

RESOLUTION NO. 041202-06

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

WHEREAS, the citizens of the City of Austin in a duly ordered referendum election adopted the provisions of the Fire and Police Employee Relations Act (FPERA), Chapter 174 of the Texas Local Government Code for firefighters employed by the Austin Fire Department; and

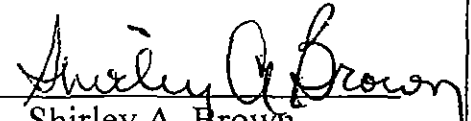
WHEREAS, the Austin Association of Professional Fire Fighters, Local 975 of the International Association of Professional Fire Fighters, previously was designated as the exclusive bargaining agent for firefighters under the Meet and Confer provisions of Chapter 143 of the Local Government Code, and it continues to represent a majority of the members of the Austin Fire Department and is entitled to the designation of exclusive bargaining agent under the FPERA; and

WHEREAS, negotiation teams for the City of Austin and the Austin Association of Professional Firefighters engaged in negotiations and reached an agreement which has been ratified by a majority of the members of the Austin Association of Professional Fire Fighters; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council ratifies the Agreement between the City of Austin and the Austin Association of Professional Fire Fighters, in the form of the attached Exhibit "A"; and authorizes the City Manager to execute said Agreement.

ADOPTED: December 2, 2004

ATTEST: 
Shirley A. Brown
City Clerk

AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

**THE AUSTIN ASSOCIATION
OF PROFESSIONAL FIREFIGHTERS**

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1 **ARTICLE 1**

2 **PREAMBLE**

3

4 **Section 1. Date of Agreement**

5 This Agreement is made and entered into by and between the City of Austin, Texas,
6 hereinafter referred to as the "CITY," and the Austin Association of Professional
7 Firefighters, Local 975 of the International Association of Firefighters, AFL-CIO-CLC,
8 hereinafter referred to as the "ASSOCIATION" and its terms shall be effective only until
9 the expiration date of the Agreement, except as otherwise specified herein.

10 **Section 2. Purpose of Agreement**

11 WHEREAS, the citizens of the City of Austin have by referendum election chosen
12 the Collective Bargaining Process as a fair and orderly way of conducting its relations with
13 Austin firefighters; and

14 WHEREAS, the Association has pledged to support the service and mission of the
15 Austin Fire Department, to constructively support the goals and objectives of the Austin
16 Fire Department, and to abide by the statutorily imposed no strike or work slowdown
17 obligations placed upon it; and

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

20 NOW, THEREFORE, in consideration of the mutual covenants and agreements
21 herein contained, the parties mutually agree as follows:

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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 Association of Professional Firefighters, Local 975 of the International Association of Firefighters, AFL-CIO-CLC, and its officers and agents authorized to act on its behalf.

2. “Employer” or “City” means the City of Austin, Texas, the Austin Fire Department and its officers, agents, managers, and others authorized to act on the City's behalf.

3. “Employee” or “Member” means any firefighter, as the term is defined in Texas Local Government Code, Section 174.003(2), in the Austin Fire Department, except the head of the Department. The terms “employee” and “member” are used interchangeably in this Agreement. The term also excludes civilian employees, retirees, and any other employees specifically exempted by the terms of this Agreement. Probationary employees are excluded from the coverage of Articles pertaining to grievances, discipline, and discharge.

“Collective Bargaining Statute” or “TPERA” both refer to Chapter 174 of the Texas Local Government code.

4. “Chapter 143” means Chapter 143 of the TEXAS LOCAL GOVERNMENT CODE, and refers to the portions of the Chapter which are applicable to the City of Austin at the time and date when this agreement is made and executed.

5. “Authorized Association Representative” means a representative of the Association authorized by the Association Executive Board to conduct business on behalf of the Association.

1 6. “Department” means the Austin Fire Department, acting through its
2 management staff.

3 7. “Chief” or “Fire Chief” means the Fire Chief of the Austin Fire Department
4 and is synonymous with the term “department head” as used in Chapter 143.

5 8. “HRD” or “Human Resources Department” means the City of Austin’s
6 Human Resources Department acting through the Director of Human Resources and/or the
7 Director’s staff or designees.

8 9. “Uniformed employee(s)” or “uniformed human resources,” as used in this
9 Agreement, means any firefighter, as the term is defined in Texas Local Government Code
10 Section 143.003(4). The term excludes civilian employees, retirees, and any other
11 employees specifically exempted by the terms of this Agreement.

12 10. “Non-uniformed employee(s)” or “non-uniformed human resources,” as used in
13 this Agreement, means all Austin Fire Department employees who are not firefighter(s), as
14 the term is defined in Texas Local Government Code Section 143.003(4). The term
15 includes all civilian employees but does not include Fire Cadets.

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ARTICLE 3

RECOGNITION

The City recognizes the Association as the sole and exclusive bargaining agent for all covered firefighters, pursuant to Section 174.101 of Chapter 174, excluding the Fire Chief, and all civilian employees of the Fire Department.

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ARTICLE 4

MANAGEMENT RIGHTS

Section 1. Rights of Management.

The City retains all inherent rights to manage the Fire 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 employees within the Department, including the right to transfer employees; the determination of policy affecting the selection of new employees; 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 measurements and standards; and the right to implement programs to increase the cost effectiveness of departmental operations.

Section 2. Preemption of Chapter 143.

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 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

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ARTICLE 5

NON DISCRIMINATION

Section 1. Discrimination Prohibited.

Neither the City nor the Association shall discriminate against any employee covered by this Agreement in a manner which would violate any applicable federal or state laws 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 employees covered by this Agreement to become or not become members of the Association, and there shall be no discrimination against such employees 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 FPERA and agrees to fairly represent all employees in the Department covered by this Agreement.

1 **ARTICLE 6**

2 **CITY/ASSOCIATION RELATIONSHIP**

3 **Section 1. Quarterly Management/Executive Board Meeting.**

4 On a quarterly basis, the Executive Board of Local 975 and management staff
5 designated by the Fire Chief shall meet to discuss the operation of this Agreement. The Fire
6 Chief will establish a process by which an agenda for such meetings will be created. The
7 intent of such meetings is not to provide for a reopener of the Agreement, and the parties
8 shall mutually agree whether to discuss a particular issue. At all times, each party retains
9 the right to determine whether a particular issue shall be discussed.

10 **Section 2. Joint Committee.**

11 **(a) Limited Purpose of Committee.** The parties agree to create a Joint
12 Committee, consisting of management and Association representatives, in order to permit
13 the Association to have input in the development of and/or revisions to Department
14 personnel policies. (Section H of the General Orders) The parties have expanded this
15 provision beyond the limited scope of the last agreement in order to continue the favorable
16 communication process initiated in the IBB process of the bargaining agreement. The
17 Association seeks to accomplish its interest by contributing to policy development and
18 change. The City seeks to accomplish its interests in obtaining valuable input into policy
19 changes, accomplishing "buy in" and support by department members while maintaining
20 the right to implement policy changes without the need for approval by the Association or
21 the committee.

22 **(b) Composition of Committee.** The Joint Committee shall be composed of three
23 (3) management representatives appointed by the Chief and three (3) Association
24 representatives appointed by the Association President. Necessary resource people will
25 attend. All members of the Joint Committee shall be trained in the principles of IBB, and

1 the Joint Committee shall use the IBB process. Provided, however, that this commitment to
2 utilize the process shall not prevent or delay changes in policy, or the implementation or
3 enforcement of interim policies while consultation and exchange continue.

4 **(c) Committee Process.** Issues involved in policy development will be posted on
5 the FireNet. All interested employees shall forward their comments to the command staff
6 and the Association Committee Members within seven (7) days in order to make sure that
7 consideration of such comments may occur prior to the meeting. Drafts of policies shall be
8 provided to the Association President. Meetings shall be held each month to consider
9 policy development and change. Meetings shall take place with a quorum and it is
10 understood that this process must go on, even if some participants cannot attend each
11 session. This provision does not preclude the implementation of interim policy changes
12 when the Chief determines that the interest of the department or the public require such
13 changes without delay. After input and communication occurs in the process, the final
14 determination of the policies of the department remains with the Chief and it is understood
15 and agreed that the approval of the Committee or the Association is not required for policy
16 changes to be effective.

17 **(d) Operational Policies.** Operational policies are not subject to the joint
18 committee process. However, the Chief will take into consideration the advantages of
19 including Association input in work groups or ad hoc committees involved in policy
20 development or revision. The department shall expand the use of the FireNet for
21 comments, or focused comments on the relevant policy related issue.

22 **Section 3. Overtime**

23 During the term of this Agreement, the Department shall have a policy regarding
24 overtime work in the Operations Division. The policy shall provide for constant staffing of
25 the Operations Division and shall provide a fair and equitable method for assigning

overtime work among employees, provided that the application of the policy does not compromise the integrity of the firefighting company or the business needs of the Department.

Section 4. Shift Trading Privileges

During the term of this Agreement, the Department shall have a policy providing for the trading of shifts/time among employees. The policy shall provide flexibility for employees to trade shifts/time, provided that the trades do not compromise the integrity of the firefighting company or the business needs of the Department.

Section 5. Kelly Shifts

During the term of this Agreement, the Department shall have a policy providing for the use of "Kelly" shifts as part of an employee's work schedule. The application of the policy shall not compromise the integrity of the firefighting company or the business needs of the Department and must meet applicable legal requirements. For purposes of this Agreement, each member is scheduled for eighteen (18) work shifts, with the nineteenth (19th) shift being the "Kelly" shift. Each firefighter's 19-day cycle begins at the end of his/her "Kelly" shift. At the end of the third consecutive 19-day cycle, the firefighter will again be scheduled off-duty on "Kelly" shift.

Section 6. EMT Certification

During the term of this Agreement, the Department shall have a policy requiring all members to maintain EMT certification at the EMT-B skill level. Members may voluntarily upgrade to EMT-I or EMT-P skill levels, but will not receive further compensation for attaining those levels. If a state of emergency exists in the City of Austin, the Chief may require any member to perform duties requiring EMT-I or EMT-P skill levels without additional compensation. If, however, the Chief requires members to perform duties requiring EMT-I or EMT-P skill levels when such a state of emergency does not

1 exist, those members will be compensated on the basis of a market-based study.

2 **Section 7. Management Control.**

3 It is expressly understood and agreed that the Chief continues to solely control all
4 policy making and implementation and that the Joint Committee created in this Article
5 applies only to the subjects specifically set out herein.

6 **Section 8. Preemption of Chapter 143.**

7 To the extent that any provision of this article conflicts with or changes Chapter 143
8 or any other statute, executive order, local ordinance, or rule, this Agreement shall
9 supersede such provisions, as authorized by Section 174.006 of the TEXAS LOCAL
10 GOVERNMENT CODE.

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ARTICLE 8

FIRE CIVIL SERVICE COMMISSION

Section 1. *Ex Parte* Communications.

The parties agree that neither the City nor the Association shall have *ex parte* communications with any member of the Commission concerning any matter that is scheduled to or likely will come before the Commission. This provision does not prohibit the Director of Civil Service and his/her staff or the City Attorney and his/her staff from performing their duties, to the extent they require communications with members of the Commission.

Section 2. Agreed Scheduling of Disciplinary Hearing.

In any disciplinary appeal to the Commission, the suspended person and the Chief may agree to schedule or reschedule the hearing for a date more than 30 days after the date the Commission receives the appeal notice. If the Director of Civil Service receives written confirmation of such an agreement from both the suspended person and the Chief (or their respective representatives), the Director of Civil Service shall schedule the hearing in accordance with such agreement, subject to the availability of a quorum of Commission members. Neither the agreement of the Commission nor a meeting of the Commission shall be required if the Director of Civil Service has received written confirmation of such an agreement.

Section 3. Preemption of Chapter 143.

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 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1 **ARTICLE 9**

2 **WAGES AND BENEFITS**

3 **A. WAGES**

4 Beginning October 3, 2004, the Base Salary Schedules contained in Appendices A and B
5 shall apply. This Base Salary Schedule reflects a 5.5% increase over the base salary
6 effective for Fiscal Year 2003-04. The increase is comprised of the 3.5% increase
7 approved by the City Council on September 13, 2004 to be effective as of October 3,
8 2004, and 2.0% to be effective October 3, 2004 as a result of this Agreement. Any back
9 pay amounts will be paid no later than the second pay period after ratification of this
10 Agreement by the City Council.

11 **B. RATES OF ADDITIONAL PAYS.**

12 During the term of this Agreement, the rates paid by the City of Austin for the
13 following additional pay items shall not be reduced below the rates effective as of October
14 1, 2004:

- 15 (a) Educational incentive/certification pay;
 - 16 (b) Assignment pay;
 - 17 (c) Longevity or seniority pay (which is included in the attached pay scales);
 - 18 (d) Mileage paid for travel between stations;
 - 19 (e) Clothing allowance;
 - 20 (f) Step pay increases; and
 - 21 (g) Reimbursement of auto insurance deductible.
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23 Bilingual pay rates will remain at \$150 per month for those employees who are
24 certified as bilingual in Spanish and English according to procedures adopted by the Chief.
25 Bilingual pay shall be paid in 26 payments at the rate of \$69.23 per pay period.

26 All time worked by an employee in addition to regularly scheduled hours shall be
27 paid at one and one-half (1.5) times the employee's regular rate.

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1 **C. PREEMPTION OF CHAPTER 143**

2 To the extent that any provision of this article conflicts with or changes Chapter 143
3 or any other statute, executive order, local ordinance, or rule, this Agreement shall
4 supersede such provisions, as authorized by Section 174.006 of the TEXAS LOCAL
5 GOVERNMENT CODE.

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Section 1. Time off for Association Business.

(a) The Chief may award paid time off for activities that directly support the mission of the Department. It is specifically understood and agreed that no paid time off shall be utilized for political lobbying at the local, State, or national level. Prior to taking any such paid time off, all requests for such time must be submitted to HQ support staff, who shall date and time stamp it and then forward it to the appropriate Command Staff member. The decision on such a request shall be made by the Division Chief (for operations – who shall look at all six battalions) or Assistant Chief (for staff positions) based on the following criteria and procedure: Leave requested more that 14 days in advance shall be decided in 5 business days;

(c) Leave requested less than 7 days in advance need not be decided until the date that the member needs off:

(c) Whether or not the request is allowed depends upon the staffing levels due to scheduled time off as dictated by department staffing policies. Approval or denial may not be based on projected or average sick leave absences. All

other absences are properly considered in determining required staffing.
This includes scheduled absences, actual authorized military leave and IOJ.

(f) Examples

- i) 1 – 6 days: A request for 2 additional Association members to attend a conference in Dallas is presented 5 days before the event. No decision will be made until the day of the event. The decision may consider the actual absences, including sick leave, on the date of approval.
- ii) 7 – 13 days: a request for 5 Association members to attend a seminar out of state must be determined within 3 days. Failure to disapprove results in automatic approval.
- iii) 14 or more: the same scenario as the one preceding, but disapproval must be given within 5 days, or approval is automatic.
- iv) The approval or disapproval within Operations will be made by the Division Chief, as follows, based on ACTUAL PERSONNEL working on the specific shift:
 - (1) Required staffing;
 - (2) Total vacation slots for the shift;
 - (3) Actual Kelly Slots scheduled for the shift
 - (4) Other already scheduled time off on that day (such as ABL, Officer College, IOJ, Military, Jury, Supplemental training).

- (g) The Association President shall specify the purpose or reason for the leave as per the current form for submitting a request.

1 (h) The Department may post the ABL submission and decisions on the Fire
2 Net.

3 **Section 2. Funding and Use of Association Business Leave.**

4 The Association Business Leave time pool shall be funded by contributions from
5 each firefighter covered by the Agreement of up to five (5) hours accumulated sick leave (or
6 vacation, if sick leave balance is less than 5 hours) on an annual basis. The number of hours
7 to be contributed each year of this agreement is to be determined by the Association. The
8 firefighter's contribution to the pool shall be made each year in the first pay period of each
9 calendar year. Any firefighter who wishes to contribute vacation leave rather than sick
10 leave shall provide a written notice to the Chief or his designee and a copy of the written
11 notice to the Association by January 1 of each year. Any firefighter who wishes to
12 withdraw from the obligation of contributing leave shall provide a written notice to the
13 Chief or his designee and a copy of the written notice to the Association by January 1 each
14 year. Failure of the firefighter to timely meet the notice of requirements specified above,
15 shall constitute a waiver of the firefighter's election to contribute vacation leave, or to
16 withdraw from the obligation to contribute leave as appropriate. Once a contribution
17 has been made to the pool, there shall be no transfer of time back into any individual
18 firefighter's sick leave or vacation account, and there will be no cash pay out for any
19 remaining time in the pool. Any hours not used in one (1) year will remain in the pool to be
20 utilized the following year. In the event there is a balance of hours in the pool at the end of
21 the contract period, those hours will be available for use in the following year for
22 Association Business Leave activities.

23 The City shall track utilization of the donated leave. The Association shall pay the
24 amount of \$900 as their agreed on half of the cost of administration.

25 The Association president shall be permitted up to 2080 hours, less accrued leave

1 time, which must be used under AFD policies, and shall be assigned on a 40 hour
2 workweek. This time shall be deducted from the ABL pool, but is not subject to the
3 approval/disapproval process in this Article. There shall be no entitlement for overtime pay
4 for any hours worked on Association business. Such employee may at any time be required
5 to return to duty if any emergency situation requires and such employee may additionally be
6 assigned to special projects, in the discretion of the Chief.

7 Should a critical need arise for additional leave for any member who is the victim of
8 a catastrophe; the Joint Committee shall assemble to consider other uses of this leave pool
9 on a case by case basis. The Joint Committee shall establish a procedure whereby sick
10 leave may be donated and used. The Association shall track utilization of the donated sick
11 leave. The Joint Committee will establish criteria for the donation and use of hours for the
12 identified need. Included in the criteria will be a one-hour minimum donation and a
13 specified beginning and ending date for the donation period. This procedure shall be
14 reviewed and approved by the Chief before it is implemented. All requests for use of
15 donated sick leave will also be subject to approval of the Department Command Staff.

16 Administrative procedures and details regarding the implementation of this Article
17 shall be specified in Departmental policy.

18 **Section 3. Indemnity**

19 The Association shall indemnify the City and any Department of the City and hold it
20 harmless against any and all claims, demands, suits or other forms of liability that may arise
21 out of, or by reason of, any actions taken by the City or any Department of the City for any
22 purpose of complying with provision of this Article.

23 **Section 4. Preemption of Chapter 143.**

24 To the extent that any provision of this article conflicts with or changes Chapter
25 141, 143, or any other statute, executive order, local ordinance, or rule, this Agreement shall

1 supersede such provisions, as authorized by Section 174.006 of the TEXAS LOCAL
2 GOVERNMENT CODE.

1 **ARTICLE 11**

2 **SHARED COMMUNICATIONS BETWEEN CITY AND ASSOCIATION**

3 **Section 1. Need for Shared Communications.**

4 The parties have agreed that there may be times when shared communications will
5 be necessary and desirable. When those occasions occur, the parties have agreed to certain
6 principles, as detailed in this Article.

7 **Section 2. Principles and Goals of Shared Communications**

8 Whenever Fire Department management or the Association finds it desirable to
9 communicate with members of the Department or the public, it is specifically agreed that
10 each will avoid personal attacks or inflammatory statements. It is also a goal of shared
11 communications that Fire Department management and the Association will identify and
12 participate in co-sponsored events. Finally, it is a goal that the Association locate and
13 assign Association representatives to Fire Department committees established by the Fire
14 Chief to advise on policies or working conditions.

15 The City and the Association also will share communications through the
16 mechanism of a Health & Safety Advisory Committee.

17 **Section 3. Shared Communications Systems**

18 (a) The Association shall be permitted to use Association bulletin boards located at
19 Fire Department work sites, after approval of placement and number by the Chief. The
20 Association's bulletin boards will be monitored by both Association station stewards and by
21 station officers for content. The following Guidelines shall apply to materials posted on the
22 bulletin boards:

- 23 (1) There shall be no personal attacks or inflammatory statements.
24 (2) All materials shall be directed toward dissemination of general Association
25 information and advising members of events, meeting, and functions;
26 (3) Department property (bulleting boards on AFD premises, the Pony, and
27 email is for public business only, and is not dedicated or made available for

1 expressing or debating views or issues, or for any type of political campaign
2 or election information or endorsements (this limitation does not apply to
3 elections for Association officers, provided that only brief notices naming
4 the individual rank, years of service and Association office sought shall be
5 permitted)

6 (4) Any concerns about the content of posted material shall be brought to the
7 attention of the Union President or designee for review and adjustment as
8 soon as the concerns are noticed. The objectionable material shall be
9 removed from the bulletin board until final determination. An Association
10 notice may include a simple reference to another source for further
11 information such "See AAPFF Web Page or the Smoke Signal"

12 (5) The Fire Chief retains the final decision as to whether Association materials
13 may be posted on bulletin boards except as to the items noted in (b) 1-5
14 below, which may be posted without prior approval.

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16 (b) The Association may also request approval to distribute specific Association
17 materials to the stations through the Department's inter-office mail system (the "Pony").
18 The Fire Chief, or his designee, shall not unreasonably deny such permission. With
19 approval of the Department Command staff, the Association may be granted approval to use
20 station printers and computers for rapid dissemination of information. Use of the Pony or
21 the Department's computers to disseminate information without prior approval shall be
22 limited to members of the Executive Board and the Union President, on the following
23 categories:

24 (1) Items approved by the Executive Board of Local 975 and certified by the
25 Board as in compliance with the provisions of this Article;

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27 (2) Dissemination of Local 975 meeting agendas;

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29 (3) Special notices of Association events, activities, member opportunities,
30 public service announcements such as "Fill the Boot" or reminders to vote;

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32 (4) Notices of committee meetings; and

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34 (5) Notices of family member deaths

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36 Materials distributed in the Pony or on computer shall meet the same Guidelines as
37 contained in Section 3 (a) above regarding bulletin boards. Other communications between
38 Fire Department Management and Association Representatives may be included by advance

1 approval.

2 Except for the categories specifically permitted without advance approval the Fire
3 Chief retains the final decision as to whether Association materials may be distributed on or
4 using Department property. A copy of any material sent without prior approval shall be
5 provided by email or photocopy for the command staff.

6 **Section 4. Joint Communications**

7 In order to reduce the amount of rumors in the Department, the parties have agreed
8 to certain methods of joint communications. These include, but are not limited to including
9 a column in any Fire Department publication (should one again be published in the future)
10 in which the Association will be permitted to address rumors. The Association also will
11 permit the Fire Chief space for a column in the "Smoke Signal" (or other successor
12 publication) in which to address rumors. If both parties agree, members of Fire Department
13 management and the Association may make joint appearances at Departmental meetings in
14 order to address critical communications.

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ARTICLE 12

ADDITIONAL VACATION SLOTS

The parties recognize that having one extra vacation slot available per Battalion per shift on Thanksgiving and Christmas is desirable. Therefore, the City agrees to permit one additional employee per Battalion and per shift, to schedule vacation time for the shift of, the shift before and the shift after, Thanksgiving and Christmas. These additional slots will be in addition to the number of slots permitted in each Battalion, per shift, before the execution of this Agreement.

ARTICLE 13

LEAVE ACCRUAL FOR CERTAIN EMPLOYEES ON FORTY HOUR WORKWEEK

Section 1. Calculation of Leave Time.

Those employees who work a forty hour workweek and those who volunteer to work four 10-hour days per workweek, shall have their leave accruals calculated as follows: Leave shall be accrued on the basis of an eight (8) hour-day rate. Leave must be used on an hour-per-hour basis.

Section 2. Agreement As to Claims

The parties agree that no employee who presently is, or who has been, scheduled to work four 10-hour days per week shall have a valid claim or lawsuit based on the accrual or use of leave time in the past. This Agreement extinguishes any and all such claims.

The parties further agree that the Association will not bring or sponsor any claims or lawsuits based on the accrual or use of leave time in the past for any employee who presently is, or who has been, scheduled to work four 10-hour days per week.

Section 3. Preemption of Chapter 143.

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 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1 **ARTICLE 14**

2 **SAFETY**

3 **Section 1. Building Maintenance.**

4 A Building Audit Committee, composed of a Departmental Safety Officer, an
5 Association representative from the Joint Health and Safety Advisory Committee, and
6 representatives appointed by the Fire Chief will conduct an annual building audit of all Fire
7 Department facilities. The Committee shall prepare a report noting all necessary repairs and
8 maintenance requests. The Committee will advise the Fire Chief of its Building Audit
9 findings. The Fire Chief will prioritize all building repair and maintenance requests
10 according to need and the availability of resources, at his discretion. The Fire Chief will
11 publish an annual report listing all facilities repairs made in the previous year and the
12 priorities for repairs he has identified for the next two years.

13 **Section 2. Joint Health and Safety Advisory Committee.**

14
15 The Joint Health and Safety Advisory Committee (the "Committee") will continue
16 to operate in the same manner as the Management/Union Safety Committee referred to in
17 General Order E04. In addition to the duties already assigned in such General Order, the
18 Committee is charged with the following additional tasks:

- 19 (1) Write and submit to the Fire Chief safety bulletin updates
20 detailing the status of ongoing safety projects;
- 21 (2) Review and advise the Fire Chief on Departmental safety
22 training; and
- 23 (3) Review and advise the Fire Chief on safety inspections of the
24 stations conducted by Fire Prevention inspectors using Uniform
25 Fire Codes for a standard.

1 **Section 3. Procedures for Committee.**
2

3 Meeting dates for the Joint Health and Safety Advisory Committee shall be set by
4 the Fire Chief in General Order EO4. General Order EO4 will also be amended to reflect
5 that Committee members who miss a pre-determined number of meetings will be replaced.
6 The Command Staff shall respond in writing within thirty (30) days to Committee
7 correspondence; however, a written response will be required only if a quorum of
8 Committee members has attended the meeting. A "quorum" is defined as consisting of
9 two-thirds (2/3) of the members appointed by the Association. The Command Staff's
10 written response to the Committee must address the issues presented by the Committee.

11 **Section 4. Safety Office.**
12

13 The Department agrees to have a Safety Office, and to the extent possible within
14 Departmental budget, expand resources available to accomplish its mission.

1 **ARTICLE 15**

2 **FIRE CADETS**

3 **Section 1. Status of Fire Cadets**

4 Fire Cadets are not entitled to the rights and benefits contained in this Agreement,
5 except for those specifically enumerated in this Article. By including this Article in the
6 Agreement, the City is not conceding that Fire Cadets are covered by Chapter 143 of the
7 Local Government Code, nor is the Association conceding that Fire Cadets are not covered
8 by Chapter 143.

9 **Section 2. Vacation and Sick Leave Accruals.**

10 **(a) Accrual Rates.** Fire Cadets will earn vacation and sick leave at the rate of one
11 and one-quarter (1.25) days per month during the time they are in Cadet Class.

12 **(b) Leave Conversion for Fire Cadets.** Leave time accrued by Fire Cadets during
13 their Cadet Class will be converted, upon graduation, by applying the standard rate already
14 in use by the Department for converting leave accruals from 40 to 53 hour work week
15 schedules.

16 **Section 3. Benefits for Fire Cadets**

17 **(a) Bilingual Pay.** Fire Cadets will be given the opportunity to take a Spanish
18 proficiency examination during their Cadet class. Each Fire Cadet who passes the
19 examination shall be entitled to begin receiving bilingual pay at the first pay period after
20 graduation from the Academy.

21 **(b) Education/Certification Pay.** Fire Cadets who meet the requirements for
22 Education and/or Certification pay will receive Education/Certification pay starting at the
23 beginning of their Cadet class or upon presenting appropriate documentation establishing
24 entitlement to the pay, whichever occurs first.

1 **Section 4. Preemption of Chapter 143.**

2 To the extent that any provision of this article conflicts with or changes Chapter
3 143 or any other statute, executive order, local ordinance, or rule, this Agreement shall
4 supersede such provisions, as authorized by Section 174.006 of the TEXAS LOCAL
5 GOVERNMENT CODE.

1 **ARTICLE 16**

2 **WRITTEN PROMOTIONAL EXAMINATION**

3 **APPEAL PROCESS**

4 **A. WRITTEN PROMOTIONAL EXAMINATION APPEAL PROCESS**

5 The appeal process specified in this Article applies to appeals by individual
6 candidates regarding the grading of his/her written promotional examination. Any
7 challenges to the administration of a written promotional examination shall be made in
8 accordance with the provisions of Chapter 143 of the Texas Local Government Code.

9 **Section 1. Appeals Criteria.**

10 In appeals from written promotion examinations for all ranks except Division Chief,
11 criteria will be applied to judge the merits of an appeal. The criteria are established in this
12 Section, but may be modified by the Appeals Criteria Committee ("ACC") as provided in
13 Section 2 below. In judging the merits of an appeal the Employee Review Committee
14 ("ERC") described in Section 4 below shall apply only the criteria listed in this section. If,
15 however, the ACC has modified the criteria, the modified criteria will be used by the ERC.
16 The Fire Civil Service Commission must apply the criteria as well, but may add any other
17 criteria it deems relevant to judge the merits of an appeal.

18 All appeals must be on the form prescribed by the Director of Civil Service and
19 must meet the following criteria for the appeal to be submitted to the Fire Civil Service
20 Commission:

21 (a) The form must be completed in the firefighter's own handwriting, must be
22 legible and must contain the following:

- 1 a. Firefighter's name
- 2 b. Name of the exam
- 3 c. Question # being appealed (or the entire exam)
- 4 d. The reason(s) why the question or exam is being appealed
- 5 The date
- 6
- 7 (b) The form must be completed so that it challenges a specific question.
- 8
- 9 (c) The form must state or list clearly the specific reason(s) for the appeal and
- 10 must refer only to the approved source material list used to formulate the
- 11 questions.
- 12 (d) All support materials cited in or attached to the appeal form must come only
- 13 from the approved source material list.
- 14 (e) Appeals must be based on the following reasons:
- 15 a. There is more than one correct answer.
- 16 b. There are no correct answers.
- 17 c. The question is not clearly stated or there is an error so that the correct
- 18 answer could not be determined.
- 19 d. The question is not from the listed source material.
- 20 (f) The following contains examples of appeals that will not be submitted to the
- 21 Fire Civil Service Commission for its review:
- 22
- 23 a. Punctuation marks are missing or incorrect.
- 24 b. The exact wording in the source materials was not used.
- 25 c. Disagreement with the way a question or answer choice is phrased.
- 26 d. The question is not job relevant. (All materials included on the approved
- 27 source materials list are deemed job relevant.)
- 28

29 **Section 2. Appeals Criteria Committee.**

30 An Appeals Criteria Committee (ACC) shall be appointed to review and modify, as
31 necessary, the criteria for what may be appealed to the Fire Civil Service Commission
32 following all written promotional examinations except for examinations for the rank of
33 Division Chief. The ACC shall review the appeal criteria contained in this Agreement
34 following the first written examination appeal conducted under this Agreement to determine
35 whether the criteria should be modified. Thereafter, the ACC shall meet to review the
36 criteria prior to each examination appeal process. The ACC, composed of seven (7)
37 individuals, shall be appointed as follows:

- 38 (a) Three (3) members appointed by the Association, each having taken at least

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

A simple majority of the ACC shall approve the criteria. The criteria approved by the ACC shall not be appealable to either the Fire Civil Service Commission or to the district court.

Section 3. Appeal Process After Written Examination.

Any member who has taken a written promotional examination may, within five (5) City of Austin business days of posting of the written promotional examination results, review his/her examination results. In a process established by the Human Resources Department, each candidate who has taken a written promotional examination may have a time period to review his/her examination, write, and submit an appeal. Any appeal must be based on the appeal criteria as provided in this Agreement. Each candidate will receive a copy of the Human Resources Department process at the conclusion of his/her examination.

The Human Resources Department will be responsible for providing dates, times, and locations for members to sign up to review his/her examination and write and submit an appeal.

Each member will be responsible for signing up for a specific time period to review his/her examination and to write and submit an appeal. The member will be permitted to stay beyond his/her scheduled time period, if needed, to complete his/her review and to write and submit an appeal. Copies of source materials will be provided for a member's use during this review period *only* if the member specifically requested the materials on the Sign Up form. During the period designated for the member to review his/her examination and to write and submit an appeal, the member may bring self-prepared materials such as notes, flash cards, or outlines. The only published materials a member may bring are the source materials upon which the examination was based.

Section 4. Review By Employee Review Committee.

An Employee Review Committee (ERC) will be appointed to screen written examination appeals for the ranks of Firefighter through Battalion Chief to the Fire Civil Service Commission, applying the criteria described in Section (A)(1), to determine if any appeals should be rejected because they do not meet the criteria. Assuring for diversity to the extent practical and possible, the ERC shall be comprised of five (5) members as follows:

For promotional examinations for Specialist rank:

Four (4) Specialists or higher rank, two (2) each appointed by the Association and the Fire Chief; and

One (1) non-voting member appointed by HRD.

For promotional examinations for Lieutenant rank:

Four (4) Lieutenants or higher rank, two (2) each appointed by the Association and the Fire Chief; and

One (1) non-voting member appointed by HRD.

For promotional examinations for Captain rank:

Four (4) Captains or higher rank, two (2) each appointed by the Association and the Fire Chief; and

One (1) non-voting member appointed by HRD.

For promotional examinations for Battalion Chief rank:

Four (4) Battalion Chiefs or higher rank two (2) each appointed by the Association and the Fire Chief; and

One (1) non-voting member appointed by HRD.

Appeals may be denied advancement from the ERC to the Fire Civil Service Commission by a vote of a simple majority of the voting members on the ERC. The ERC will not have any information concerning the identity of the person writing the appeal and will not

1 make any statement, assertion, or recommendation regarding the validity of an appeal or
2 subsequent Fire Civil Service Commission action. There will be no state District Court appeal
3 of the ERC's examination appeal determinations or from the Fire Civil Service Commission's
4 written examination appeal decisions, except an appeal alleging the City's failure to validate the
5 written examination, fraud, collusion, or unlawful means.

6 **Section 5. Written Examination Appeals for Rank of Division Chief.**

7 Notwithstanding any of the provisions of this Article, appeals from written promotional
8 examinations for the rank of Division Chief will be conducted in accordance with the
9 provisions of Chapter 143.

10 **B. DEMOTION AND REINSTATEMENT**

11 1. Any person placed on the reinstatement list (and there shall be only one list for
12 each rank) by virtue of demotion shall remain on the list indefinitely. This section shall apply to
13 all demotions other than voluntary demotions and those made for discipline on civil service
14 charges, which circumstances do not give rise to any right to be placed on a reinstatement list.
15 Persons on the list shall be entitled to reinstatement in the reverse order of demotion. This
16 results in last demoted first reinstated. Reinstatements must occur off of the reinstatement list
17 before any promotions from a promotional eligibility list. Until such reinstatements occur and
18 the reinstatement list is exhausted, there shall be no "vacancy" created for the purpose of any
19 promotional eligibility list.

20 2. Once reinstated, a member's eligibility for promotion shall be determined from
21 cumulative time in rank, rather than continuous time in rank.

22 3. This section alone shall control any right to reinstatement from a reinstatement
23 list, and all provisions of Chapter 143 are preempted, whether or not expressly inconsistent with
24 this provision.

1 4. Notwithstanding the provisions of Local Government Code § 143.072, when a
2 fire fighter returns from a military leave of absence, is reinstated to active duty in the
3 department and is restored to his/her former position, thus creating a surplus in his/her rank, the
4 last person promoted to that rank will be demoted and placed on the reinstatement list for that
5 rank.

6 **SECTION C. VACANCY UPON INDEFINITE SUSPENSION**

7 Notwithstanding any provision in the Article or any provision in Chapter 143, an
8 indefinite suspension of a member shall create a vacancy, even if there is a pending appeal, but
9 shall not expand the size of the classified service. In the event the indefinite suspension is
10 overturned, the last person promoted shall be demoted, with such rights as are prescribed in
11 Section B.

12 **D. PREEMPTION OF CHAPTER 143.**

13 To the extent that any provision of this Article conflicts with or changes Chapter 143 or
14 any other statute, executive order, local ordinance, or rule, this Agreement shall supersede such
15 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1
2 **ARTICLE 17**

3 **INITIAL HIRING PROCESS**

4 All Fire Cadet positions in the Austin Fire Department shall be filled by applicants
5 selected by the initial hiring process outlined in this Article.

6 **Section 1. Overview of Requirements.**

7 All applicants must successfully complete all phases of the hiring process in the order
8 specified by the Department. All phases of the hiring process shall be administered by the
9 Department. Applicants who successfully complete all phases of the hiring process shall be
10 placed in the eligible applicant pool. The ranking of applicants in the eligible applicant pool
11 shall be based on a composite score determined as provided in this Article.

12 **Section 2. Submission of Proper Application.**

13 Each applicant must submit a proper application, as defined by the Department. The
14 application will be used for initial screening of applicants for minimum requirements for the
15 position of Fire Cadet and for issues such as driving record and prior criminal history. The
16 application expires one year after the proper application is received by the Department.

17 **Section 3. Testing and Evaluation Phases.**

18 Subject to the implementation provisions in Section 8 below, all applicants must pass
19 each of the following tests and/or evaluations. If an applicant fails any of the tests, the applicant
20 shall be disqualified from the hiring process.

- 21 (a) **General Aptitude Test** (a validated written examination): The
22 applicant's score on this test will count as 10% of the applicant's
23 composite score.
24
25 (b) **Behavioral Test** (a validated assessment of communication
26 skills, problem solving skills, and interpersonal skills based on
27 videotaped scenarios and the applicant's responses to the
28 scenarios): The applicant's score on this test will count as 40%
29 of the applicant's composite score. The behavioral test will be
30 selected in accordance with Section 4 below.

- 1
- 2 (c) **Oral Interview Board** (Assuring for diversity to the extent
- 3 practical and possible, the Oral Interview Board shall be
- 4 composed of five (5) or more interviewers appointed by the
- 5 Chief. The Association and each employee group which is a
- 6 member of the Department's Diversity Council will submit a list
- 7 of names to be considered by the Chief for appointment to the
- 8 Board.): The applicant's score on the interview board will count
- 9 as 40% of the applicant's composite score.
- 10
- 11 (d) **Listening Comprehension Test** (assessment of ability to listen
- 12 to and understand directives and/or information): The applicant's
- 13 score on this test will count as 10% of the applicant's composite
- 14 score.
- 15
- 16 (e) **Candidate Physical Ability Test (CPAT)** (methodology in
- 17 accordance with the nationally distributed recommendations of
- 18 the IAFF/IAFC Joint Labor Management Wellness/Fitness
- 19 Initiative Group.): This test is in addition to the medical and
- 20 psychological examinations provided for in Chapter 143. The
- 21 test shall be pass/fail and the applicant shall not be placed in the
- 22 eligible applicant pool unless this test is passed.
- 23
- 24 (f) **Background Investigation** (including review of criminal and
- 25 personal histories, driving record, credit history, personal and
- 26 employment references, etc.): This investigation shall be pass/fail
- 27 and the applicant shall not be placed in the eligible applicant
- 28 pool unless this test is passed.
- 29

30 **Section 4. Selection of Behavioral Test.**

31 The Behavioral Test used in this hiring process shall be the same one used for Class

32 107.

33 **Section 5. Additional Points.**

34 Applicants who are placed in the eligible applicant pool are entitled to have a maximum

35 of six (6) points added to their composite score based on the following items:

- 36 (a) Two (2) points if applicant is certified, according to the
- 37 procedures adopted by the Chief, as bilingual in Spanish and
- 38 English;
- 39
- 40 (b) Two (2) points if applicant has a minimum of two (2) years
- 41 consecutive military service terminating in an honorable
- 42 discharge;
- 43
- 44

- 1 (c) One (1) point if the applicant has prior experience in a paid
2 emergency response department as an EMT or firefighter; and
3
4 (d) One (1) point if the applicant has a minimum of thirty (30)
5 college credit hours.
6

7 **Section 6. Filling of Vacant Fire Cadet Positions.**

8 Fire Cadet positions shall be filled by applicants from the eligible applicant pool who
9 have successfully completed all phases of the hiring process. Positions shall be filled from the
10 pool based on a ranking of the applicants by their composite scores including any additional
11 points. In determining the ranking of the applicants, the Department will break any tied scores
12 by using random numbers generated by a computer. The eligibility list shall reflect whether any
13 candidate's ranking was determined by the use of this tie-breaking process.

14 The eligible applicant pool shall be used for the creation of only one Cadet class.
15 Anyone remaining in the eligible applicant pool after creation of the class shall remain in the
16 pool for one (1) year after a proper application is received by the Department. Each class will
17 be filled from a new eligible applicant pool and an applicant may be ranked in a different
18 position in a subsequent pool.

19 **Section 7. Administration of Process.**

20 All phases of the initial hiring process will be administered by the Department in
21 accordance with the provisions of this Agreement and those provisions of Chapter 143 which
22 are not specifically superseded by this Agreement. All tests and evaluations provided for in this
23 process may be administered on a year-round basis and may be given on various dates and at
24 various locations, as determined by the Chief.

25 **Section 8. Implementation of Initial Hiring Process.**

26 Until the Candidate Physical Ability Test (CPAT) recommended by the IAFF/IAFC
27 Joint Labor Management Wellness/Fitness Initiative Group is ready for use, the Physical Ability
28 Test provided for in this Article shall be the same test administered by the Department

1 immediately prior to the effective date of this Agreement. Regardless of which physical ability
2 test is used, all applicants must pass the test and it shall be scored on a pass/fail basis.

3 The Listening Comprehension Test provided for in this Article may not be available for
4 use by the Department in creating the eligible applicant pool for the first Cadet Class following
5 the effective date of this Agreement. If the test is not available, the composite score used to
6 place and rank applicants in the eligible applicant pool for that class will be calculated as
7 follows: General Aptitude Test: 20%; Behavioral Test: 40%; Oral Interview Board: 40%. All
8 applicants for that class must also pass all other phases of the hiring process.

9 **Section 9. "Pipeline" Evergreen Provision** The hiring of any cadet in Class 109 commenced
10 prior to the expiration of this agreement may continue to completion, the expiration of this
11 Agreement notwithstanding.

12 **Section 10. Preemption of Chapter 143.**

13 To the extent that any provision of this article conflicts with or changes Chapter 143 or any
14 other statute, executive order, local ordinance, or rule, this Agreement shall supersede such
15 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1 have the same duties and powers set forth in Chapter 143, but shall not have the power to
2 substitute a program of counseling and/or rehabilitation different than the program imposed by
3 the Fire Chief or to substitute any period of suspension for the required program of counseling
4 and/or rehabilitation.

5 **Section 3. Alternative Discipline by Agreement.**

6 In considering appropriate disciplinary action, the Fire Chief may require that an
7 employee be evaluated by a qualified professional designated by the Fire Chief. If that
8 professional recommends a program of counseling and/or rehabilitation for the employee, the
9 Fire Chief may offer the employee the opportunity to enter into an alternative disciplinary
10 agreement under which the employee would accept a temporary suspension of up to ninety (90)
11 days and agree to successfully complete the program of counseling and/or rehabilitation
12 recommended by the qualified professional designated by the Fire Chief. The program of
13 counseling and/or rehabilitation will be completed on the employee's own time, unless the Fire
14 Chief approves the use of vacation time. The employee shall be responsible for paying all costs
15 of the program of counseling and/or rehabilitation which are not covered by the employee's
16 health insurance plan. If the employee's misconduct involves alcohol and/or drug-related
17 behavior, the Fire Chief may require that the employee submit to mandatory alcohol and/or drug
18 testing, upon order by the Fire Chief, for a specified period of time. If the employee accepts the
19 opportunity for agreed alternative discipline, the employee may not appeal any terms of the
20 agreement. If the employee fails to successfully complete the program of counseling and/or
21 rehabilitation, the employee may be indefinitely suspended without right of appeal.

22 **Section 4. Last Chance Probation Agreement.**

23 In considering appropriate disciplinary action, the Fire Chief may require that an
24 employee be evaluated by a qualified professional designated by the Fire Chief. If that
25 professional recommends a program of counseling and/or rehabilitation for the employee, the

1 Fire Chief may offer the employee, as an alternative to indefinite suspension, the opportunity to
2 enter into a "Last Chance Probation" agreement. The agreement may include the following
3 provisions in addition to any other provisions agreed upon by the employee and the Fire Chief.

4 (a) The employee will successfully complete the program of counseling and/or
5 rehabilitation recommended by the qualified professional designated by the Fire Chief.

6
7 (b) The program of counseling and/or rehabilitation will be completed on the
8 employee's own time, unless the Fire Chief approves the use of vacation time. The
9 employee shall be responsible for paying all costs of the program of counseling and/or
10 rehabilitation which are not covered by the employee's health insurance plan.

11
12 (c) The employee will agree to a probationary period not to exceed one year, with the
13 additional requirement that if, during the probationary period, the employee commits the
14 same or a similar act of misconduct, the employee will be indefinitely suspended
15 without right of appeal.
16

17 If the employee's misconduct involves alcohol and/or drug-related behavior, the Fire
18 Chief may require that the employee submit to mandatory alcohol and/or drug testing, upon
19 order by the Fire Chief, for a specified period of time. If the employee accepts the opportunity
20 for a "Last Chance Probation" agreement, the employee may not appeal any terms of the
21 agreement. If the employee fails to successfully complete the agreed program, the employee
22 may be indefinitely suspended without right of appeal.

23 **Section 5. Publishing Notice of Discipline.**

24 The Fire Chief must publish and circulate within the Department a communication
25 which informs employees of disciplinary suspensions imposed by the Fire Chief or disciplinary
26 suspensions agreed to by the Fire Chief and an employee. The communication may include the
27 employee's rank; each policy or rule which was violated; any extenuating or mitigating
28 circumstances; a brief factual description if the policy or rule violation is not self-explanatory;
29 and the discipline imposed or agreed to by the employee. The communication shall not identify
30 the employee by name.
31

Section 6. Transfers Related to Discipline.

The Fire Chief retains all right and authority to direct the assignment or placement of employees. If any employee is transferred in relation to a disciplinary action, the Fire Chief shall make every attempt to place the transferred employee in a vacant assignment. If an employee, other than the employee being disciplined, is displaced because of a transfer related to discipline, the Fire Chief will make every attempt to help the displaced individual move to a more desirable location, which may not necessarily be the location from which the disciplined employee was moved.

Section 7. Non-disciplinary corrective action.

Verbal counseling and written reprimands are not discipline, and are not subject to grievances or appeals as to the substance of the decisions made. A contract grievance may be pursued for violations of the process set forth in this section. Verbal counseling shall be included in the company journal. Written reprimands shall be initiated on a form which provides space for the employee to respond and include his or her version of the event in dispute, which shall be completed and filed within 72 hours following delivery of the proposed written reprimand. That form shall be submitted by the initiating supervisor through the chain of command for review and action. There shall be no other requirement for advance notice of any proposed action. The form shall recite any instances of prior counseling or action, or if there are none, shall state the specific reasons justifying the present action without prior progressive corrective action. Written reprimands shall be initiated by the employee's immediate supervisor. The "immediate supervisor" is the one who had immediate supervisory responsibility over the employee at the time of the incident. If a higher ranking department officer witnesses the violation, that officer may direct the supervisor to initiate a written reprimand after discussing the incident with the supervisor. Verbal counseling by an officer other than the immediate supervisor shall be in the supervisor's presence. A written reprimand

1 shall not be used or relied upon in connection with any future corrective action or discipline
2 after 12 months from the date of its approval.

3 **Section 8. Preemption of Chapter 143.**

4 To the extent that any provision of this article conflicts with or changes Chapter 143 or
5 any other statute, executive order, local ordinance, or rule, this Agreement shall supersede such
6 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1 **ARTICLE 19**

2 **USE OF UNIFORMED AND NON-UNIFORMED RESOURCES**

3 **Section 1. Goals and Objectives.**

4 The parties acknowledge that they share the interest of utilizing uniformed and non-
5 uniformed human resources in a manner which best accomplishes the goals and objectives of
6 the Department while preserving job security for uniformed members. To fulfill this interest,
7 the parties agree that this Article shall apply to the duties set out herein.

8 **Section 2. Fire Prevention.**

9 Fire prevention duties shall be performed by uniformed employees, except that degreed
10 engineers who are non-uniformed employees may be assigned fire prevention duties.

11 **Section 3. Fire Communications.**

12 Fire communications duties will be performed by uniformed employees, except that the
13 dispatch positions currently filled by non-uniformed employees will be converted to uniformed
14 positions through attrition. No additional dispatch positions will be filled by non-uniformed
15 employees.

16 **Section 4. Fire Photography.**

17 Fire photography duties will be performed as follows: Non-uniformed positions may be
18 designated by a title such as "video tv production coordinator." Any such positions shall be in
19 addition to the uniformed positions currently assigned to Fire Photography.

20 **Section 5. Fire Administration.**

21 Fire administration duties may be performed by non-uniformed employees.

22 **Section 6. Public Relations Director.**

23 The position of Public Relations Director will be a non-uniformed position which may
24 retain all of the duties and responsibilities of the previous Public Information Officer. The Fire
25 Chief shall adopt a standard procedure which calls for the use of uniformed employees as public

1 information officers for on-camera interviews and/or comments at fire or emergency scenes.
2 The parties specifically agree, however, that no grievances or other claims may be filed by any
3 uniformed employee if any reporter or camera operator inadvertently speaks with and/or
4 photographs a non-uniformed employee at a fire or emergency scene.

5 **Section 7. Preemption of Chapter 143.**

6 To the extent that any provision of this Article conflicts with or changes Chapter 143 or any
7 other statute, executive order, local ordinance, or rule, this Agreement shall supersede such
8 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1 **ARTICLE 20**

2 **GRIEVANCE / ARBITRATION**

3
4
5 **Section 1. Nature of Contract Grievances.**

6 This grievance procedure provides the exclusive method for resolving disputes
7 between employees and/or the Association, and the City concerning the interpretation,
8 application and/or enforcement of this Agreement. Employee grievances concerning
9 employment matters not related to this Agreement are not subject to this procedure. An
10 employee may use the Department's general grievance procedure for resolution of non-
11 contract grievances. Suspension, demotion and discharge decisions must be appealed in the
12 manner described in TEXAS LOCAL GOVERNMENT CODE Chapter 143. They may not
13 be grieved under this procedure.

14 **Section 2. Initiating Contract Grievances.**

15 An employee may initiate a contract grievance by filing the grievance in writing with
16 the Professional Standards Officer. The written grievance must state briefly the nature of the
17 problem, the specific contract provision(s) allegedly violated, and the requested remedy.

18 The Association may initiate a contract grievance on its own behalf or on behalf of
19 affected employees. The Association may initiate a contract grievance by filing the grievance
20 in writing with the Fire Chief's office. The written grievance must state briefly the nature of
21 the problem, the specific contract provision(s) allegedly violated, and the requested remedy.

22 The City may initiate a contract grievance by filing the grievance in writing with the
23 Association President. The written grievance must state briefly the nature of the problem, the
24 specific contract provision(s) allegedly violated, and the requested remedy.

25 **Section 3. Time Limit for Filing Contract Grievances.**

26 An employee, the Association, or the City must file the grievance within 30 days of the
27 date they actually become aware, or through reasonable diligence, should have become aware,

1 of the alleged violation of the Agreement.

2 **Section 4. Processing Employee Contract Grievances.**

3 **Step 1 grievance meeting.** The Professional Standards Officer will identify the
4 appropriate supervisor(s) to act as the City's Step 1 grievance representative, and will arrange
5 a Step 1 grievance meeting between the employee, his/her Association representative, and the
6 City Representative. The Step 1 meeting must take place within 15 calendar days of the date
7 the written grievance is filed. The City Representative will provide a written Step 1 decision
8 to the employee or his/her Association representative within 10 calendar days of the Step 1
9 meeting. **Note:** if the Fire Chief's office is the lowest supervisory level with authority to
10 provide the remedy requested, the Fire Chief's response will be treated as a Step 2 grievance
11 response and the parties may proceed directly to arbitration through the procedure described
12 below.

13 **Step 2 grievance meeting.** If dissatisfied with the Step 1 response, the employee or
14 his/her Association representative may request a Step 2 meeting by filing a written request
15 with the Fire Chief's office within 7 calendar days of the employee's receipt of the Step 1
16 response. The Fire Chief or his/her designated representative will conduct the Step 2 meeting
17 within 15 calendar days of the date the Step 2 request is received in the Fire Chief's office. A
18 written Step 2 decision on the grievance must be provided to the employee or his/her
19 Association representative within 10 calendar days of the meeting.

20 **Arbitration.** If the employee and/or Association is dissatisfied with the Step 2
21 grievance decision, the Association may request that the grievance be arbitrated by filing a
22 written arbitration request with the Fire Chief's office within 15 calendar days of the date the
23 Step 2 decision is received by the Association.

24 Where the Association invokes arbitration, representatives of the Association
25 President and the Fire Chief will meet by phone or in person within 7 calendar days to select

1 a mutually agreed arbitrator. If the parties are unable to agree on an arbitrator, the Fire
2 Chief's office or the Association may request a panel of 7 names from the American
3 Arbitration Association or the Federal Mediation & Conciliation Service. Representatives of
4 the Fire Chief and Association will meet within 7 calendar days of receipt of the arbitrator's
5 list by either to select an arbitrator by alternately striking names. If either party fails to
6 participate after two opportunities in the selection of an arbitrator, the other party may strike
7 three names on the list and return it to the AAA, with a copy to the opposing party sent by
8 facsimile and by certified mail. In the event that either party fails to strike the list, the
9 selection of the Arbitrator shall proceed under the AAA Labor Arbitration Rules.

10 The arbitrator thus selected will be notified and a hearing date(s) requested. If the
11 arbitrator is unable to provide a date for hearing within 3 months of his/her selection, either
12 party may request selection of another arbitrator by the same means. The arbitrator will
13 provide a written decision as expeditiously as possible after conducting the hearing. The
14 arbitrator shall consider and decide only the issue(s) in the original grievance or submitted in
15 writing by agreement of the parties. The parties specifically agree that the arbitrator's authority
16 shall be strictly limited to interpreting and applying the explicit provisions of this Agreement.
17 The arbitrator shall not have authority to modify the agreement or create additional provisions
18 not included in the Agreement. The parties agree that neither the City nor the Association shall
19 have *ex parte* communications with the arbitrator concerning any matter involved in the
20 Grievance submitted to the arbitrator. Each party shall be responsible for its own expenses in
21 preparing for and representing itself at arbitration, but the fees of the arbitrator shall be borne
22 equally by the parties. The written decision of the arbitrator shall be final and binding on both
23 parties but shall not create a basis for retroactive adjustment in any other case and shall not be
24 appealable. The arbitrator will have full authority to provide an adequate remedy if, in the
25 arbitrator's opinion, such is necessary.

1 **Section 5. Processing Association/City Contract Grievances.**

2 A meeting will be conducted between representatives of the Association President
3 and the Fire Chief within 15 calendar days of receipt of an Association or City grievance. A
4 written decision will be provided by the Association President or Fire Chief within 15
5 calendar days of the meeting. If dissatisfied, the grieving party may invoke arbitration within
6 15 calendar days after the other party's written decision is received. Arbitration will be
7 conducted in the same manner described in § 4 above.

8 **Section 6. Association Representation at Grievances.**

9 An employee is entitled, but not required, to have an Association representative at all
10 steps of the grievance/arbitration, provided that no employee has a right to counsel at any
11 stage prior to arbitration. Where the employee elects Association representation, delivery of
12 required notices and grievance decisions will be to the Association with a copy to the
13 employee, and the Association's receipt of notices/decisions will be used to determine time
14 limits for further needed action.

15 If the employee elects not to be represented in the grievance process, the Association
16 will receive a copy of all notices/decisions provided to the employee and is entitled to have a
17 representative attend all grievance meetings. The employee's receipt of notices/decisions
18 will be used to determine time limits for further needed action. Only the Association may
19 decide to arbitrate an employee contract grievance.

20 **Section 7. Effect of missing time limits.**

21 If the City's representatives fail to take required action to process a grievance, the
22 employee or Association may, but is not required, to move the grievance to the next level.

23 If the employee or Association fails to adhere to the deadlines for advancing the
24 grievance to the next level, the last grievance decision received will be considered final. This
25 provision shall not apply in rare instances of excusable delay based on unforeseen

1 circumstances or events; no delay based on negligence, oversight or inattention shall be
2 excused.

3 If any deadline falls on a Saturday, Sunday, or other date when the Chief's office is
4 closed, the due date shall be the following date when the office is open.

5 Any timeline or deadline provided in this article may be extended by mutual written
6 agreement of the parties involved at the particular step of the process where the timeline
7 applies.

8 **Section 8. Effect of Contract Expiration on Existing Contract Grievances.**

9 Notwithstanding any other provision of this Agreement, the Agreement's expiration
10 during the pendency of a contract grievance will not preclude processing of the grievance,
11 although relief granted, if any, will be limited to the period during which the Agreement was
12 in effect.

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1 **ARTICLE 21**

2 **PERSONNEL DEPLOYMENT**

3 **Section 1. Trading Assignments.**

4 Two employees of the same rank may trade or "swap" assignments in accordance with
5 this procedure. Agreed upon swaps will be granted only with the approval of the appropriate
6 Battalion Chiefs and the next level supervisor. The swap must be entered into voluntarily by
7 each employee, but neither employee may enter into a swap if he/she is on an eligibility list for
8 promotion and promotion is likely from that list. There shall be no swaps involving more than
9 two employees. Any manipulation of the swap procedure by any employee or supervisor shall
10 terminate the proposed swap.

11 **Section 2. Policy on Transfers to Open Assignments.**

12 (a) To afford an opportunity for all employees covered by this Agreement to obtain any
13 assignment which becomes available, the Department will advertise all "open assignments" for
14 a minimum period of 10 calendar days. This posting shall take place within 7 calendar days
15 from when an assignment is determined to be "open" For purposes of this Agreement only, an
16 "open assignment" is a Civil Service position of any rank from Firefighter through Battalion
17 Chief which has been vacated for any reason including but not limited to, retirement,
18 resignation, termination, promotion, or transfer. Newly created positions authorized by the City
19 Council will also be considered "open assignments"

20 (b) All promotions shall be made in accordance with this Agreement and applicable
21 provisions of Chapter 143.

22 (c) Employees who are promoted or transferred into a staff assignment (40
23 hours/week) or any other assignment for which assignment pay is received (other than bilingual
24 pay) shall ordinarily stay in the assignment for a minimum of two years. A Special Operations
25 two-year commitment shall begin at such time when: (1) the employee begins the

1 departmental, state, or federal certification process to be qualified for the assignment; or (2) the
2 employee may be counted towards any established required staffing level. In the event the
3 employee has not begun the training for the Special Operations commitment, then the employee
4 is eligible to apply for "open assignments"

5 (d) The procedures to be followed in transferring employees to "open assignments"
6 are contained in General Order H19-B.

7 (e) If no candidates apply for an open assignment advertised by a Battalion Chief,
8 the Fire Chief may, at his discretion:

9 (1) leave the assignment open;

10 (2) fill the assignment by a staff person, if possible;

11 (3) fill the assignment by a promotee;

12 (4) fill the assignment with a recent academy graduate (if the opening is a
13 Firefighter assignment); or

14 (5) fill the assignment by transferring an employee.

15 **Section 3. Method of Advertising.**

16 Battalion Chiefs shall advertise open assignments by placing a notice of the opening on
17 the Department's computer network. If the Fire Chief decides to leave an assignment open, the
18 assignment will remain posted on the computer.

19 **Section 4. Discretion of Fire Chief.**

20 Nothing in this Article shall be construed as limiting the Fire Chief's authority to
21 determine personnel assignments.

22 **Section 5. Preemption of Chapter 143.**

23 To the extent that any provision of this article conflicts with or changes Chapter 143 or
24 any other statute, executive order, local ordinance, or rule, this Agreement shall supersede such
25 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

ARTICLE 22

PERSONNEL DEVELOPMENT EVALUATIONS

Section 1. The parties have agreed that Personnel Development Evaluations/PDE's (the current version of efficiency reports in the AFD) shall be conducted annually, notwithstanding Section 143.082, or Commission rules. No information on discipline or reprimands shall be included on the efficiency report/PDE.

Section 2. 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 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

1 **ARTICLE 23**

2 **TERMINATION OF AGREEMENT**

3 **Section 1. Term of Agreement.**

4 This Agreement shall be effective only as of the date it is ratified by the City of Austin
5 City Council; and shall only be prospective in its effect from that date, except as to the
6 provisions herein for retroactive wage adjustments. It shall remain in full force and effect until
7 the 30th day of September, 2005, except as to the specific provisions herein which provide for
8 the continuing effect of the initial hiring, grievance/arbitration and any other such
9 specific provisions concerning duration or termination.

10 **Section 2. Notice and Renegotiation.**

11 If either the City or the Association desires to engage in negotiation for a successor
12 Agreement, then either or both shall give the other party written notice of its desire to negotiate
13 for a new Agreement no later than 120 days before the expiration of the present Agreement. In
14 the event that notice of intent to renegotiate is given by either party, the parties will begin
15 negotiations for a new Agreement not later than 60 days after notice is given, unless the parties
16 agree otherwise.

17 **Section 3. Interest-Based Bargaining.**

18 The parties agree to consider using the interest-based bargaining (IBB) process in future
19 negotiations, with the intent of achieving the goals of IBB.

20 **Section 4. Funding Obligations.**

21 The City presently intends to continue this Agreement each fiscal year through its term,
22 to pay all payments due, and to fully and promptly perform all of the obligations of the City
23 under this Agreement. All obligations of the City shall be paid only out of current revenues or
24 any other funds lawfully available therefore and appropriated for such purpose by the City
25 Council, in compliance with the Texas Constitution, Article 11, Sections 5 and 7.

1 **Section 5. Preemption of Chapter 143.**

2 To the extent that any provision of this article conflicts with or changes Chapter 143 or
3 any other statute, executive order, local ordinance, or rule, this Agreement shall supersede such
4 provisions, as authorized by Section 174.006 of the TEXAS LOCAL GOVERNMENT CODE.

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ARTICLE 24

ENTIRE 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 collective bargaining 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 bargain 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. This Agreement may be amended during its term by the parties only by written mutual agreement ratified in accordance with the provisions of Chapter 174.

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ARTICLE 25

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; Rules and Regulations of the Firefighters and Police Officers Civil Service Commission for the City of Austin; and policies and procedures of the Austin Fire Department.

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Notices required to be provided to the City under this Agreement or the FPERA, unless specifically noted otherwise, will be provided in writing to the Fire Chief's office and the City Attorney. Notices required to be provided to the Association under this Agreement or the FPERA, unless specifically noted otherwise, will be provided in writing to the Association President's office and the Association Attorney. A notice that is provided by mail and addressed to the two correct mailing addresses for the City or the Association will be deemed timely if postmarked no later than the date such notice is due.

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

Austin Association of
Professional Fire Fighters

By: _____
Mike Martinez
President