel for such defense, but shall reasonably cooperate with counsel designated by the City Attorney to participate.

The CITY agrees that it will not authorize payroll deduction of dues or fees for any organization that purports to represent Austin police officers in employment matters, that is not currently authorized to have payroll deduction of dues. This requirement shall not apply to organizations that enjoyed dues check off as of the date the Austin City Council recognized the APA as the sole and exclusive bargaining representative of officers in the Department, including the Austin Police Association and the Combined Law Enforcement Association of Texas

ARTICLE 7

WAGES AND BENEFITS

Section 1. Wage and Benefit Changes.

Beginning on the effective date of this agreement, the Base Salary Schedule contained in Appendix A shall apply. Future wage increases shall occur in accordance with the public safety premium provisions in Article 21.

Section 2. Longevity Pay.

Longevity pay shall continue to be paid in a lump sum in the first regularly scheduled pay period after the officer's anniversary date, which is the annual anniversary of the officer's most recent commission date. This change in payment of longevity does not

affect the treatment of longevity for retirement and overtime purposes, and the CITY and the officers shall continue making retirement contributions for longevity payments.

Effective October 1, 2005, longevity pay shall increase to seventy dollars (\$70.00) per year of service, up to a maximum of 25 years.

Effective October 1, 2007, longevity pay shall increase to ninety six dollars (\$96.00) per year of service, up to a maximum of 25 years.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §141.032 of the Texas Local Government Code.

Section 3. Retirement Contributions for Cadets.

The CITY agrees to continue contributions for cadets to the Police Retirement System.

Section 4. Field Training Officer Pay.

Field training officer (FTO) pay shall be paid at the effective rate of one hundred and seventy five (\$175.00) per month to each officer assigned in the FTO program, as selected according to criteria established by the Chief. This payment shall not be made to officers assigned to the Training Division, to the FTO Program Coordinator. Officers authorized to train probationary patrol officers during their probationary period, and not a part of the FTO program, will be compensated for the actual hours spent training.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §143.043 of the Texas Local Government Code.

Section 5. Mental Health Certification Pay.

Effective October 1, 2004 Mental Health Certification Pay shall be paid at the effective rate of one hundred and seventy five dollars (\$175.00) per month to each officer assigned to a Patrol Shift, and serving as a Mental Health Officer as selected and approved according to criteria established by the Chief. This payment shall not be made to the officers assigned to the Crisis Intervention Team.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §143.042 of the Texas Local Government Code.

Section 6. Bilingual Pay.

Bilingual pay will be paid at the rate of one hundred and seventy five (\$175.00) per month for officers certified under standards established by the Chief and assigned to the bilingual program. Effective October 1, 2004, it is further agreed that the current bilingual program shall be expanded the German language in addition to the previously approved French/Haitian, Asian (Vietnamese, Cantonese, Thai, Korean, Japanese, and Malaysian), and sign language for the deaf. The parties have agreed to include this language solely based on the level of continuing need in the field for interpretation during police calls and contacts. Officers will not be paid cumulatively if they are certified in more than one language.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §143.042 of the Texas Local Government Code.

Section 7. Compensation for Lieutenants and Commanders.

Lieutenants and Commanders shall be compensated on a salary basis and are exempt employees for purposes of overtime compensation under applicable federal law. The parties further agree that the Lieutenants and Commanders accept their salaries as inclusive of any and all overtime compensation. Lieutenants permanently assigned to an evening or night shift in Patrol shall be paid an additional stipend of one hundred and twenty five (\$125.00) per month upon this contract agreement; effective October 1, 2004 the stipend shall be two hundred and seventy five (\$275.00) per month; effective October 1, 2005 the stipend shall be three hundred (\$300.00) per month. Lieutenants assigned to a Patrol Area Command who are assigned to an evening or night shift for a twenty eight (28) day cycle, when the shift begins at or after 2:00 p.m., shall be entitled to one hundred and twenty five dollars (\$125.00) monthly stipend for each twenty eight (28) day cycle upon this contract agreement; effective October 1, 2004 the stipend shall be two hundred and seventy five dollars (\$275.00) per month; effective October 1, 2005, the stipend shall be three hundred dollars \$300.00) per month.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §143.047 and §142.015 of the Texas Local Government Code.

Section 8. Assistant Chiefs.

The Chief of Police has the right to set wages and benefits for the Assistant Chiefs, subject to the approval of the City Council as a part of the budget. The Chief may designate one Assistant Chief as the Executive Assistant or Chief of Staff, whose pay and benefits may be different than the other Assistant Chiefs. Bonuses for performance may be made in the Chief's discretion.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §142.015 and §143.041 of the Texas Local Government Code.

Section 9. Clothing Allowance.

During the term of this contract, the clothing allowance shall be five hundred dollars (\$500.00) per year for all officers deemed eligible by the Chief, with a payment schedule to be determined by the Chief.

Section 10. Education and Certificate Pay.

An officer shall be entitled to either Certificate pay or Education pay, at the highest qualifying rate, but shall not be entitled to both. Education pay shall only be payable for degrees or college credit from an accredited college or university. An accredited college or university is an institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, or the Western Association of Schools and Colleges (Reference: TCLEOSE Rule 211.1(a)(2), as modified by the Commission from time to time).

Each officer holding an Intermediate TCLEOSE Certificate shall be paid fifty dollars (\$50.00) per month. Each officer holding an Advanced TCLEOSE Certificate shall be paid one hundred dollars (\$100) per month. Each officer holding a Master TCLEOSE Certificate shall be paid one hundred fifty dollars (\$150.00) per month.

Education Incentive Pay:

Effective October 1, 2004, Education Incentive Pay shall be paid as follows:

- a) Each officer holding an Associate's degree or 60 hours of college credit shall be paid one hundred dollars (\$100.00) per month.
- b) Each officer holding a Bachelor's degree shall be paid two hundred and twenty dollars (\$220.00) per month.
- c) Each officer holding a Master's degree shall be paid three hundred dollars (\$300.00) per month.
- d) No officer hired after March 25, 2001, will be eligible for Intermediate or Advanced Certificate pay. Education pay incentive amounts at or above those set forth in this agreement remain in effect, and this agreement continues the right of all officers to qualify for or achieve Master Certification pay.

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §143.044 of the Texas Local Government Code.

Section 11. Shift Differential.

The CITY shall pay an additional two hundred dollars (\$200.00) effective upon this contract agreement; effective October 1, 2004 two hundred and seventy five (\$275.00) per month; effective October 1, 2005 three hundred (\$300.00) per month to an officer normally assigned to an evening or night shift for a twenty eight (28) day cycle, when the shift begins at or after 2:00 p.m. Only officers working 50% or more of their shifts beginning after 2:00 p.m., in a 28 day cycle, shall be eligible. Shift differential pay shall apply to all ranks up to and including Sergeant. This provision shall apply in lieu of the City policy applicable to shift differential for any other employees

It is expressly understood and agreed that this section shall be entitled to preemption including but not limited to the provision of §143.047 of the Texas Local Government Code.

Section 12. Monthly Paid Compensation.

It is expressly understood and agreed that the CITY reserves the right to pro-rate and pay all monthly payments in bi-weekly equivalents.

ARTICLE 8

OVERTIME, CALL BACK, COURT TIME, AND ON-CALL

Section 1. Overtime.

Beginning October 1, 2001, for purposes of computing overtime, all approved paid leave time, other than sick leave, shall be calculated as hours worked.

Section 2. On-call status.

The City will allow eight (8) hours of comp time per week for any non-exempt officer on call, as defined by Department policy implemented by the Chief. Officers placed on "court call" while under subpoena to court for two or more consecutive days, shall not be eligible under the prior sentence, but shall receive one (1) hour of additional comp time per day for each regularly scheduled day off or pre-approved leave day.

Section 3. Call back and Court time.

a) Effective with this contract an officer who attends court more than one hour before the start of his/her regularly scheduled shift shall receive a minimum of three (3) hours compensation at time and one half. (e.g. If the officer is assigned to work from 9:00

a.m. till 7:00 p.m., and he/she must attend municipal court at 7:00 a.m. the same day, the officer is entitled to three (3) hours of overtime.)

b) Effective October 1, 2005, an officer who attends court more than one hour before the start of his/her regularly scheduled shift shall receive a minimum of four (4) hours compensation at time and one half. (e.g. If the officer is assigned to work from 9:00 a.m. till 7:00 p.m., and he/she must attend municipal court at 7:00 a.m. the same day, the officer is entitled to four (4) hours of overtime).

c) If the officer attends court one hour or less before the start of his/her regularly scheduled shift, the officer shall receive one (1) full hour of compensation at time and one half. (e.g. if the officer's shift starts at 9:00 a.m., but he/she must attend municipal court at 8:00 a.m. or later, the officer shall receive one full hour of overtime).

d) Effective with this contract an officer who attends court after his/her regularly scheduled shift has ended shall receive a minimum of three (3) hours compensation at time and one half (e.g. If the officer is assigned to work from 10:00 p.m. till 8:00 a.m., and he/she must attend municipal court at 8:00 a.m. the same date, the officer is entitled to three (3) hours of overtime).

e) Effective October 1, 2005, an officer who attends court after his/her regularly scheduled shift has ended shall receive a minimum of four (4) hours compensation at time and one half (e.g. If the officer is assigned to work from 10:00 p.m. till 8:00 a.m., and he/she must attend municipal court at 8:00 a.m. the same date, the officer is entitled to four (4) hours of overtime).

f) If the officer's court assignment begins during his/her regularly scheduled shift but continues beyond his/her normal duty hours, the officer will only be entitled to the actual amount of overtime hours worked. (e.g. If the officer is assigned to work from 10:00 p.m. till 8:00 a.m., and if the officer's court assignment begins at 7:30 a.m. and the officer is not dismissed from court until 9:00 a.m., the officer shall receive only one (1) hour of overtime).

g) All other provisions of Austin Police Department General Order A402 (Overtime and Compensatory Time) dated March 1, 2002, shall continue to apply except as modified by the above provisions.

h) If an officer is called back for unscheduled or scheduled call back, as defined by the Department, the officer shall receive a minimum of three (3) hours of compensation at time and one half.

Section 4. Special Preemption.

It is expressly understood and agreed that this Article shall be entitled to preemption including but not limited to the provisions of the Texas Local Government Code Chapter 142.0015 and 142.009.

ARTICLE 9

SPECIAL LEAVE PROVISIONS

Section 1. Emergency Leave.

Each officer may utilize up to forty (40) hours of paid emergency leave for a death in the immediate family as defined in the City of Austin personnel policies.

Section 2. Sick Leave Donation.

If an officer is in danger of having used all accrued time (vacation, sick, etc.) due to a serious illness or injury, as defined by the FMLA, other officers may voluntarily donate up to forty (40) hours of vacation or sick leave to the ill or injured employee to avoid loss of pay. No officer shall be permitted to bank more than four hundred (400) hours of such donated leave within any twelve (12) month period of time. Donated leave may only be used for the officer to whom donated. In the event that all of the donated leave time is not used, the City shall not be obligated to make any redistribution of banked hours to the donors. The remaining unused donated amount shall not be paid on separation.

Section 3. Payment of Leave on Separation.

Separation pay for sick leave will not be paid unless the employee has at least five (5) years of actual service. The maximum accumulated sick leave paid to an officer shall be 720 hours. Effective October 1, 2004, separation pay will only be paid to officers with at least ten (10) years of actual service, and accumulated sick leave will be paid to such officers who separate in good standing (which shall not include separation in lieu of termination) in accordance with the following:

Maximum sick leave payout will be paid out as indicated below:

Effective October 1, 2004	920 hours
Effective October 1, 2005	1020 hours
Effective October 1, 2006	1120 hours
Effective October 1, 2007	1400 hours

Section 4. Special Preemption.

It is expressly understood and agreed that this Article shall be entitled to preemption including but not limited to the provisions of the Texas Local Government Code Chapter 143.045.

ARTICLE 10

HOLIDAYS AND VACATION

All non-exempt hourly employees whose shift begins on December 25 shall continue to be paid time and one half their regular hourly rate for all hours actually worked for the entire shift. Exempt employees who are required by their immediate supervisor to work on Christmas shall be paid a holiday stipend pursuant to City policy.

The City shall provide by policy for the application of seniority standards on use of Holidays and Vacation, but agrees that any policy will apply equal standards, either department-wide or division-wide.

All sworn officers shall accrue regular vacation leave at 6.25 hours for each pay period in which benefits accrue.

ARTICLE 11

ASSOCIATION BUSINESS LEAVE

Section 1. Time Off For Association Business.

An ASSOCIATION business leave time pool (the Pool) shall be created for the purpose of conducting ASSOCIATION business. Association business is defined as time spent in Meet and Confer negotiations, adjusting grievances or in dispute resolution process, attending the annual State CLEAT conference, the Association's Executive Board meetings, and regular Association business meetings. It is specifically understood and agreed that Association pool time shall not be utilized for legislative and/or political activities at the State or National level, unless they relate to the wages, rates of pay, hours of employment, or conditions of work affecting the members of the ASSOCIATION. At the local level, the use of Association pool time for legislative and/or political activities shall be limited to raising concerns regarding officer safety. Association pool time shall not be utilized for legislative and/or political activities related to any election of public officials or City Charter amendments. Association pool time shall not be utilized for legislative and/or political activities that are sponsored or supported by the Association's Political Action Committee(s).

It is specifically understood and agreed that no Association pool time shall be utilized for legislative and/or political activities at the local, state, or national level that are contrary to the City's adopted legislative program. No Association pool time shall be utilized for activities prohibited by Section 143.086 of Chapter 143 or by the Texas Ethics Commission. Nothing contained in this Subsection is intended to limit the use of the individual officer's remaining vacation time by the officer for legislative and/or political activities.

Section 2. Establishment of Association Leave Time Pool.

The Pool shall be funded by a reduction of annual sick leave accumulation in the amount of five (5) hours per officer, during the first pay period of the calendar year. In the first pay period of each calendar year of this agreement, the City shall fund the Association Leave Pool in an amount equal to five (5) hours multiplied by the number of employees in the bargaining unit on that date. The City will track contributions to and deductions from the Pool, and will be reimbursed by the Association for the administrative time involved. The Association shall pay a reimbursement of nine hundred dollars (\$900.00) each contract year prior to September 15.

Once a contribution has been made to the Pool, there shall be no transfer of the time back into any individual officer's leave time account, and there will be no cash pay out for any remaining time in the Pool. Any hours not used in one (1) year will remain in the Pool to be utilized the following year. Such pool hours shall never have any cash or surrender value.

Section 3. Use of Association Business Leave Time Pool.

All Association business leave will be requested in writing to the ASSOCIATION President, and submitted in advance for approval by the Chief, including a determination that the occurrence for which Pool time is requested meets the requirements established in Section 1. The Chief may waive the requirement that the request and approval be in writing. Requests for use of Pool time shall be made as far in advance as is practicable. The ASSOCIATION President may be permitted up to 2080 hours of such leave, under criteria set by the Chief's office in a written policy. The ASSOCIATION President shall account for all leave time taken under such status through the Chief's office, which shall be subject to approval on a monthly basis, and such time shall be subtracted from the Association leave pool. There shall be no entitlement for overtime pay for any hours worked on ASSOCIATION business. Such employee may at any time be required to return to duty if any emergency situation or the best interests of the Department require; and such employee may additionally be assigned to special projects, in the discretion of the Chief.

ASSOCIATION Board Members and each of the standing Committee Chairpersons may each be authorized to utilize up to two hundred and forty (240) hours from the Pool during the year. No more than one-half (1/2) of the hours specified in this Subsection may be used for legislative and/or political activities as limited in Subsection 1 above. The ASSOCIATION may request approval for the use of additional Pool hours for ASSOCIATION members. Any use of additional Pool time will be solely at the Chief's discretion. The practice of addressing cadet classes twice during cadet training, with approval of the time and content by the Chief, shall continue through the duration of this Agreement. Such time spent addressing cadet classes shall be deducted from the Pool. This provision does not exclude the Chief from approving other individuals or groups to address cadet classes at his discretion, including employee representative groups with current dues check off.

Section 4. Indemnification.

The ASSOCIATION shall jointly defend the provisions of this article on behalf of both parties, and shall indemnify the CITY and any Department of the CITY and hold it harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any actions taken by the CITY or any Department of the CITY for any purpose of complying with provisions of this article. The Association shall be entitled to select and direct counsel for such defense, but shall reasonably cooperate with counsel designated by the City Attorney to participate.

ARTICLE 12

ASSOCIATION COMMUNICATION

The ASSOCIATION'S access to City facilities and equipment to communicate with its membership shall include the use of one (1) bulletin board installed at each substation and satellite office, one (1) in the central Criminal Investigations Bureau report writing room, and one (1) in one other location agreed to by the ASSOCIATION and the Chief, and Departmental pagers. Use of pagers shall be in accordance with written Departmental policy, or shall otherwise be approved in advance by the Chief's office. Use of department equipment to create or send email on ASSOCIATION business is not allowed. The design and placement of the bulletin boards shall be approved in advance by the Chief or his designee.

Section 1. Guidelines for Association Bulletin Boards.

The following guidelines shall apply to materials posted on the bulletin boards:

- a) There shall be no personal attacks or inflammatory statements.
- b) All materials shall be directed toward dissemination of ASSOCIATION information.
- c) Any concerns about the content of posted material shall be brought to the attention of the ASSOCIATION'S executive board for review and adjustment as soon as the concerns are noticed. The Chief shall direct the objectionable material to be removed from the bulletin board until final determination.
- d) In any case, the Police Chief retains the final decision as to whether ASSOCIATION material may be posted on bulletin boards. At no time shall the bulletin boards contain any political endorsement, whether at the local, state or federal level.

ARTICLE 13

PROMOTIONS

Section 1. Corporal and Detective.

Eligibility

A police officer shall be eligible to sit for the Corporal's promotional examination after completing six (6) years from the date of initial commission with the APD. A police officer continues to be able to sit for the Detective's promotional examination after completing two (2) years from the date of initial commission with the APD. However, beginning January 1, 2006 the time in rank requirement to be eligible to sit for the promotional examination shall be changed to five (5) years for both Corporal and Detective.

The job description for the Corporal rank shall include acting as a supervisor when a Sergeant is not available, conducting assigned investigation and other duties as *determined by the Chief and set out in the job description and general orders.*

A Corporal and Detective become eligible for promotion to Sergeant after two (2) years in rank. A Corporal shall be entitled to higher classification pay under the same criteria set forth in Department policy then applicable to any other supervisor temporarily working in the next higher rank.

Positions in the ranks of Corporal and Detective shall be filled from an eligibility list created by a promotional procedure consisting of a written examination conducted in accordance with this Article.

Written examination points:

(See Section 5)

Maximum exam points 100

Maximum Education points 2

Maximum seniority points +15*

Total maximum points: 117**

*Seniority points calculated at 1 point per year of service, and shall be prorated for partial years.

**Formula shall be carried to 3 decimal points and rounded up from .0005. Police Civil Service tie-breaking rules will be applied if necessary.

Seniority

Each officer shall be entitled to up to a maximum of fifteen (15) seniority points to be added to the written exam score, equivalent to one (1) point per year of service, which shall be prorated for partial years.

Education

The following education points shall be added to each candidates score, and shall only apply to college degrees from an accredited college or university, meeting the accreditation standard referenced in Article 7 Section 10 for education incentive pay. No cumulative points shall be allowed for more than one degree or Certification.

Add .5 point for 60 college credits

Add 1.0 point for Bachelor Degree or Master Police Officer Certificate

Add 2.0 points for Masters Degree

Section 2. Sergeant.

Promotional Procedure for Rank of Sergeant

Positions in the rank of Sergeant shall be filled from an eligibility list created by a promotional procedure consisting of a written examination and an Assessment Center conducted in accordance with this Article.

After the Assessment Center scoring has been completed, for the rank of Sergeant the eligibility list shall be calculated as follows:

Written examination points:

(See Section 5)

Maximum exam points 100

Maximum seniority points +15*

Total maximum points: 115

Assessment Center:

Assessment Center points 100

Maximum education points + 2

Total maximum points: 102

*Seniority points calculated at 1 point per year of service, and shall be prorated for partial years.

PROMOTION ELIGIBILITY LIST FORMULA:

$$\begin{aligned} & (\text{Written examination points} + \text{seniority points}) / 115 \times 100 \times .50 \text{ adjustment factor} \\ & + \\ & (\text{Assessment Center Points} + \text{Education Points}) / 102 \times 100 \times .50 \text{ adjustment factor} \\ & = \end{aligned}$$

Total points for promotion list**

**Formula shall be carried to 3 decimal points and rounded up from .0005. Police Civil Service tie-breaking rules will be applied if necessary.

Seniority

Each officer shall be entitled to up to a maximum of fifteen (15) seniority points to be added to the written exam score, equivalent to one (1) point per year of service, which shall be prorated for partial years.

Education

The following education points shall be added to each candidate's score. These points shall only be added to the assessment score in accordance with the formula below, and shall only apply to college degrees from an accredited college or university, meeting the accreditation standard referenced in Article 7 Section 10 for education incentive pay. No cumulative points shall be allowed for more than one degree or Certification.

Add .5 point for 60 college credits

Add 1.0 point for Bachelor Degree or Master Police Officer Certificate

Add 2.0 points for Masters Degree

Section 3. Lieutenant.

Promotional Procedure for Rank of Lieutenant

Positions in the rank of Lieutenant shall be filled from an eligibility list created by a promotional procedure consisting of a written examination and an Assessment Center conducted in accordance with this Article.

After the Assessment Center scoring has been completed, for the rank of Lieutenant the eligibility list shall be calculated as follows:

<u>Written examination points:</u>		<u>Assessment Center:</u>	
(See Section 5)			
Maximum exam points	100	Assessment Center points	100
Maximum seniority points	<u>+15*</u>	Maximum education points	<u>+ 2</u>
Total maximum points:	115	Total maximum points:	102

*Seniority points calculated at 1 point per year of service, and shall be prorated for partial years.

PROMOTION ELIGIBILITY LIST FORMULA:

$$\begin{aligned} & (\text{Written examination points} + \text{seniority points}) / 115 \times 100 \times .50 \text{ adjustment factor} \\ & + \\ & (\text{Assessment Center Points} + \text{Education Points}) / 102 \times 100 \times .50 \text{ adjustment factor} \\ & = \\ & \text{Total points for promotion list**} \end{aligned}$$

**Formula shall be carried to 3 decimal points and rounded up from .0005. Police Civil Service tie-breaking rules will be applied if necessary.

Seniority

Each officer shall be entitled to up to a maximum of fifteen (15) seniority points to be added to the written exam score, equivalent to one (1) point per year of service, which shall be prorated for partial years.

Education

The following education points shall be added to each candidate's score. These points shall only be added to the assessment score in accordance with the formula below, and shall only apply to college degrees from an accredited college or university, meeting the accreditation standard referenced in Article 7 Section 10 for education incentive pay. No cumulative points shall be allowed for more than one degree.

Add 1.0 point for Bachelor Degree

Add 2.0 points for Masters Degree

Section 4. Commanders.

Promotional Procedure for Rank of Commander

Positions in the rank of Commander shall be filled from an eligibility list created by a promotional procedure consisting of a written examination and an Assessment Center conducted in accordance with this Article.

After the Assessment Center scoring has been completed, for the rank of Commander the eligibility list shall be calculated as follows:

Written examination points:
(See Section 5)

Assessment Center:

Maximum exam points 100

Assessment Center points 100

Maximum seniority points +15*

Maximum education points + 2

Total maximum points: 115

Total maximum points: 102

*Seniority points calculated at 1 point per year of service, and shall be prorated for partial years.

PROMOTION ELIGIBILITY LIST FORMULA:

$$\begin{aligned} & (\text{Written examination points} + \text{seniority points}) / 115 \times 100 \times .50 \text{ adjustment factor} \\ & + \\ & (\text{Assessment Center Points} + \text{Education Points}) / 102 \times 100 \times .50 \text{ adjustment factor} \\ & = \\ & \text{Total points for promotion list**} \end{aligned}$$

**Formula shall be carried to 3 decimal points and rounded up from .0005. Police Civil Service tie-breaking rules will be applied if necessary.

Seniority

Each officer shall be entitled to up to a maximum of fifteen (15) seniority points to be added to the written exam score, equivalent to one (1) point per year of service, which shall be prorated for partial years.

Education

The following education points shall be added to each candidate's score. These points shall only be added to the assessment score in accordance with the formula below, and shall only apply to college degrees from an accredited college or university, meeting the accreditation standard referenced in Article 7 Section 10 for education incentive pay. No cumulative points shall be allowed for more than one degree.

Add 1.0 point for Bachelor Degree

Add 2.0 points for Masters Degree

Section 5. Written Examination for Promotion to the Ranks of Corporal, Detective, Sergeant, Lieutenant, and Commander.

All candidates for the ranks of Corporal, Detective, Sergeant, Lieutenant, and Commander shall first take a written examination. The maximum score for the written examination shall be one hundred (100) points. The written examination shall consist of questions relating to the duties of the rank to be filled, as contained in reading material selected by the Chief of Police. The CITY may engage an independent consultant to professionally develop the written examination questions after consultations with the Human Resources Department (HRD). The CITY will make a reasonable effort to have the written examination validated. The examination may be validated before or after the

examination is given. Prior to being administered, the finalized examination shall be kept in a safe and secure manner.

The CITY shall make reasonable efforts to provide a six (6) month study time window prior to promotional examinations, but it is recognized that expiration or exhaustion of a list may necessitate an earlier examination.

Section 6. Assessment Center Process for Promotion to the Ranks of Sergeant, Lieutenant or Commander.

Officers who pass the Sergeant's, Lieutenant's or Commander's written promotional examination with a score of seventy percent (70%) or higher will proceed to the next step of the examination process, which is an Assessment Center.

Prior to the written test being administered, the Chief shall establish assessment criteria based on job content and responsibility. The Human Resources Department will generate a list of consultants, and will review that list with the Chief, who will approve the list. The Chief shall also appoint three (3) members to serve on an Assessment Center Review Committee (ACRC), plus one (1) alternate. The ASSOCIATION shall also select three (3) individuals to serve on the ACRC and one (1) alternate. All ACRC members shall be selected from the tested rank or above. The ACRC shall meet and consider the list of consultants approved by the Chief and select the Assessment Center Consultant from the list which may be subject to Council approval, pursuant to City purchasing policies and procedures.

After the Assessment Center Consultant has been selected, the Consultant will orient the ACRC. The Consultant will confer with both the Chief and the ACRC on the needs or issues affecting the design of the Assessment Center. Any input from the ASSOCIATION will be summarized by the ACRC and made available to anyone who requests it. The Consultant shall make all final decisions concerning the design and implementation of the Assessment Center.

The consultant will design the Assessment Center from among the following exercises:

- In-Basket
- Problem Solving/Analysis
- Written and Oral Resumes/Structured Interviews
- Role-Playing
- Memo/Report Writing
- Oral Presentation/Plan Preparation
- Staff Meeting
- Special Event/Operations.

The consultant is not required to utilize all of the exercises, but may select the exercises or combine the listed exercises into one or more exercises that are best suited for the particular rank.

The Consultant also selects the assessors, who shall meet the following criteria:

- a) Active duty, sworn officers of similar rank to the promotion, or above, from cities with a population of 200,000 or greater;
- b) Shall not reside in Austin;
- c) Shall not be related to any candidates for promotion;
- d) Shall not be known to, beyond mere acquaintance, any candidates for promotion;
- e) Shall have two (2) years of experience in the promoted or equivalent rank; and
- f) Shall not be a current or former employee of the City of Austin.

The Consultant shall conduct an orientation for candidates prior to administering the Assessment Center. The Consultant may deem the orientation mandatory, and all candidates must attend in order to participate, if it is declared mandatory. If the consultant deems orientation to be mandatory, then at least two (2) orientations shall be scheduled with one in the morning and one in the afternoon. If a mandatory orientation is scheduled during an officer's work time, he/she will be permitted to attend.

The assessors selected by the Consultant will assess the candidates for the rank. The assessors shall award up to one hundred (100) points to each candidate participating in the assessment center. The assessment sessions will be videotaped, and candidates may review their own session pursuant to procedures established by Human Resources provided that candidates are given up to four (4) hours, which may be provided in smaller increments of time, to review their assessment session. The Human Resources Department shall make available blocks of time for officers to review examination results from 8:00 a.m. to 5:00 p.m., and at least two (2) evening options until 10:00 p.m. shall be provided. However, these time periods need not be kept available or staffed unless the times are reserved in advance. Examination reviews will be conducted on the officer's off-duty time. Copies of the videotapes will not be given to the candidate. Nothing in the assessment center process may be appealed either to the Police Civil Service Commission, hearing examiner, or the District Court.

Section 7. Eligibility Lists for the Ranks of Corporal, Detective, Sergeant, Lieutenant, and Commander.

All promotional eligibility lists created under this Article shall be constructed, with the highest total score being ranked number one and descending in numerical order. All eligibility lists shall be valid for eighteen (18) months from the date that the eligibility list is finalized.

Section 8. Appeals Criteria Committee.

An Appeals Criteria Committee (ACC) shall continue to determine the criteria for what may be appealed to the Police Civil Service Commission following all written promotional examinations. The ACC shall establish appeal criteria which will be used for all written examinations held during the term of this Agreement. The ACC, composed of seven (7) individuals, shall be appointed as follows:

- a) Three (3) members appointed by ASSOCIATION, each having taken at least one (1) promotional exam;
- b) Two (2) members appointed by the Chief of Police, each having taken at least one (1) promotional exam;
- c) One (1) member appointed by the Director of the Human Resources Department; and
- d) One (1) member appointed by the Chair of the Police Civil Service Commission.

A simple majority of the ACC shall approve the criteria. The Chief may reconvene the ACC if, after an eligibility list has been established, it appears that clarification or modification of the criteria is warranted. The criteria approved by the ACC shall not be appealable to either the Police Civil Service Commission, a hearing examiner, or to the District Court.

Section 9. Appeal Process After Written Examination.

Any officer who has taken a written promotional examination may, within seven (7) City of Austin business days of the posting of the written promotional exam results, review his/her examination results. The process shall be established by the Human Resources Department; provided, however, that each officer who has taken a promotional examination may have up to four (4) hours to review his/her examination, write, and submit the appeal, if any, which must be based on the appeal criteria approved by the ACC. Once an appeal is filed, it shall be assigned a number and processed anonymously. The officer may obtain a copy of his or her appeal. The Human Resources Division shall make available blocks of time for officers to review examination results from 8:00 a.m. to 5:00 p.m., and at least two (2) evening options until 10:00 p.m. shall be provided. However, these time periods need not be kept available or staffed unless the times are reserved in advance. Examination reviews will be conducted on the officer's off-duty time. There will be no appeal to the Police Civil Service Commission, a hearing examiner, or to the District Court of any facet of the examination review process.

Section 10. Review by Employee Review Committee.

An Employee Review Committee (ERC) will be appointed to screen written examination appeals to the Police Civil Service Commission, applying the criteria established by the ACC to determine which appeals should be rejected because they do not meet the criteria. *Assuring for diversity as is practical and possible the ERC shall be comprised of five (5) members as follows:*

Four (4) officers of the rank of the promotional exam or higher, two (2) each appointed by the ASSOCIATION and the Chief of Police; and

One (1) member appointed by HRD.

Appeals may advance from the ERC to the Police Civil Service Commission by a vote of a simple majority of the ERC. The ERC will not make any statement, assertion, or recommendation regarding the validity of an appeal or subsequent Police Civil Service Commission action. There will be no State District Court appeal of the ERC's examination appeal determinations or from the Police Civil Service Commission's written examination appeal decisions, except an appeal alleging the CITY's failure to validate the written examination.

Section 11. Special Preemption.

It is expressly understood and agreed that the provisions in Chapter 143.036(d) and (e) and 143.014(f) of the Local Government Code prescribing time limits for filling vacancies at the rank of Sergeant or above shall be expanded to one hundred and twenty (120) days from the date the vacancy occurs during the term of this Agreement.

Section 12. Committee on the Assessment Center Process.

The CITY and the ASSOCIATION shall each appoint two (2) persons to a committee that shall schedule a meeting with the participants in each Assessment Center process to discuss the strengths and weaknesses perceived by the participants, after completion of the process. The Committee may recommend changes in the procedures set out in this Agreement.

Section 13. Military Promotions/Demotions.

The following changes are made to Sections 143.031 and 143.072 of the Texas Local Government Code:

- a) Section 143.072(c). When an officer is promoted as the result of a vacancy created by a military leave of absence, when the officer on military leave returns to active duty in the Department, the person who filled the most recent vacancy at that rank shall be the one who is demoted to the next lowest classification and placed on a reinstatement list.

- b) The same result applies to all other promotions in lower ranks which resulted from the first promotion and subsequent demotion.
- c) Time spent on a reinstatement list shall not be considered a break in service for civil service purposes, including, but not limited to eligibility for future promotional examinations.
- d) This Section shall be retroactive in all respects to September 1, 2001.
- e) All other provisions of Sections 143.031 and 143.072 not specifically changed by this Agreement shall remain in effect.

Section 14. General Preemption.

It is expressly understood and agreed that this Article shall be entitled to preemption including but not limited to the provisions of Subchapter B of the Texas Local Government Code Chapter 143.

ARTICLE 14

INITIAL HIRING PROCESS

Any individual who wishes to be considered for employment as a cadet in the Austin Police Department must complete the following application and examination process.

Section 1. Submission of Proper Application.

In order to be considered for the position of cadet, each applicant must first submit a proper application as defined by the Department. A proper application shall include, but not be limited to, information on personal history, criminal history, driving record and age. The information submitted shall be used by the Police Department to determine whether the applicant meets the minimum qualifications to proceed to the testing phase of the process. The application expires twelve (12) months after a proper application, as described above, is received by the Police Department unless circumstances result in a delay in scheduling or start of a cadet class, in which case the Chief of Police may extend the twelve (12) month deadline for an additional six (6) months.

Section 2. Maximum Age of Applicants.

For applicants who have no prior military or police experience, the maximum age for application to the cadet position shall be forty (40) years old. For applicants with prior military or police experience, the maximum age limit shall be forty-five (45) years old.

Section 3. Testing of Applicants.

a) Academy cadets will be hired from a roster created by a testing process, administered under the Austin Police Department. Applicants will be ranked on the roster

based on composite scores in a multi-part testing process, including a written examination and oral interview board.

The list of applicants shall be established with the following percentage weight applied to each portion of the testing process:

Written Test	45%
Oral Interview Board	<u>55%</u>
Total Points:	100%

b) The written examination contents may include, among other things, testing of written communication skills, reading comprehension, accuracy of observations and biographical inventory. Each applicant shall also be required to undergo an oral interview board, as provided in subsection 4.

c) Additional points may be awarded only to an applicant with a passing composite score as follows:

Two (2) years prior police experience	3 points
Two (2) years prior military experience	2 points
Thirty (30) or more college hours*	2 points
Bachelors or Master's Degree*	3 points
Certified in second language*	3 points

*No cumulative points for education or more than one additional language are allowed. The Chief shall decide what specific languages will qualify for the extra second language points prior to the posting of each test date, and the applicant is responsible for becoming certified.

Additional points, if any, shall be added to the applicant's total points.

d) All applicants will be required to have completed a minimum of thirty (30) college hours in order to be eligible for consideration. The CITY, at its sole discretion, may waive all or part of the college hours requirement and permit substitution of up to two (2) years of prior police or military experience. After completing the testing phase, all applicants will be required to pass a background check, polygraph and physical ability test, which shall be a pass/fail grade. A failing grade on any of the items listed in this subsection shall disqualify the applicant from further consideration. After a conditional offer of employment has been made, the applicant shall undergo medical and psychological examinations. The recruiting staff is specifically authorized to recruit, administer written tests, and process applicants in the field.

Section 4. Oral Interview Board.

Before being further considered for employment, each applicant who has been placed in the eligible applicant roster and who has not been disqualified pursuant to subsection 3(d) above, will undergo an oral interview before the Oral Interview Board, which will be

comprised of members of the Austin Police Department appointed by the Chief. In the event the Oral Interview Board does not pass an applicant, the applicant's name will be removed from the current eligible applicant roster.

Section 5. Effect on Present Cadet Classes.

It is specifically understood and agreed that the hiring process set out in this Agreement shall not apply to persons hired before the effective date of this Agreement.

Section 6. Extended Probationary Period.

The "at will" probationary period of individuals filling beginning positions in the police department shall begin, under this agreement, on the date the cadet receives his/her commission and shall end at the expiration of fifteen (15) months. The probationary period of any cadet that already holds a commission prior to entering the police academy shall begin on the date the officer receives their first assignment after successful completion of the academy, and shall end at the expiration of fifteen (15) months. However, any leave taken by a probationary police officer during this probationary time period, including but not limited to injury leave, FMLA leave, sick leave, shall extend this probationary period by the length of the leave taken. (Approved vacation leave other than FMLA will not so extend the probationary period.)

Section 7. Defense of Actions.

In the event an applicant files an action against the CITY and the ASSOCIATION on account of the operation of Article 14, the City agrees to jointly defend on behalf of both parties the validity of this provision adopted by both parties, with counsel of the CITY's choice. This provision does not preclude the ASSOCIATION from retaining its own defense counsel, at its expense and the CITY shall reasonably cooperate with counsel designated by the ASSOCIATION to participate.

Section 8. Special Preemption.

It is expressly understood and agreed that this Article shall be entitled to preemption, including but not limited to the provisions of the Texas Local Government Code §143.022 through §143.027.

ARTICLE 15

DRUG TESTING

Section 1. Commitment to an Effective Drug Interdiction Program.

The CITY and the ASSOCIATION agree that officers may be called upon in hazardous situations without warning, and that it is imperative to the interest of the officers and the public to ensure that officers are not substance impaired. In order to further their joint interest in protecting officers and the public, the CITY and the

ASSOCIATION agree to mandatory drug testing as described in this section. The CITY and the ASSOCIATION have a mutual interest in ensuring that drug impaired officers do not perform law enforcement duties. The CITY and the ASSOCIATION are committed to the principle that the mandatory drug testing policy for officers is designed and shall be administered to result in disciplinary action only against those officers who have violated the Police Department's rules, regulations, policies and procedures.

Section 2. Random Testing.

One hundred percent (100%) of officers at all ranks, including the Chief, shall be susceptible to mandatory testing for illegal drugs and controlled substances during each calendar year on a fair and impartial statistical basis at the CITY's expense. The fair and impartial statistical basis (in which each officer has an equal chance of being selected during a calendar year) shall be by a non-discriminatory computerized program operated and certified as non-discriminatory by an independent firm hired by the CITY, and the officer shall be tested upon being selected by the computer.

Upon notice of selection for random testing, any officer shall provide a urine sample in accordance with the policy or protocol established by the testing laboratory. Failure to provide a sample shall be equivalent to insubordination and may be the basis for suspension or indefinite suspension.

Section 3. Assurance of Accurate Results.

Officers shall have the right to request that their urine sample be stored in case of legal disputes. The urine sample will be submitted to the designated testing facility where a sample will be maintained for the period of one year. Officers may, at their own expense, request to have a test administered at an approved physician's office accompanied by the testing personnel provided such testing is administered within eight (8) hours after notification by the Chief. Drug testing shall consist of a two-step procedure:

1. Initial screening test.
2. Confirmation test.

Should a confirmation test be required, the test procedure will be technologically different and more sensitive than the initial screening test. Officers shall be provided with a notice of the result and may obtain a copy of the actual laboratory result upon request to the Lieutenant assigned responsibility as Drug Testing Coordinator.

The CITY and the ASSOCIATION agree that only an appropriately certified laboratory should conduct drug testing. The laboratory selected shall be experienced and capable of quality control documentation, chain of custody and have a demonstrated technical expertise and proficiency in urine analysis and shall comply with all requirements of an appropriately certified laboratory. The CITY shall require any laboratory selected for collecting samples to conduct a background investigation on those

laboratory personnel involved in the collecting or handling of an unsealed sample. In addition, the CITY shall require any laboratory involved in collecting samples to use only employees who have not been arrested by officers of the Austin Police Department or convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs to be involved in collecting or handling of an unsealed sample collected from an officer. In the event that the laboratory that collects the initial samples is not the same laboratory that conducts the actual testing of those samples, only the laboratory that collects the initial samples must comply with the background and criminal history provision of this Agreement. Test results shall be inadmissible in any administrative disciplinary hearing if it is determined that the laboratory collecting samples failed to conduct a background investigation on the laboratory personnel involved in collecting or handling the unsealed sample which resulted in a positive test result.

All records pertaining to the Department-required drug tests shall remain confidential except to the extent used in a disciplinary appeal. Drug test results and records shall be stored in a locked file under the control of the Drug Coordinator, under the supervision of the Chief, will maintain original copies submitted by the laboratory. No access to these files shall be allowed without written approval of the Chief.

Section 4. Testing on Reasonable Suspicion.

Nothing in this Article shall be construed to prohibit the Chief from conducting a drug test on an officer, or a search of any areas in which the officer does not have a personal privacy expectation, based upon reasonable suspicion in accordance with the guidelines as set forth in Department policy for such by actions. Such actions may be taken upon the agreement of any two supervisors that there is a reasonable basis for a suspicion that:

- a) An officer is presently using or under the influence of illegal drugs or inhalants
- b) An officer has possession of illegal drugs or inhalants
- c) An officer has been associated with or involved with others who were using or under the influence of illegal drugs or inhalants, or who were in possession of same, which association or involvement was not authorized or required in connection with any law enforcement duty, under circumstances which reasonably indicate participation or complicity with, or protection of such other individuals
- d) Any conduct or situation described in a-c immediately above involving alcohol, while on duty, or which results in on-duty impairment.

Section 5. Definitions.

For the purposes of this Article:

"Drug testing" shall be defined as the compulsory production and submission of a urine sample by an officer for chemical analysis to detect the presence of prohibited drug usage, in connection with the random testing process set forth herein; and production or submission of urine, blood, or hair sample for a required test based on the reasonable suspicion standards set forth herein.

ARTICLE 16

CITIZEN OVERSIGHT OF THE AUSTIN POLICE DEPARTMENT

Section 1. Citizen Oversight.

- a) Citizen Oversight means the process which incorporates citizen input into the administrative review of conduct of APD officers and the review of the Austin Police Department's policies and procedures. The City of Austin may provide for Citizen Oversight of the Austin Police Department. Citizen Oversight may include an Office of the Police Monitor and a Volunteer Citizen's Panel. The City agrees that there will be no parallel process created in addition to the one contemplated by these provisions.
- b) The purpose of Citizen Oversight is:
 - 1. to assure timely, fair, impartial, and objective administrative review of complaints against police officers, while protecting the individual rights of officers and citizens;
 - 2. to provide an independent and objective review of the policies and procedures of the Austin Police Department; and
 - 3. to provide a primary, but not exclusive, location for accepting administrative complaints of officer misconduct.
- c) Except as otherwise provided by this Agreement, the Chief of Police retains all management rights and authority over the process of administrative investigation of alleged misconduct by APD officers that could result in disciplinary action.
- d) The Citizen Oversight process, regardless of its name or structure, shall not be used or permitted to gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint of misconduct by an officer. There shall be no legal or administrative requirement, including but not

limited to subpoena power or an order from the City Manager or the Department, that an officer appear before or present evidence to any individual, panel, committee, group, or forum of any type involved in Citizen Oversight. This provision has no application to any Independent Investigation authorized by the Chief of Police or the City Manager, regardless of whether the Independent Investigation was recommended by a Panel or Police Monitor, or to any hearing of an appeal of disciplinary action pursuant to this Agreement and/or Chapter 143 of the Texas Local Government Code. Police officers remain subject to orders or subpoenas to appear and provide testimony or evidence in such investigations or hearings.

Section 2. The Office of the Police Monitor (“OPM”).

- a) The Police Monitor will have unfettered access to the Internal Affairs investigation process, except as provided herein. The Police Monitor may inquire of the Commander of the Internal Affairs Division or the Chief of Police, or the Chief’s designee, as to the status of any pending IAD investigation.
- b) The OPM shall not gather evidence, contact or interview witnesses (except the complainant as provided herein), or otherwise independently investigate a complaint. The OPM shall not have the authority to subpoena witnesses. There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that a police officer appear or present evidence to the Police Monitor. The OPM may obtain the following information in connection with the filing of a complaint of officer misconduct:
 - 1. the complainant’s personal information;
 - 2. the nature of the complaint;
 - 3. witness information;
 - 4. the incident location, date, and time; and
 - 5. the APD officer(s) involved.
- c) Personnel from the OPM shall not encourage or insist upon the filing of a complaint.
- d) Only the Police Monitor or the Assistant Police Monitor may attend an interview of the officer who is the subject of the investigation or administrative inquiry. At the conclusion of any interview, the OPM representative may take the IAD investigator aside and request that the

investigator ask additional questions. Whether such information is sought in any witness interview is within the discretion of the IAD investigator.

- e) Neither the Police Monitor nor the Internal Affairs Representative(s) may remain in the Disciplinary Review Board (DRB) meeting while the chain of command discusses the final classification and/or appropriate discipline, if any, to be imposed. The final classification of an allegation of misconduct is within the sole discretion of the Chief of Police, subject to the officer's right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this agreement.

Section 3. Volunteer Citizen Panel ("Panel").

A. Function

1. The Panel shall serve to make recommendations to the Chief of Police as provided in this Article, and in addition to review individual cases of officer conduct as authorized in this Article. Panel members shall perform their duties in a fair and objective manner.
2. The Panel shall select a Chair for the panel who shall serve a one-year term. The Panel shall provide a public report setting forth the basis and concerns of the Panel supporting any recommendation for an Independent Investigation. In addition, the Panel shall provide a public report setting forth the Panel's conclusions and recommendations after its review of any Independent Investigation.

B. Qualifications

To be eligible for appointment to the Panel, applicants must not have a felony criminal conviction, received deferred adjudication for a felony, or be under felony indictment. Prior to appointment, Panel members must submit to a criminal background investigation to determine their eligibility to serve on the Panel. A felony conviction, felony indictment, or felony deferred adjudication, after appointment, shall result in the immediate removal of the member from the Panel by the City Manager.

C. Training

To serve on the Panel, each member must complete the following training within 180 days of their appointment. Failure to timely complete the required training shall automatically result in the immediate removal of the member from the Panel. The minimum training requirements are as follows:

1. Attend a two to three (2-3) day training tailored from parts of the Austin Police Academy.

2. Attend six (6) hours of training provided by the Internal Affairs Division.
3. Attend the Citizen's Police Academy.

D. Resign to Run

Any person involved in the citizen oversight process as a Panel member, who files for public elective office shall immediately resign from their position in the citizen oversight process, and failing such resignation shall be immediately removed by the City Manager.

E. Panel Review Process

1. Not later than thirty (30) calendar days after the mailing of the notice of the outcome of the investigation to the complainant, the complainant may request that the Police Monitor refer the complaint to the Panel.
2. Without a complainant's request, only the following cases may be referred to the Panel:
 - a) a "Critical Incident" as defined this Article;
 - b) the appearance of a pattern of serious misconduct by the officer involved;
 - c) the appearance of a pattern of department-wide misconduct;
 - d) the appearance of serious official misconduct by one or more members of the Department;
 - e) the appearance of bias based misconduct; or
 - f) the appearance of issue(s) to be addressed by policy, procedure, or training recommendations.

F. Nature of Proceedings

- a) The review of any case by the Panel shall not be conducted as a hearing or trial. Except for the receipt of public input/communications as provided by this Section or an Independent Investigation authorized by this Article, the Panel shall not gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint. The Panel shall not have the authority to subpoena witnesses. There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that a police officer appear or present

evidence to the Panel. The Panel shall immediately forward any information or evidence of which it becomes aware to the Chief of Police through the Police Monitor.

- b) A quorum shall be established prior to beginning the review of any case by the Panel.
- c) Not less than five (5) working days prior to a Panel meeting, the OPM shall provide the Internal Affairs Division and the individual designated by the president of the bargaining agent as the Panel liaison, with a copy of the Panel meeting agenda. The Panel shall not take action upon or receive public input/communications concerning any case or issue not listed as an agenda item. The Internal Affairs Division shall promptly notify any officer who is the subject of a complaint listed as an agenda item as to the scheduled Panel meeting. Notice of special meetings shall be handled in a similar manner, unless circumstances require a shorter notice, in which case the notice shall be issued as soon as the special meeting is scheduled.
- d) By virtue of its purely advisory role, the Panel is not a governmental body and is not subject to the Open Meetings Act. Those portions of the meeting during which public input/communication is accepted shall be open to the public and recorded by video and audio cassette tape.

G. Private Session

- a) Prior to receiving any communication from the complainant or any other public input/communications, the Panel may meet in private session to be briefed concerning the facts of the particular case to be reviewed. Either the Police Monitor or the IAD representative shall present to the Panel the information obtained from the IAD investigation. Members of the Panel may be provided with READ ONLY electronic access to all or part of the IAD files during these presentations.
- b) An APD officer designated by the president of the bargaining agent and one individual from the Internal Affairs Division shall be present during the Panel private session case briefing, including the portion of the private session described in subsection "e" below. The bargaining agent's representative will not participate in the briefing and is present only as an observer. The bargaining representative may not be involved in the case as a witness, investigator, relative, or officer in the chain of command. Information in the possession of the APD officer as a result of participation in such briefing shall not be disclosed or revealed other than as necessary as a part of official Association business in monitoring and enforcing this agreement, or in the normal course of dispute resolution processes under this agreement.

- c) Panel members shall have full access to all administrative investigative and disciplinary files necessary to perform their functions under this agreement. Panel members may ask questions and obtain specific facts, details and information from the Police Monitor, IAD, or the Chief's office.
- d) During any private Panel briefing, the presenter should exercise discretion and omit information from the briefing that the Police Monitor deems to be irrelevant to the citizen's complaint, as well as information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests.
- e) Upon completion of the Panel case briefing, the complainant shall be allowed to address the Panel. The police officer who is the subject of the complaint may, but is not required to attend and listen to the address by the complainant. If the complainant is anxious or intimidated by the presence of the officer, the Panel shall videotape the complainant's address to the Panel, and allow the officer to view and respond to the taped statement outside the complainant's presence. Other than the complainant and the responding police officer, only those persons authorized to attend the Panel case briefing may be present during this portion of the Panel meeting.

H. Public Session and Comments

- a) After any address by the complainant and/or responding police officer, the Panel shall meet in public session to receive any additional public input/communications concerning the case under review. During the public session, the Police Monitor shall take precautions to prevent discussion of the facts of the particular case and to prevent the public session from being used as a forum to gather evidence, interview witnesses, or otherwise independently investigate a complaint. Any individual who indicates that he has new or additional evidence concerning the particular case shall be referred to the Chief of Police or his designee. The rules that apply to citizen communications with the City Council shall apply to the public session of the Panel meetings.
- b) The Police Monitor, in consultation with the Panel, shall set the time limits for such proceedings.

I. Deliberations

After receiving public input, if any, the Panel shall discuss the particular case under review in private session. The Police Monitor and/or the Assistant

Police Monitor may be present during such discussion. No other individual may be present unless, the panel requests further information.

J. Action and Recommendations

- a) At the conclusion of the review process set forth above, the Panel, upon a majority vote of its total members, may make the following recommendations to Chief of Police:
 - 1. further investigation by the Department is warranted;
 - 2. Department policies warrant review and/or change;
 - 3. an "Independent Investigation" is warranted; or
 - 4. a written, non-binding recommendation on discipline

A recommendation on discipline is limited to cases involving a "critical incident" as defined in this Article. The Panel shall not take action or make recommendations not authorized by this Article.

- b) After the Citizen Oversight process has been completed for a "critical incident," as that phrase is defined herein, the individuals involved in the Citizen Oversight process may make non-binding disciplinary recommendations to the Chief of Police. The final decision as to appropriate discipline is within the sole discretion of the Chief of Police, subject to the officer's right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this agreement. The objectives of the process being served by a written recommendation as to discipline, neither the OPM employees nor individual members of the Panel shall publicly express agreement or disagreement with the final disciplinary decision of the Chief, other than as set forth in the written recommendation. Any such recommendation shall not be publicly disclosed prior to the Chief's final decision. After the Chief of Police has made his final decision, any such citizen or internal monitor recommendations shall be subject to public disclosure to the extent permitted by law. Violation of this provision shall be subject to the dispute resolution process set forth in Section 7 of this Article, but a Panel member shall not be subject to permanent removal from the Panel except upon a second violation of this standard.
- c) For purposes of this Section, the term "Critical Incident" shall mean:
 - 1. An alleged use of force or other action by an Austin Police Officer that directly results in serious bodily injury or death (The definition

of "serious bodily injury" found in the Texas Penal Code, Section 1.07(a)(46) will apply.);

2. A death in custody; or
 3. An officer involved shooting.
- d) Members must attend the meeting and hear the merits of the case in order to vote. The Panel's recommendations shall be reduced to writing. The Panel's written recommendations shall explain the Panel's issues(s) or concern(s).
 - e) The Police Monitor shall consult with the Panel in formulating any *recommendations to the Chief of Police*. All recommendations to the Chief of Police by the Panel shall be made available to the public to the extent permitted by law and this Agreement.

Section 4. Independent Investigation.

- a) In this Article, "Independent Investigation" means an administrative investigation or inquiry of alleged or potential misconduct by an officer, authorized by the Chief of Police or City Manager and conducted by a person(s) who is not:
 1. an employee of the City of Austin;
 2. an employee of the Office of the Police Monitor; or
 3. a volunteer member of the Panel.
- b) An "Independent Investigation" does not include attorney-client work product or privileged material related to the defense of claims or suits against the City of Austin.
- c) The Chief of Police and the City Manager retain all management rights to authorize an Independent Investigation concerning police conduct.

Section 5. Public Report of Independent Investigation.

- a) The provisions of Section 143.089(g) of the Texas Local Government Code are expressly modified to the extent necessary to permit public release of a final report prepared by an investigator who conducts an Independent Investigation authorized by the Chief of Police or City Manager concerning police conduct.

- b) The public release of information authorized by this Section shall not contain or reveal evidentiary facts, or other substantive investigative information from the file, except to the extent that such information is at the time of such release no longer protected from public disclosure by law, or is already public as a matter of fact by lawful or authorized means or by the officer's own release. For example, the names of officers in an investigation may not be released, but could be released if those officers have elected to enter the public debate and discuss their involvement, or if the public has been informed of identities by lawful or authorized means in the course of grand jury or other legal proceedings. The public statements authorized in this agreement are subject to review by the City of Austin Law Department to insure compliance with this Agreement and to determine whether the release of such information may be prohibited by any other law.
- c) This Section shall apply to any Independent Investigation whether completed prior to or after the effective date of this Agreement and applies to every position and rank within the Austin Police Department.
- d) Section 143.089(g) of the Texas Local Government Code is modified and superceded to the extent necessary to permit the public release of the following information only:
 - 1. A report setting forth the basis and concerns of the Panel supporting any recommendation for an Independent Investigation.
 - 2. A report setting forth the Panel's conclusions and recommendations after its review of any Independent Investigation.
 - 3. A report setting forth any policy recommendations made by the Panel.
 - 4. A final report from an Independent Investigator, whether or not recommended by the Panel. This Section shall also apply to any Independent Investigation completed prior to ratification of this agreement.

Section 6. Public Communication.

- a) Except as permitted by this Agreement, employees of the OPM and members of the Panel shall not publicly comment on the specifics of pending complaints and investigations prior to a panel decision. All public comments and communications by the OPM shall be factual and demonstrate impartiality to individual police officers, the Austin Police Department, the Austin Police Association, employees of the City of Austin, residents of the City of Austin, and community groups.

- b) Should a person participating on a Panel make public statements which, to a reasonable observer, would be perceived to express or demonstrate a position, bias, or prejudice on the merits of a particular case that is under investigation or subject to review, prior to the completion of the citizen panel process for that case, such person will not be allowed to participate in the review, deliberation, or drafting of recommendations concerning that case. This provision does not prohibit the Panel or an individual Panel member from making generic, non-case related public statements about the Austin Police Department, or from providing information about the process, which does not appear to prejudice the merits, or demonstrate a bias on the case. In the event of a violation of this standard, the Panel member shall be subject to permanent removal from the panel as set forth below.
- c) No public comment or communication (including but not limited to oral or written statements, reports, newsletters, or other materials made, released, published or distributed) by the OPM or Panel members will make reference to or identify an officer by name, unless such release is then permitted by law, or the officer's name has become public as a matter of fact by lawful or authorized means, or by the officer's own release. Public comments or communications by the OPM and the Panel shall conform with state and federal law and this Agreement regarding confidentiality, and shall not contain information that is confidential or privileged under this Agreement or state, federal or common law.
- d) All OPM written publications shall be provided to the APD and the APA simultaneously with distribution to the public.

Section 7. *Dispute Resolution.*

- a) Complaints concerning the conduct of OPM employees shall be filed with the Police Monitor, or if the complaint concerns the personal conduct of the Police Monitor, shall be filed with the City Manager. If not resolved at the first level, a fact finder shall be appointed to review relevant materials and take evidence to reach written findings of fact, which shall be expedited for final resolution within two weeks after appointment. The fact finder shall be appointed by striking an AAA list, if the parties do not otherwise agree on a fact finder. Upon conclusion of the fact finding, and after review and evaluation of the fact finder's report, the Police Monitor (or City Manager if the complaint concerns the personal conduct of the Police Monitor) shall make a decision. The final decision shall be made by the City Manager.
- b) Complaints concerning the conduct of Panel members shall be filed with the City Manager. If a signed complaint is filed alleging specific comments by a Panel member that violate the standards in subparagraph 6 (b) above, the Panel's consideration shall be postponed or the particular Panel member shall not participate, until the matter is finally resolved. A complaint may not be

based on statements or conduct previously raised and found insufficient for disqualification. Only one of such Panel members may be temporarily disqualified under this provision on a particular case. The City Manager shall promptly determine the complaint. The Association may appeal from the decision of the City Manager through the expedited arbitration process in this agreement. If two (2) consecutive complaints are found insufficient on a particular Panel member, subsequent complaints on that Panel member shall not result in temporary removal, but upon final determination that there has been a violation, such member shall be subject to permanent removal. Nothing shall prevent the Chief from taking disciplinary action within the statutory time frame, under the provisions of Chapter 143, as modified by this agreement.

Section 8. Access to Section 143.089(g) Files.

- a) Information concerning the administrative review of complaints against officers, including but not limited to Internal Affairs Division files and all contents thereof, are intended solely for the Department's use pursuant to Section 143.089(g) of the Texas Local Government Code (the 143.089(g) file.). All records of the Police Monitor's Office that relate to individual case investigations and the APD 143.089(g) file, although same are not APD files or records, shall have the same statutory character in the hands of the Police Monitor, and shall not be disclosed by any person, unless otherwise authorized by law. Public access to such information is strictly governed by this agreement and Texas law. To the extent necessary to perform their duties, individuals involved in the Citizen Oversight process are granted a right of access to the information contained within the 143.089(g) files of police officers.
- b) Individuals involved in the Citizen Oversight process shall not be provided with information contained within a personnel file, including the 143.089(g) file of a police officer, that is made confidential by a law other than Chapter 143 of the Texas Local Government Code, such as records concerning juveniles, sexual assault victims, and individuals who have tested positive for HIV. All persons who have access to IAD files or investigative information by virtue of this agreement shall not be provided with access to any records of criminal investigations by the APD unless those materials are a part of the IAD administrative investigation file.
- c) All individuals who have access by virtue of this agreement to IAD files or investigative information, including the information contained within the 143.089(g) files of police officers, shall be bound to the same extent as the Austin Police Department and the City of Austin to comply with the confidentiality provisions of this Agreement, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act. All such individuals shall further be bound to the same extent as the Austin Police

Department and the City of Austin to respect the rights of individual police officers under the Texas Constitution and the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, including not revealing information contained in a compelled statement protected by the doctrine set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 511 (1967).

- d) A breach of the confidentiality provisions of this Agreement and/or Chapter 143 of the Texas Local Government Code by any individual involved in Citizen Oversight:
 - 1. Shall be a basis for removal from office;
 - 2. May subject the individual to criminal prosecution for offenses including, but not limited to Abuse of Official Capacity, Official Oppression, Misuse of Official Information, or the Texas Public Information Act; and/or
 - 3. May subject the individual to civil liability under applicable State and Federal law.
- e) The confidentiality provisions of this agreement, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act, are continuous in nature. All individuals involved in Citizen Oversight are subject to these confidentiality provisions even after their association with the Oversight process has terminated.

Section 9. Use of Evidence from the Citizen Oversight Process in Disciplinary Appeals.

Opinions or recommendations from individuals involved in Citizen Oversight in a particular case may not be used by a party in connection with an appeal of any disciplinary action under the provisions of Chapter 143 of the Texas Local Government Code. No party to an arbitration or Civil Service proceeding may use or subpoena any individual involved in Citizen Oversight as a witness at an arbitration or Civil Service proceeding including, but not limited to live or deposition testimony which concerns the individuals duties or responsibilities in the oversight process or their opinions or recommendations in a particular case. This provision shall not prevent any testimony for evidentiary predicate.

Section 10. Partial Invalidation and Severance.

In the event that a Court Order, Judgment, Texas Attorney General Opinion, or arbitration decision, which is final and non-appealable, or which is otherwise allowed to take effect, which order, judgment, opinion, or decision holds that the right of access to the information contained within the 143.089(g) files of police officers granted by this

Article or the public dissemination of information pursuant to this Article, results in "public information" status under the Texas Public Information Act of the information contained within the 143.089(g) files of a police officer, the provision or provisions resulting in such a change in the status of the 143.089(g) file shall be invalidated and severed from the balance of this Agreement.

Section 11. Remedies.

A. Benefit of the Bargain

The CITY expressly retains its right and ability to proceed with the determination of whether or not police misconduct occurred and the authority of the Chief to impose disciplinary action. The ASSOCIATION recognizes the fact that such reservations are essential to this Agreement. No dispute concerning the operation and function of the Police Monitor's Office or the Panel shall impair or delay the process of the Chief's investigation and determination of whether or not police misconduct occurred and the degree of discipline, if any, to impose. This includes internal dispute resolution procedures in this Agreement, any grievance process or arbitration, and any litigation over such issues. In other words, any such dispute resolution processes may proceed, as set forth in this contract or by law, but the disciplinary process may likewise and simultaneously proceed to its conclusion without delay. The statutory time period for the Chief of Police to take disciplinary action against an officer shall be tolled to the extent of any period in which a court order, injunction, or TRO, obtained by the officer involved or the bargaining agent on behalf of the officer, halts the Department's investigative or disciplinary process. In no event will the actual time exceed 180 days. The parties agree that the processes in this Agreement, together with the remedies set forth and the procedural protections and rights extended to officers in this Agreement are adequate remedies at law for all disputes arising under this Article.

B. Expedited Arbitration

The parties have agreed to expedited arbitration for all unresolved grievances related to the application or interpretation of this Article in order to achieve immediate resolution and to avoid the need for court intervention in equity. Such arbitrations shall be conducted pursuant to the Expedited Labor Arbitration Procedures established by the American Arbitration Association ("AAA"), as amended and effective December 1, 2002. To be appointed, the arbitrator must be available to hear the arbitration within thirty (30) days of selection and a decision shall be made within one (1) week of the hearing. The parties agree to create a list of pre-approved arbitrators. Failing same, or in the absence of an available arbitrator from such pre-approved list, the arbitrator designated by the AAA shall be required to be licensed as an attorney in the State of Texas. The parties both agree that the arbitrator has the discretion to receive and hear issues and testimony by written submission or phone conference, but may also require live testimony where appropriate.

ARTICLE 17

PROTECTED RIGHTS OF OFFICERS

Section 1. Effect of Article.

The following provisions shall apply to the administrative investigation of alleged misconduct by APD police officers and the process of administrative discipline. To the extent of any conflict between this Agreement and the provisions of Chapter 143 of the Texas Local Government Code, the provisions of this Agreement shall control. To the extent of any conflict between this Article and any other provision of this agreement, this Article shall control.

Section 2. Definitions.

In this Article:

- a) "Complaint" means any affidavit, administrative referral, or other document setting forth allegations or facts that may form the basis of future allegations of misconduct against an officer and which serves as the basis for initiating an investigation.
- b) "Disciplinary Action" means suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.
- c) "Investigation" means an administrative investigation of alleged misconduct by a police officer that could result in disciplinary action.
- d) "Investigator" means an agent or employee of the Department or an Independent Investigator who participates in conducting an investigation.
- e) "Statement" means any communication (oral or written) setting forth particulars or facts regarding the alleged misconduct under investigation.
- f) "Evidence" means statements, reports, records, recordings, documents, computer data, text, graphics, videotape, photographs, or other tangible forms of information, including a "complaint".

Section 3. Compelled Testimony.

There shall be no legal or administrative requirement, including but not limited to subpoena power or an order from the City Manager or the Department, that an officer appear before or present evidence to any individual, panel, committee, group, or forum of any type involved in Citizen Oversight. This provision has no application to any Independent Investigation authorized by the Chief of Police or the City Manager, regardless of whether the Independent Investigation was recommended by the Citizen's Review Panel or the Police Monitor, or to any hearing of an appeal of disciplinary action

pursuant to this Agreement and/or Chapter 143 of the Texas Local Government Code. Police officers remain subject to orders or subpoenas to appear and provide testimony or evidence in such investigations or hearings.

Section 4. Access to Records by Officers.

- a) Not less than forty eight (48) hours before the officer who is the subject of an investigation provides a statement to an investigator, the officer shall be provided a copy of the complaint(s). The Department may omit the name and/or identity of the person making the complaint. In the event that the complaint(s) does not contain all allegations of misconduct under investigation, not less than forty eight (48) hours before the investigator begins the initial oral or written interrogation of the officer, the investigator must inform the officer in writing of the additional allegations being investigated.
- b) Before the officer who is the subject of an investigation provides a statement to an investigator, the officer and his representative shall be provided an opportunity to review any videotape, photograph, or other recording of the operative conduct or alleged injuries, if any, which is the subject of the allegations if such recording is within the possession or control of the Department.
- c) An officer is entitled to a copy of his or her statement to the Internal Affairs Division at the time when the statement is finalized and signed by the officer, but the statement remains confidential in the hands of the officer pursuant to 143.089(g), APD policy, and orders of non-communication about internal investigations, except for consultations with counsel.
- d) Before the officer who is the subject of an investigation provides a statement to an investigator, the officer and his representative shall be allowed to review the portions of any document(s) in which it is alleged that the officer provided false, incomplete, inconsistent, or conflicting information, or in which it is alleged that the officer omitted information in violation of any law or Department policy.
- e) Before the officer who is the subject of an investigation provides a statement to an investigator, the officer and his representative shall be allowed to review any report, supplement, use of force report, or other statement recorded or written by the officer, setting forth particulars or facts regarding the operative conduct which is the subject of the allegation(s).
- f) Not less than forty eight (48) hours before a DRB (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an officer for alleged misconduct, the officer and his representative shall be allowed to review for

three (3) hours all evidence gathered or obtained during the investigation, and not previously reviewed by the officer pursuant to this Section. The evidence available for review shall not include any investigator's summary.

- g) When the Chief of Police is notified that the Panel plans to review a case involving a "critical incident" or an allegation of a civil rights violation, the officer and his representative shall be given an opportunity to meet with the Internal Affairs investigator and review witness statements and photographic or videotape evidence contained in the IA file, for a period of up to three (3) hours.
- h) Neither the officer nor his representative will be permitted to make copies of any witness statements, audio tapes, photographic or videotape evidence reviewed; however, they may take written notes only, provided that they comply with the confidentiality and use provisions in Section 6.
- i) Nothing in this Article shall be construed as requiring the Department to provide or make available for review by the officer or his representative any evidence from criminal investigations by the Austin Police Department unless that evidence is a part of the Internal Affairs Division administrative file. No criminal investigation material that is part of the Internal Affairs Department case file can be released if there is a pending criminal investigation or judicial proceeding.

Section 5. Audiotaping of Disciplinary Review Board Proceedings.

When a DRB is held, the officer who is the subject of the investigation may audio tape the portion of the DRB in which the chain-of-command discusses the IAD investigation and the disciplinary decision with the officer.

Section 6. Confidentiality of Records and Misuse of Information.

The access to records provided in Section 4 of this Article has been granted in exchange for the following agreements intended to insure confidentiality and to prevent retaliation or the threat of retaliation against any witness in an investigation:

- a) Retaliation or the threat of retaliation by an officer, or by an individual at the direction of the officer, against the author of an Internal Affairs statement is strictly prohibited. A sustained violation of this subsection shall result in either a temporary or indefinite suspension.
- b) If an officer is suspended pursuant to this Section, the officer shall have the right to appeal the suspension to the Civil Service Commission or to an Independent Third Party Hearing Examiner pursuant to the provisions of this Agreement and Chapter 143 of the Texas Local Government Code. The Commission or the Hearing Examiner shall decide whether the specific

charge related to this Section is true. If the charge is found to be true, the Commission or Hearing Examiner must affirm the disciplinary action and cannot amend, modify, or reduce the period of disciplinary suspension.

- c) Sections 143.053(e) & (f) of the Texas Local Government Code are hereby superceded to the extent of any conflict with this Section.

Section 7. Right to Representation.

An officer who is the subject of an investigation or administrative inquiry shall have the right to be represented by an attorney of the officer's choice during an interview provided the attorney complies with the Internal Affairs interview protocol. An officer shall have the right to be represented by an attorney of the officer's choice during a DRB (or other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an officer for alleged misconduct.)

Section 8. Violation of Officer's Rights.

If the Department or any investigator violates any of the provisions of this Article or of Section 143.312 of the Texas Local Government Code while conducting an investigation, the Department shall reverse any punitive action which depends upon evidence resulting from a violation of this agreement; including a reprimand, and in any appeal, evidence resulting from a violation of this agreement shall be specifically excluded from introduction into evidence in any proceeding against the officer, including any disciplinary appeal hearing. The hearing examiner or arbitrator may make such other evidentiary rulings as are just and fair, after consideration of the circumstances of the violation.

ARTICLE 18

DISCIPLINARY ACTION AND APPEALS

Section 1. Suspensions of Three (3) Days or Less.

Appealable and Non-Appealable Suspensions

It is understood that most officers will make some errors during their career involving rule violations, including those who are good, professional police officers. The parties agree that short disciplinary suspensions are for the purpose of reinforcing the need for compliance with departmental standards and not necessarily as punishment.

The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.

- a) **Suspensions that may not be appealed.** The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary

and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.

- b) **Suspensions that may be appealed.** The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.

Arbitration Costs on Appealable Suspensions

In the event that an officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.

To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars (\$100.00) per month to be deducted from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.

Reductions of Suspensions of Three (3) Days or Less to a Written Reprimand

The parties agree that temporary suspensions of 1, 2, or 3 days that were imposed on or after March 25, 2001, will be automatically reduced to a written reprimand under the following conditions:

- a) Suspensions of 1, 2, or 3 days, which are/were not appealed, shall be reduced to a written reprimand two (2) years after the date the suspension was served on the officer if:
 - 1. The officer does/did not have a sustained complaint for substantially similar conduct within two (2) years from the date the suspension was served on the officer.
- b) Suspensions of 1, 2, or 3 days, which are/were not appealed, shall be reduced to a written reprimand three (3) years after the date the suspension was served on the officer if:
 - 1. The officer has been previously disciplined for substantially similar conduct, and;

2. The officer does/did not have a sustained complaint for substantially similar conduct within the next three (3) years from the date the suspension was served on the officer.
- c) Any controversy over whether or not the prior conduct was substantially similar may be presented to an arbitrator under the other provisions of this Article.
 - d) Suspensions of 1, 2, or 3 days that are/were appealed to the Civil Service Commission or a Hearing Examiner are not eligible for reduction to a written reprimand under this Agreement.
 - e) Suspensions of 1, 2, or 3 days that are/were reduced to a written reprimand shall not be introduced, cited, or used in any manner in subsequent disciplinary suspensions or appeals as to that officer, but the original disciplinary decision is not covered by this Section as to contentions of disparate discipline by other officers.
 - f) If the conditions set forth in subparts (a) or (b) are met, the Department shall notify the Civil Service Commission in writing that the temporary suspension has been reduced to a written reprimand. A copy of this document shall be included in the IAD investigative file, and the Department shall enter a notation in all disciplinary databases or records reflecting this change. The parties agree that the Department and the Civil Service Commission will not alter, destroy, conceal, or remove, any documents related to the temporary suspension, including but not limited to the letter of temporary suspension that was filed with the Commission as required by LGC 143.052(c), or the IAD investigative file itself.

Section 2. Suspensions of Fifteen (15) Days or Less.

If the Chief determines to suspend an officer for fifteen (15) days or less, the Chief may, at his sole discretion in hardship cases, authorize use of the officer's accumulated vacation leave to cover all or part of the suspension. It is also understood and agreed that if the Chief permits the use of vacation days for suspension, such days off shall be considered as equal punishment to traditional unpaid days of suspension. In no case will sick leave be substituted for unpaid days of suspension.

Section 3. Mutually Agreed Suspensions of Sixteen (16) to Ninety (90) Days.

Either the Police Chief or the officer facing discipline may offer to impose or accept a suspension without pay for a period from sixteen (16) to ninety (90) days. If the officer accepts the mutually agreed suspension, there shall be no appeal either to the Police Civil Service Commission, to the District Court or to a Hearing Examiner. It is also understood and agreed that if the Chief permits the use of vacation days for suspension,

such days off shall be considered as equal punishment to traditional unpaid days of suspension. In no case will sick leave be substituted for unpaid days of suspension.

Section 4. Alternative Discipline by the Police Chief.

In considering appropriate disciplinary action the Police Chief may require that an officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the officer, the Police Chief may, as an alternative to temporary or indefinite suspension, or in combination with a temporary suspension, require that the officer successfully complete the recommended program. The program of counseling and/or rehabilitation will be completed on the officer's off-duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the officer's health insurance plan. If the officer's misconduct involves alcohol-related behavior, the Police Chief may require that the officer submit to mandatory alcohol testing, when ordered by the Police Chief, for a specified period of time. If, after entering the program of counseling and/or rehabilitation, the officer fails or refuses to complete the program, the officer may be indefinitely suspended. The officer has the right to appeal to the Police Civil Service Commission or to a third party Hearing Examiner any discipline imposed under this section by filing an appeal notice in accordance with the provisions of Chapter 143. On appeal, the Police Civil Service Commission or Hearing Examiner shall have the same duties and powers set forth in Chapter 143, but shall not have the power to substitute a program of counseling and/or rehabilitation different from the program imposed by the Police Chief or to substitute any period of suspension for the required program of counseling and/or rehabilitation.

Section 5. Alternative Discipline by Agreement.

In considering appropriate disciplinary action, the Police Chief may require that an officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the officer, the Police Chief may offer the officer the opportunity to enter into an alternative disciplinary agreement under which the officer would accept a temporary suspension of up to ninety (90) days and agree to successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Police Chief. The program of counseling and/or rehabilitation will be completed on the officer's off duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the officer's health insurance plan. If the officer's misconduct involved alcohol related behavior, the Police Chief may require that the officer submit to mandatory alcohol testing, when ordered by the Police Chief, for a specified period of time. If the officer accepts the opportunity for agreed alternative discipline, the officer may not appeal any terms of the Agreement. If the officer fails to successfully complete the program of counseling and/or rehabilitation, the officer may be indefinitely suspended without right of appeal.

Section 6. Last Chance Agreement.

In considering appropriate disciplinary action, the Police Chief may require that an officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the officer, the Police Chief may offer the officer, as an alternative to indefinite suspension, the opportunity to enter into a last chance agreement. The agreement may include the following provisions in addition to any other provisions agreed upon by the officer and the Police Chief.

- a) The officer will successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Police Chief.
- b) *The program of counseling and/or rehabilitation will be completed on the officer's off-duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the officer's health insurance plan.*
- c) The officer will agree to a probationary period not to exceed one (1) year, with the additional requirement that if, during the probationary period, the officer commits the same or a similar act of misconduct, the officer will be indefinitely suspended without right of appeal.

If the officer's misconduct involves alcohol-related behavior, the Police Chief may require that the officer submit to mandatory alcohol testing, upon order by the Police Chief, for a specified period of time. If the officer accepts the opportunity for a last chance agreement, the officer may not appeal any terms of the agreement. If the officer fails to successfully complete the agreed upon program, the officer may be indefinitely *suspended without right of appeal.*

Section 7. Hearing Examiner Retained.

The CITY recognizes that during the term of this Agreement officers have the right to an appeal of an indefinite suspension or suspension for a definite number of days (subject to the provisions herein on non-appealable suspensions of 1 to 3 days) before a Hearing Examiner as provided in Section 143.057 of the Texas Local Government Code. During the term of this Agreement, the parties specifically agree to retain this right of appeal, as modified herein, notwithstanding any change to Section 143.057 which may occur as a result of court or legislative action.

Section 8. Hearing Examiner Provisions.

In order to be mutually accepted on the hearing examiners list, an individual must be impartial to the ASSOCIATION and the CITY, shall be a member of the American Arbitration Association (AAA), have formal training in presentation and evaluation of evidence, and have experience in deciding municipal employment issues. The AAA shall administer the hearing examiner panel.

Section 9. Procedures for Hearings Before Police Civil Service Commission and Independent Hearing Examiners.

It is expressly agreed that Police Civil Service Commission hearings and hearings before Hearing Examiners under 143.057 are informal administrative hearings and are not subject to discovery or evidentiary processes. Specifically it is understood that neither the Texas Rules of Evidence (TRE) or the Texas Rules of Court (TRC) apply to such hearings. If the Department calls a witness to testify during a hearing and that witness has given a statement to Internal Affairs regarding the pending case, then the Department will provide a copy of that statement to the officer's counsel at the time the witness is called to testify.

Section 10. Procedures Before Hearing Examiners.

In any proceeding before a hearing examiner, the following procedures shall be followed:

- a) The Department shall furnish the charge letter to the hearing examiner by delivering a copy to the AAA far enough in advance, so that the hearing examiner receives the copy at least five (5) days before the start of the hearing.
- b) The officer may furnish a position statement to the hearing examiner by delivering copies to the AAA and to the Department far enough in advance, so that the hearing examiner and the Department receives the copies at least five (5) days before the start of the hearing.
- c) At the close of the presentation of evidence, the hearing examiner shall conduct a post-hearing conference with counsel for the Department and the officer and advise counsel what issue(s) the hearing officer wants covered in post-hearing briefs. This does not preclude either party from briefing anything not requested by the hearing examiner.
- d) Failure of the AAA to meet its obligations as set out in this Subsection does not jeopardize the hearing rights of either the City or the officer.

Section 11. Mediation.

The City shall implement a voluntary mediation process concerning citizen complaints. The Association may appoint two persons to work with the City in developing the specific operating procedure. The process shall include and be based upon the following concepts:

- a) Mediation shall be an option offered to the complainant at the time the initial complaint is filed for minor nature complaints, such as rudeness.
- b) For a complaint to proceed to mediation, both the officer and the complaining citizen must voluntarily agree.
- c) Once mediation has been agreed to, the matter cannot be returned to the Department to be handled as a disciplinary matter.

Section 12. Preemption.

It is expressly understood and agreed that this Article shall be entitled to preemption, including but not limited to the provisions of Subchapter D of the Texas Local Government Code Chapter 143.

ARTICLE 19

ASSIGNMENT CHANGES

Section 1. Advance Notice of Assignment Changes.

Except for normal shift rotations, for assignment changes that are determined far enough in advance, the Department will provide a twenty-eight (28) calendar-day notice to the affected officer. Advance notice of the assignment change may be waived by the Chief or his designee, if prior notice is not in the best interest of the Department or in any emergency situations. Advance notice of the assignment change may be waived by the officer. In the event of special hardship, an affected officer may appeal to the Assistant Chief of their Bureau for consideration of temporary scheduling or other adjustments to reduce or address personal hardships. The Chief shall create a joint committee with representatives appointed by the ASSOCIATION to evaluate hardship claims and to recommend action to the Assistant Chief.

Section 2. Requested Job Assignment Transfers.

A reasonable, good faith effort shall be made to post initial assignment vacancies. It is recognized and understood that notice cannot be sent for all backfill transfers resulting from the initial vacancies. The usual process shall be to post notice and reference to the APD bulletin board and City email. This notice may be sent out to all employees on alpha pager, as near as possible to ten (10) days before closing the application process

whether or not you get it. It shall be satisfactory to send an "all page" notice whether or not each individual officer receives it. Oral or written reprimands shall not affect an employee's ability to apply for a transfer to a sought after position, but may be considered along with all other factors in making a selection among applicants. Applying for a posted position shall neither jeopardize nor insure an officer's current assignment. The Chief shall establish a committee with representatives appointed by the ASSOCIATION to recommend changes or improvements in the process of posting notice of job assignment opportunities or openings.

ARTICLE 20

DISPUTE RESOLUTION PROCESS

Section 1. Goals and Objectives.

The parties agree that they share the interest of resolving disputes with minimum confrontation. To this end, the parties will attempt to insure that disputes are identified and resolved through a process committed to mutual respect, open communication, and joint problem solving.

Section 2. Nature of Grievances.

A grievance may be filed under this procedure by the ASSOCIATION or by any individual officer to whom this AGREEMENT applies. A grievance based on an allegation of the violation of any provision of federal or state law, which law provides an outside administrative process for initial review by an agency prior to litigation, is voluntary only and need not be exhausted prior to pursuit of any available legal remedy. A grievance based on any other allegation of the violation of any provision of federal or state law must be filed and pursued to completion in order to exhaust the administrative remedies available under this Agreement and in order to allow the City an opportunity to investigate, address, and resolve any such dispute. A grievance which does not relate to the application and/or interpretation of any provision of this Agreement shall proceed through the process only through Step 3 and the decision of the Police Chief at that step shall be final. A grievance which relates to the application and/or interpretation of any provision of this Agreement shall proceed through this process until it is resolved or until the process is completed. Grievances pending as of the effective date of this Agreement shall be processed under procedures in effect prior to the Agreement. Pending shall mean that the written grievance has been filed.

Section 3. Days and Timelines.

For purposes of this Article, all timelines are based on calendar days excluding weekends and City observed holidays. In addition, the day of the act, event or default after which a period of time begins to run is not included. The last day of the period is included unless, it is a weekend or City observed holiday. Any timeline or deadline provided in this Article may be extended by mutual written agreement of the parties

involved at the particular step of the process where the timeline applies. If any timeline or deadline for a decision is missed by the City, the grievance automatically proceeds to the next step in the process. Except for Step 2, if any timeline or deadline for action is missed by the ASSOCIATION or the Grievant, the grievance is considered to be resolved and dismissed.

Section 4. Association Grievance Committee.

The ASSOCIATION President shall appoint the chairperson and members of the Austin Police Association Grievance Committee. Members of the committee shall serve until a replacement is appointed by the ASSOCIATION President.

Section 5. Association Representatives.

The Grievant may be accompanied by and/or represented by one representative at all steps of the process. If the ASSOCIATION pursues the grievance following Step 2, the ASSOCIATION shall be considered to be the Grievant at all subsequent steps in the process.

Section 6. Pre-Grievance Stage.

The parties acknowledge that it is usually most desirable for officers and supervisors to resolve problems through free and informal communications. To accomplish this goal, officers shall try, within fifteen (15) days after an officer's actual or constructive knowledge of the event giving rise to an issue, to resolve the issue with his/her immediate supervisor and the supervisor one level above the immediate supervisor.

Section 7. Filing the Grievance.

If the issue is not resolved at the Pre-Grievance Stage, and if the officer wishes to carry the grievance forward, the officer shall, within five (5) days after the final grievance meeting with his supervisors, file a written statement of the issue giving rise to the grievance. In any event, the written grievance statement must be filed within thirty (30) days of the grievant's actual or constructive knowledge of the event giving rise to the grievance. The Office of Personnel Services shall indicate the date of filing upon the written grievance statement. The written grievance statement shall be completed on a form adopted by the Police Chief. The officer shall be responsible for notifying the Association of the grievance by sending a copy of the written grievance statement to the Association President or his designee.

Section 8. Steps of Grievance Process.

The steps of the grievance process are as follows:

Step 1

Within five (5) days after the written grievance statement is filed, the officer's division Sergeant and Lieutenant will schedule a meeting to occur no more than ten (10) days after the filing of the grievance. A grievance filed by a Sergeant or Lieutenant shall result in a meeting with the Division Commander. The meeting will bring together the Grievant and all relevant parties in an effort to try to resolve the grievance informally. Any decision by the Sergeant, Lieutenant, or Commander at Step 1 is subject to final review and approval by the Chief. Such approval shall be noted on the grievance form before it is returned to the Office of Personnel Services and the Association President, or his designee. If this meeting does not resolve the grievance, the Lieutenant will schedule a meeting within ten days with the Commander. If the meeting resolves the grievance, the decision will be noted on the grievance form within ten (10) days after the meeting occurs and copies of the grievance form shall be returned to the officer, by personal delivery, or by mail to the officer's home address as shown in Department records. The completed form shall be filed with Department's Office of Personnel Services, and a copy sent to the Association President or his designee.

Step 2

A grievance that does not relate to the application and/or interpretation of any provision of this Agreement shall proceed to Step 3 and by-pass this step. If a contract grievance is not resolved at Step 1, the Grievant shall, within ten (10) days after the completion of Step 1, take the grievance to the Association Grievance Committee for consideration. If the Association determines that it wishes to pursue the grievance further, written notice of that decision which includes a statement of the occurrence upon which the grievance is based, the provisions of the Agreement that have been violated, and a proposed resolution of the grievance must be provided to the Police Chief within ten (10) days after the Association Grievance Committee receives the grievance.

Step 3

Within five (5) days after receiving written notice from the Association as a result of Step 2, or within five (5) days after receiving written notice from the grievant as a result of Step 1, the Police Chief will schedule a meeting to occur no more than fifteen (15) days after receipt of the written notice. The officer shall be given forty-eight (48) hours notice of the meeting. If the meeting is for a contract grievance, the meeting will include Association representatives. The purpose of the meeting is to discuss the issue giving rise to the grievance and seek to resolve the grievance. The Police Chief's written decision on the resolution of the grievance shall be made within five (5) days after the Step 3 meeting occurs. The response shall be personally delivered to the officer or mailed by certified mail, return receipt requested, to the officer's home address as shown in Department records. A copy shall be sent to the Office of Personnel Services, and if originally notified of the grievance, the Association President or his/her designee.

Step 4

If a grievance involving the application or interpretation of this Agreement is not resolved at Step 3 by the Police Chief's decision, the parties may within five (5) days after the date of the Chief's written decision, schedule a meeting to occur no more than ten (10) days after the date of the Chief's written decision. This step is optional and will be used only if the parties mutually agree to use Interest Based Bargaining (IBB) principles or mediation by a third party mediator to resolve the dispute. The purpose of the meeting will be to resolve the grievance. The meeting shall include three (3) representatives selected by the Association and three (3) representatives selected by the Police Chief. If there is an individual grievant, he/she shall be one of the Association representatives. All of the representatives, except for individual grievant, must have been trained in Interest Based Bargaining or dispute resolution and at least two (2) representatives from each side shall have participated in the negotiation of this Agreement. For purposes of this step, the parties intend to use the Interest Based Bargaining concepts and principles utilized in negotiating this Agreement. If the grievance is resolved at Step 4, the parties will prepare a memorandum setting forth their understanding of the resolution of the grievance. If Step 4 is not utilized, or if settlement is not reached, then the Association may proceed with the grievance to Step 5.

Step 5

If a grievance involving the application or interpretation of this Agreement is not resolved at Step 3 or 4, the Association may within ten (10) days after conclusion of Step 4 request that the grievance be submitted to arbitration in accordance with the provisions of this Agreement. The arbitration hearing will be scheduled by agreement at the earliest date possible, preferably within thirty (30) days after conclusion of Step 3 and 4. The arbitrator will be selected as agreed or under the AAA process.

The hearing shall be held at a location which is convenient for all parties and the arbitrator and shall be conducted informally, without strict evidentiary or procedural rules. Unless otherwise mutually agreed, the submission to the arbitrator shall be based on the written grievance statement submitted by the Association at Step 2. The arbitrator shall consider and decide only the issue(s) in the grievance statement or submitted in writing by agreement of the parties. The hearing shall be concluded as expeditiously as possible and the arbitrator's written decision shall be provided to both parties within thirty (30) days after close of the hearing.

The parties specifically agree that the arbitrator's authority shall be strictly limited to interpreting and applying the explicit provisions of this Agreement. The arbitrator shall not have authority to modify the agreement or create additional provisions not included in the Agreement. The parties agree that neither the City nor the Association shall have *ex parte* communications with the arbitrator concerning any matter involved in the grievance submitted to the arbitrator. Each party shall be responsible for its own expenses in preparing for and representing itself at arbitration, but the fees of the arbitrator shall be borne equally by the parties. The written decision of the arbitrator

shall be final and binding on both parties, shall not create a basis for retroactive adjustment in any other case, and shall not be appealable.

Section 9. Precedential Value of Decisions.

For purposes of interpreting or applying the provisions of this Agreement, only those decisions made at or after Step 3 of this process shall have any precedential value in any later grievance or dispute between the parties.

Section 10. Agreement for Logistics of Arbitration.

The parties may enter into a Memorandum of Understanding which provides for administrative support services in connection with the maintenance of the arbitrator panel, scheduling of hearings, billing of fees, etc., by the American Arbitration Association.

ARTICLE 21

TERM OF AGREEMENT AND PUBLIC SAFETY PREMIUM WAGE ADJUSTMENT

This agreement shall continue in effect under the following terms and conditions:

1. For Fiscal Year 2003-2004 base wages paid to police officers shall remain at rates in effect on April 1, 2003.
2. For Fiscal Year 2004-2005 (October 1, 2004), and each year thereafter, beginning with the first day of each fiscal year, base wages paid to police officers shall be increased by two percent (2%) above the base percentage amount established and set aside for "meet expectations" compensation adjustments for non-civil service City of Austin employees for that fiscal year. In the event that no compensation adjustment is established and set aside for non-civil service City of Austin employees for that Fiscal Year, base wages for police officers shall be increased by two percent (2%).
3. In the event that non-civil service City of Austin employees have three consecutive years without base wage increases, police officers shall not receive an increase in the third of those three consecutive years.

The "base percentage amount" established and set aside for "meets expectations" compensation adjustments for non-civil service City of Austin employees, as referred to above, is determined annually by the City Council in the adopted City budget and associated documents. The City Manager shall provide a statement of this amount to the President of the Association within thirty (30) calendar days of the adoption of the City budget by the City Council, which shall be determinative in the absence of fraud or a clear abuse of discretion. .

4. Either party may propose a single contract article, or new issue for re-negotiations after October 1, 2006 of this agreement, and each year thereafter; provided, however, that the party making such proposal forfeits the option to make any proposal for a change during the following full contract year. The parties may mutually agree to corrections or clarifications by Memorandum of Agreement, with the authority of the Board of Directors of the Association and the City Manager for the City.
5. Either party may terminate this agreement after the first five years of its term with written notification to the other party at least ninety (90) calendar days prior to September 30, 2008. In the event that neither party terminates the agreement at the end of the fifth year, the contract shall continue in effect until either party terminates this agreement by providing written notification to the other party at least ninety (90) calendar days prior to the end of each calendar year thereafter.
6. This agreement is intended to form the basis for a longstanding legal framework for the labor relationship among the parties, and to substantially eliminate the need for periodic comprehensive contract negotiations. However, the parties recognize that unforeseen developments in the law of legal issues upon which they have relied may change the viability of this agreement for either side. Rather than including in this agreement many of the details or the process which were in the former agreement, the parties have limited the provisions in this agreement to those that are necessary. This includes agreements on the issues which may require a contractual modification of existing civil service law (access to the 143.089(g) file, and release of defined reports from Independent Investigations), agreements to outline the broad concepts of citizen oversight, and agreements which clarify rights which exist with or without the agreement. Other aspects of the City's implementation of citizen oversight are its prerogatives under Texas law and the City Charter, and do not require contractual provisions. Both parties recognize that the City may proceed with citizen oversight under this new agreement substantially as it has done under the prior agreement, and the City is entitled to the maintenance of those prior rights and prerogatives, although this agreement does not require the City to operate citizen oversight under the prior provisions, except to the extent now specified in this agreement. Both parties recognize that without the continued ability of the City to carry out citizen oversight, this agreement would not have been reached, either as to the economic issues or the additional provisions for the procedural protections of officer's rights. In the event of any court order, judgment, Texas Attorney General's opinion or arbitration decision brought or caused by officers or the APA which substantially impairs oversight access to the 143.089(g) file, prevents release of the defined portions of reports of independent investigation, invalidates the 180 tolling provision in Article 16, or impairs the City's right to expedited arbitration as contemplated herein, the City may reopen negotiations to resolve and correct the issue or an alternate resolution, notwithstanding the limitations on raising new issues in this Article. If a negotiated resolution of the issue is not achieved, the

City may terminate this agreement after 90 days written notice, and the parties may resume negotiations toward a successor agreement under the provisions Section 143.301 et.seq., of the Texas Local Government Code. In like manner, in the event of any court order, judgment, Texas Attorney General's opinion or arbitration decision brought or caused by the City of Austin or other party with standing under this agreement substantially impairs the provisions of Article 17 pertaining to officer's rights, or which would allow full access to investigative evidence of officer misconduct in the absence of a disciplinary decision imposed by the Chief, the APA may reopen negotiations to resolve and correct the issue or an alternate resolution, notwithstanding the limitations on raising new issues in this Article. If a negotiated resolution is not achieved, the APA may terminate this agreement upon 90 days written notice, and the parties may resume negotiations toward a successor agreement under the provisions Section 143.301 et.seq., of the Texas Local Government Code.

7. The Association may terminate this agreement with ninety (90) calendar days written notification during any year in which the City establishes "market study based compensation" increases and does not establish base percentage increases for non-civil service City of Austin employees.
8. In the event of any temporary expiration of the prior agreement before the legally effective approval of this agreement, this agreement shall nevertheless control all matters and rights defined hereunder, in spite of any such interim lapse or gap, as if this agreement had become immediately effective upon the expiration of the prior agreement. This provision of the agreement shall not require exhaustion of administrative remedies by any person claiming rights relating to it or asserting its invalidity.

ARTICLE 22

TERMINATION OF AGREEMENT

Section 1. Effect of Termination of Agreement.

In the event that a successor Agreement has not been ratified by October 1, 2008, and this agreement has not automatically renewed for an additional year, then when this Agreement terminates, all the provisions of this Agreement, both economic and non-economic, shall expire and no longer be in full force and effect, except for:

- a) All promotional eligibility lists created during this agreement which shall be valid for eighteen months, even after this Agreement terminates.
- b) Any hiring process which has been commenced in substantial reliance upon the provisions in this agreement.

- c) Any disciplinary case which has been scheduled for a DRB meeting and the officer has been so notified prior to the date of the termination of this agreement shall proceed to conclusion under the provisions of this agreement.
- d) The Promotions Article, the provision for three (3) day limited appeal suspensions, the Union Dues check off article, and the Association Business Leave Article contained in this agreement shall remain in full force and effect until a successor agreement has been reached, or twelve (12) months after expiration/termination, whichever is earlier.
- e) After, expiration/termination of this agreement, it is expressly understood that the wages and compensation specified in this Agreement may then be placed at a level determined by the City Manager, as funds are authorized by the City Council, and this does not preclude wages and compensation being rolled back to pre-contract levels, as they existed on the day prior to the effective date of this Agreement.

Section 2. Funding Obligations.

The CITY presently intends to continue this Agreement each fiscal year through its term, to pay all payments due, and to fully and promptly perform all of the obligations of the CITY under this Agreement. All obligations of the CITY shall be paid only out of current revenues or any other funds lawfully available therefore and appropriated for such purpose by the City Council, in compliance with the Texas Constitution, Article XI, Sections 5 and 7. In the event that the City of Austin cannot meet its funding obligations, as provided in the State Constitution, this entire Agreement becomes null and void.

ARTICLE 23

ENTIRE AGREEMENT

Section 1. Obligation During Term of Agreement.

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to raise issues and make proposals with respect to any subject or matter not removed by law from the meet and confer process, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the CITY and the ASSOCIATION, for the duration of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated, to meet and confer with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement, except as provided for single issue negotiation above. This

Agreement may be amended during its term by the parties, by written mutual agreement ratified in accordance with the provisions of Chapter 143.

In the event that the Texas Legislature amends any provision of Texas Local Government Code Chapters 141, 142 and 143 that changes wages or benefits for City of Austin Police Officers during the term of this Agreement, any such amendment shall not be applicable to the officers covered by this Agreement, unless the City Council adopts such amendment by Ordinance. Examples of A wages and benefits include, but are not limited to, base salary, longevity, assignment pay, sick leave, vacation, health insurance, and weapon provision mandates.

ARTICLE 24

SAVINGS CLAUSES

Section 1. Effect of Illegal Provision.

If any provision of this Agreement is subsequently declared by legislative or judicial authority to be unlawful, unenforceable, or not in accordance with applicable statutes, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement, and the parties shall meet as soon as possible to agree on a substitute provision. However, if the parties are unable to agree within thirty (30) days following commencement of the initial meeting, then the matter shall be postponed until meet and confer negotiations are resumed.

Section 2. Preemption of Local Government Code and Other Provisions.

The provisions of this Agreement shall supersede the provisions of any statute, Executive Order, local ordinance, or rule, which are in conflict herewith, including for example and not by way of limitation, the contrary provisions of Chapter 143; Ordinances of the City of Austin, Texas; and Rules and Regulations of the Police Officers' Civil Service Commission for the City of Austin, Texas. This preemption provision is authorized by Section 143.307 of the Texas Local Government Code, and the parties have expressly agreed that each and every provision involving or creating such a conflict shall have the effect of superceding the statutory standard or result which would otherwise obtain, in the absence of this agreement. This provision is of the essence to the bargain and agreement which has been reached.

Section 3. Change in Authorized Representative.

During the term of this Agreement, if there is a withdrawal of recognition of the APA pursuant to Section 143.304 of the Texas Local Government Code, then it will be the CITY's option to continue the terms of this Agreement or to cancel the contract and engage in negotiations with the successor organization, if any.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED TO HAVE THIS AGREEMENT TO BE SIGNED BY THEIR DULY AUTHORIZED REPRESENTATIVES ON THIS ____ DAY OF _____ 2004.

Toby Hammett Futrell,
City Manager

Mike Sheffield, President,
Austin Police Association