

**AGREEMENT BETWEEN
THE CITY OF AUSTIN AND
THE AUSTIN POLICE ASSOCIATION**

EFFECTIVE NOVEMBER 15, 2018

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ARTICLE 1
PREAMBLE

As authorized by Chapter 143 of the Texas Local Government Code, the City of Austin, Texas (hereinafter referred to as the “CITY”) and the Austin Police Association (hereinafter referred to as the “ASSOCIATION”) reached a Meet and Confer Agreement effective November 15, 2018 (hereinafter referred to as the “AGREEMENT”). The AGREEMENT was ratified by the City Council and the Association prior to the effective date.

Section 1. Date of Agreement

This AGREEMENT was made, entered into, and first effective this 15th day of November, 2018 (unless specific provisions or Exhibit terms set forth a later effective date) by and between the CITY and 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 slowdown 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, reserve officers, 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. "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. "Business day" means a day on which the City conducts normal business. 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.

11. “Reserve Officer” means an honorably retired Austin Police Officer who meets the minimum standards as determined by the Department. This definition may be amended by agreement of the ASSOCIATION President and the City Manager.
12. “Department” means the Austin Police Department.
13. “Agreement” means this “Meet & Confer Agreement” between the City of Austin and the Austin Police Association.

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 layoff 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 Release of Information

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 information to the extent and in the manner authorized by this AGREEMENT.

b) This Section shall apply to any authorized Independent Investigation whether completed prior to or after the effective date of this AGREEMENT. This section shall also apply to any authorized report or recommendation under Article 16 issued after the effective date of this AGREEMENT. The public release of Panel reports or recommendations issued prior to the effective date of this AGREEMENT are governed by the provisions of the AGREEMENT in effect at time of its issuance.

**ARTICLE 5
NON-DISCRIMINATION**

Section 1. Discrimination Prohibited

Neither the ASSOCIATION nor the CITY shall engage in discrimination against any employee because of the employee's membership or non-membership in the ASSOCIATION.

Neither the ASSOCIATION nor the CITY shall engage in discrimination against any employee because of the employee's race, color, national origin, religion or creed, age, sex or gender, sexual orientation, military status or veterans' status, or disability or handicap. An employee who believes that they have been discriminated against because of the employee's race, color, national origin, religion or creed, age, sex or gender, sexual orientation, military status or veterans' status, or disability or handicap retains all rights afforded to them under state and federal laws; however, neither the employee nor the ASSOCIATION can initiate a grievance under the Agreement Grievance Procedure in Article 20 concerning such allegations.

Section 2. Association Membership or Activity

a) 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 or retaliation against such Officers because of lawful ASSOCIATION membership or non-membership activity or status.

b) The CITY will not retaliate against Officers for seeking ASSOCIATION assistance with regard to employment matters, nor will it take actions to discourage them from doing so. The parties agree that this Subsection does not provide the basis for a dispute, claim or complaint under Article 20 unless there is a pattern of retaliation that has not been appropriately addressed by APD management.

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 AND CHECK OFF

Section 1. Payroll Deductions and Union Dues

a) 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, telephones, PAC, and dues for Austin Police Women's Association, Amigos en Azul Texas Peace Officers' Association, Combined Law Enforcement Associations of Texas, Police Officers Memorial Fund, Spectrum Advisory Group, LLC, ASSOCIATION members' dues for the "100" Club, and contributions by officers to the ASSOCIATION's charitable organization, *Austin Cops for Charities*, 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. During the term of this AGREEMENT, should the CITY determine to stop offering short term disability insurance to its employees, as an automatic benefit, the CITY shall notify the APA and will cease deducting the premiums for Spectrum Advisory Group, LLC, by the last pay period of the calendar year in which the CITY made such determination.

b) The CITY agrees to deduct, for those officers who provide a signed authorization form supplied by the CITY, premiums for other ASSOCIATION-preferred providers if approved by the CITY. Dues deductions for such premiums will begin no later than the third pay period after the officer submits a properly completed dues deduction form authorizing such deductions. Any such deductions will be discontinued if requested by the ASSOCIATION.

c) 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, except deductions for *Austin Cops for Charities*, 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) calendar 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.

d) The CITY understands that the ASSOCIATION may prohibit affiliate organizations from activities that impair or interfere with its role as the exclusive bargaining agent.

Section 2. Other Payroll Deductions

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 specifically listed in this Article or 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.

Section 3. Deductions for Death of Officer

Whenever an Officer dies, and the CITY is notified by the ASSOCIATION of its intent to invoke this provision, the CITY will deduct \$25.00 dollars, as directed by the ASSOCIATION, from each ASSOCIATION member's pay one time during the month immediately following the Officer's death. In the case of multiple applicable deaths in a month, the ASSOCIATION may have the deductions spread over consecutive pay periods upon reasonable notice to the CITY. As with other deductions, said amount will be forwarded directly to the ASSOCIATION. The ASSOCIATION shall provide, by internal policy, all other details, such as designation of beneficiaries, reimbursement to members, eligibility for benefits, and distribution of funds.

Section 4. Effect of Contract Expiration

The provisions of this Article shall remain in full force and effect after expiration of this AGREEMENT until a successor AGREEMENT has been reached, or for twelve (12) months after expiration of this AGREEMENT, if no subsequent agreement is ratified.

ARTICLE 7
WAGES AND BENEFITS

Section 1. Base Wages

a) For Fiscal Year 2018-2019

From the effective date of this Agreement through December 22, 2018, the pay scale attached hereto as Appendix A-1 shall apply to all Officers covered by this Agreement.

Effective the pay period beginning December 23, 2018, the pay scale attached hereto as Appendix A-2 shall apply to all Officers covered by this AGREEMENT. The pay scale reflects a 1% increase to base wages.

b) For Fiscal Year 2019-2020

Effective with the first full pay period of January 2020, the pay scale attached hereto as Appendix A-3 shall apply to all Officers covered by this AGREEMENT. The pay scale reflects a 2% increase to base wages.

c) For Fiscal Year 2020-2021

Effective with the first full pay period of January 2021, the pay scale attached hereto as Appendix A-4 shall apply to all Officers covered by this AGREEMENT. The pay scale reflects a 2% increase in base wages.

d) For Fiscal Year 2021-2022

Effective with the first full pay period of January 2022, the pay scale attached hereto as Appendix A-5 shall apply to all Officers covered by this AGREEMENT. The pay scale reflects a 2% increase to base wages.

Section 2. Longevity Pay

Longevity pay in the amount of one hundred and seven dollars (\$107.00) per year of service, up to a maximum of 25 years, shall 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 contributions for longevity payments.

Section 3. 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, or 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.

Section 4. Mental Health Certification Pay

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.

The Department agrees to conduct an annual review, with input from the Association, to assess whether additional officers will be entitled to such pay.

Section 5. Bilingual Pay

Bilingual pay will be paid at the rate of one hundred and seventy five dollars (\$175.00) per month for Officers certified under standards established by the Chief and assigned to the bilingual program. The bilingual program shall include German, Spanish, French/Haitian, Farsi, Arabic, Asian (Vietnamese, Cantonese, Thai, Korean, Japanese, and Malaysian), Russian, Ukrainian, and sign language for the deaf. Officers will not be paid cumulatively if they are certified in more than one language.

Section 6. Compensation for Lieutenants and Commanders

a) 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.

b) Lieutenants permanently assigned to an evening or night shift in Patrol shall be paid an additional stipend of three hundred dollars (\$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) calendar day cycle, when the shift begins at or after 12:00 p.m., shall be entitled to three hundred dollars (\$300.00) per month.

Section 7. 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. Additional performance pay may be awarded in the Chief's discretion.

Section 8. Clothing Allowance

During the term of this AGREEMENT, 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 9. 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, the Western Association of Schools and Colleges, or the Accreditation Service for International Schools, Colleges and Universities. The Chief also, in his sole discretion, has the authority to consider a general statement of equivalency received directly from the Foreign Credentials Service of America in determining that a degree or college credit(s) may be considered to be from an accredited college or university. (Reference: TCOLE Rule 211.1(a)(3), as modified by the Commission from time to time).

a) Certificate Pay

(1) Each Officer holding an Intermediate TCOLE Certificate shall be paid fifty dollars (\$50.00) per month. Each Officer holding an Advanced TCOLE Certificate shall be paid one hundred dollars (\$100.00) per month. Each Officer holding a Master TCOLE Certificate shall be paid one hundred fifty dollars (\$150.00) per month.

(2) No Officer hired after March 25, 2001, will be eligible for Intermediate or Advanced Certificate pay. Certificate pay 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.

b) Education Incentive Pay

(1) Each Officer holding an Associate's degree or sixty (60) hours of college credit shall be paid one hundred dollars (\$100.00) per month.

(2) Each Officer holding a Bachelor's degree shall be paid two hundred and twenty dollars (\$220.00) per month.

(3) Each Officer holding a Master's degree shall be paid three hundred dollars (\$300.00) per month.

Section 10. Shift Differential

The CITY shall pay an additional three hundred dollars (\$300.00) per month to an Officer normally assigned to an evening or night shift for a twenty eight (28) calendar day cycle, when the

shift begins at or after 12:00 p.m. Only Officers working 50% or more of their shifts beginning at or after 12:00 p.m., in a 28 calendar 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.

Section 11. Monthly Paid Compensation

It is expressly understood and agreed that the CITY reserves the right to prorate and pay all monthly payments in biweekly equivalents.

Items in Sections 2 through 10 above will be effective the pay period beginning November 25, 2018.

Section 12. Work Furloughs

It is expressly agreed and understood that during the term of this AGREEMENT, employees covered by this AGREEMENT shall be exempt from any mandatory employee work furlough or other unpaid leave plan implemented by the CITY for the purpose of reducing base wages paid to employees by reducing an employee's normal work hours. This Section does not apply to disciplinary actions.

Section 13. Severe Weather

The Department shall adopt a policy regarding leave for Officers required to provide essential services during severe weather or other emergencies that is in compliance with existing state law.

Section 14. Officer Residency Incentive Pay

a) The City Council may authorize Officer Residency Incentive Pay if the ordinance applies equally to each Officer who meets the criteria established by the ordinance.

b) The Residency Incentive Pay shall be in an amount and is payable under conditions, requirements and criteria set by the ordinance. Residency Incentive Pay is in addition to the base salary received by Officers.

c) The Chief of Police is not eligible for the Residency Incentive Pay authorized by this Section.

d) To the extent of any conflict between this Subsection and portions of any state statute, local ordinance, City or Department policy, including but not limited to Texas Local Government Code §143.041, the provisions of this Subsection shall preempt such statute, local ordinance, City or Department policy only to the extent of such conflict.

ARTICLE 8
OVERTIME, ON-CALL, COURT TIME AND CALL BACK

Section 1. Overtime

a) For purposes of computing overtime, all approved paid leave time, other than sick leave and vacation leave, shall be calculated as hours worked.

b) There shall be an exception to this Section if the Chief of Police in his/her sole discretion determines that the needs of Department necessitate allowing vacation time to be calculated as hours worked under specific circumstances of overtime work shortages including, but not limited to, other special events as determined by Chief.

c) Specific assignments contracted for by a source outside the “City”, excluding assignments reimbursed by Federal and State partners, will be compensated at the individual officer’s overtime rate of pay regardless of the number of productive hours the officer has worked in that work week.

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 calendar 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. Court Time

a) 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) 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).

c) 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).

d) 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).

Section 4. Call Back

a) Non-exempt Officers who are off-duty and receive notification to return to duty status one hour or less before the start of their regularly scheduled shift shall receive one (1) full hour of compensation at time and one half.

b) Non-exempt Officers who are off-duty and receive notification to return to duty status shall receive a minimum of three (3) hours of compensation at time and one half when notified to return to duty status:

- (1) After the conclusion of their regularly scheduled shift, or
- (2) More than one (1) hour before their regularly scheduled shift.

c) Non-exempt Officers who are off-duty and receive notification to return to duty status shall receive only fifteen (15) minutes of compensation at time and a half should the callback be cancelled within fifteen (15) minutes of the notification, or the actual time spent completing the assignment last no more than fifteen (15) minutes.

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

a) If an employee is in danger of having used all accrued time (vacation, sick, etc.) due to a serious illness or injury, as defined by the FMLA, 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 employee 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.

b) For purposes of Section 2 of this Article, “employee” shall mean any City of Austin employee except a Chapter 143 civil service employee of the Fire Department or the EMS Department.

Section 3. Payment of Sick Leave on Separation

a) For Officers hired on or before the effective date of this Agreement with at least sixteen (16) years of actual service who separate in good standing, separation pay for accrued sick leave will be paid as follows:

An Officer shall not be considered to have separated in good standing if he/she is indefinitely suspended or leaves the Department in lieu of termination. Except as provided in the following paragraph, the maximum accrued sick leave payable will be 1400 hours.

The maximum accrued sick leave payable will be increased to 1700 hours if, in addition to the above requirements, the Officer has not used more than 80 hours of sick leave in either of the two prior twelve month periods before the date of separation, and has not used more than 120 hours cumulative in the prior 24 month period before the date of separation. The Chief shall have the right to grant hardship approval for use of leave above these amounts on the basis of actual documented medical conditions or treatment justifying the absence.

For former PSEM officers, the sixteen (16) years requirement under section 3(a) shall be calculated using total City of Austin years of service, not strictly years of service at APD.

b) For Officers hired after the effective date of this AGREEMENT with at least sixteen (16) years of actual service who separate in good standing, accrued sick leave will be payable at the maximum amount of 900 hours.

Section 4. Administrative Leave

Officers may be granted Administrative Leave based on participation in a CITY or departmental program that awards Administrative Leave to program participants or for any purpose or event authorized by the Chief.

Section 5. Preemption

Officers shall be entitled to Special Leave as provided in this Article and as provided and defined by City of Austin and APD policy and procedure as of the effective date of this AGREEMENT. Such entitlements shall not be changed during the term of this AGREEMENT, and shall totally preempt any provisions for leave under Chapters 141, 142, and 143 of the Local Government Code.

ARTICLE 10
HOLIDAYS, VACATION AND SICK LEAVE

Section 1. Christmas Holiday

All non-exempt hourly Officers 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 Officers who are required by their immediate supervisor to work on Christmas shall be paid a holiday stipend pursuant to CITY policy.

Section 2. Seniority Standards

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.

Section 3. Vacation Accrual Rate

All Officers shall accrue regular vacation leave at the rate of 6.25 hours for each pay period in which benefits accrue.

Section 4. Accrual Caps for Vacation and Exception Vacation

a) All Officers may accrue up to four hundred (400) hours of vacation and up to one hundred sixty (160) hours of exception vacation. The maximum hours of vacation payable upon separation shall continue to be two hundred forty (240) hours of vacation and one hundred sixty (160) hours of exception vacation, in accordance with City policy.

Effective January 1, 2019 Officers may accrue up to two hundred (200) hours of exception vacation. This provision shall expire on December 31, 2020 and the maximum hours of exception vacation accrual shall revert to one hundred and sixty (160) hours.

b) It is the Officer's responsibility to ensure that the vacation and exception vacation balances remain at or below the accrual caps. Hours in excess of the caps will not accrue and no Officer will receive financial compensation for any hours in excess of the cap.

Section 5. Sick Leave Accrual Rate

All Officers shall accrue sick leave at the rate of 6.08 hours for each pay period in which benefits accrue.

Section 6. Preemption

Officers shall be entitled to Holiday, Vacation and Sick Leave as provided in this Article and as provided and defined by City of Austin and APD policy and procedure as of the effective date of this AGREEMENT. Such entitlements shall not be changed during the term of this

AGREEMENT, and shall totally preempt any provisions for leave under Chapters 141, 142, and 143 of the Local Government Code.

ARTICLE 11
ASSOCIATION BUSINESS LEAVE

Section 1. Definitions

As used in this Article:

a) “Association Business” means time spent in Meet and Confer negotiations; administering the terms of this AGREEMENT, including the adjusting of grievances and participating in a dispute resolution process; representing members in a disciplinary process (to the extent allowed by this AGREEMENT); and attending the annual State CLEAT conference and Executive Board meetings, the ASSOCIATION’S Executive Board meetings, regular ASSOCIATION business meetings and ASSOCIATION seminars and workshops (subject to the provisions of Section 4 below).

Section 2. Establishment of Association Business Leave Time Pool

a) Each year during the term of this AGREEMENT, during the first ten (10) days of the calendar year, the CITY will contribute 7,000 hours of Association Business Leave (ABL) to a pool of leave time which may be used in accordance with this Article. The CITY will track deductions from the pool as ABL is used.

b) Any pool hours remaining at the end of a calendar year will remain in the pool to be utilized in the following year. Hours of leave in the pool shall never have any cash or surrender value.

Section 3. Use of Association Business Leave

a) ASSOCIATION President

(1) The ASSOCIATION President may use ABL for any lawful activity consistent with the ASSOCIATION’S purposes, except as specifically prohibited by this AGREEMENT.

(2) The ASSOCIATION President may be permitted up to 2080 hours of ABL per year. Use of ABL by the ASSOCIATION President may be denied or revoked only in the event of an emergency situation. The ASSOCIATION President will be returned to ABL status after the emergency situation ends.

b) ASSOCIATION Board Members and Committee Chairs

(1) ASSOCIATION Board Members and Committee Chairs may use ABL to conduct ASSOCIATION Business as authorized in this Section. Board Members and Committee Chairs may also use ABL for special events that support the mission of the Department or the ASSOCIATION, but do not otherwise violate the terms of this Article. 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/her discretion, including employee representative groups with current dues check off, but excluding groups that seek to represent Officers regarding wages, hours and other conditions of employment.

(2) ASSOCIATION Board Members and each of the standing Committee Chairs may each be authorized to utilize up to four hundred hours (400) hours of ABL from the Pool during the year.

(3) Subject to the Chief's operational control and approval, two (2) Board Members, or Committee Chairs may be authorized to use more than four hundred (400) hours of ABL from the pool during the year. No more than one-half (1/2) of the hours specified in this Subsection may be utilized for legislative and/or political activities as limited by Section 4. If ABL for such Board Members(s) or Committee Chair(s) is revoked for any reason other than an emergency situation, the ASSOCIATION President may meet with the Deputy City Manager or the Assistant City Manager over public safety to review such action. The timeline for filing a grievance, if any, shall be tolled until such review has been completed.

Effective October 1, 2020 subject to the Chief's operational control and approval three (3) Board members or Committee Chairs may be authorized to use more than four hundred (400) hours of ABL from the pool during the year.

c) ASSOCIATION Members

The ASSOCIATION may request approval for the use of additional ABL for ASSOCIATION members. Any use of additional ABL will be solely at the Chief's discretion.

d) Accounting for ABL

All Officers shall account for all ABL taken through the Chief's office, and such time shall be subtracted from the Association leave pool. There shall be no entitlement for overtime pay for any hours worked on ABL.

e) Officer Conduct While on ABL

While on ABL, all Officers shall abide by the policies, rules, regulations, procedures, and directives of the Austin Police Department. ABL may be revoked for violations of such policies, including but not limited to acts that bring discredit to the Department or to the CITY, that tend to adversely affect the confidence of the public in the integrity of the Department, or improperly damages or impairs the reputation of the Department. The CITY recognizes the ASSOCIATION's prerogative to publicly express interests related to the wages, rates of pay, hours of employment, or conditions of work affecting the members of the ASSOCIATION. The CITY further recognizes that from time to time, the interests of the ASSOCIATION may not be shared by the Department or CITY. Expression of such interests in a manner consistent with the philosophy and values of the Department will not be considered to be a violation of this Subsection.

f) Temporary Vacancy

(1) In his or her sole discretion, the Chief of Police may determine that the continuous absence from duty of more than three months due to the usage of ABL creates a vacancy in the affected Officer's rank, but shall not expand the size of the classified service. When the Officer whose absence created the vacancy returns to active duty, thus creating a surplus in his/her rank, the last person promoted to that rank will be demoted to the next lower classification and placed on the reinstatement list with such rights as prescribed by this Article.

(2) The same result applies to all other promotions in the lower ranks which resulted from the first promotion and subsequent demotion.

(3) There shall be only one reinstatement list for each rank for persons demoted by virtue of this Section. Any person placed on the reinstatement list shall remain on the list indefinitely. Persons on the list shall be entitled to reinstatement to the rank from which they were demoted in the same order as the demotion occurred. This results in the last demoted at that rank being the first reinstated. Reinstatements must occur off of the reinstatement list for that rank before any promotional eligibility list. Until such reinstatements occur and the reinstatement list is exhausted, there shall be no "vacancy" created at that rank for the purpose of any promotional eligibility list.

Section 4. Use of ABL for Legislative/Political Activities

a) It is specifically understood and agreed that ABL 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 ABL for legislative and/or political activities shall be limited to raising concerns regarding officer safety. ABL shall not be utilized for legislative and/or political activities related to any election of public officials or City Charter amendments. ABL shall not be utilized for legislative and/or political activities that are sponsored or supported by the ASSOCIATION's Political Action Committee(s).

b) It is specifically understood and agreed that no ABL 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 ABL 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 prohibit an Officer from using vacation time to engage in legislative and/or political activities.

Section 5. Request for ABL

All Association Business Leave will be requested in writing to and approved by the ASSOCIATION President, and submitted in advance for final approval by the Chief in accordance with this Article. The Chief may waive the requirement that the request and approval be in writing. Requests for use of ABL shall be made as far in advance as is practicable.

Section 6. Effect of Contract Expiration

The provisions of this Article shall remain in full force and effect after expiration of this AGREEMENT until the earlier of the date a successor agreement has been reached, or twelve (12) months after expiration of this AGREEMENT.

ARTICLE 12
ASSOCIATION COMMUNICATION

Section 1. Association Access to Bulletin Boards, Pagers

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) bulletin board in other locations agreed to by the ASSOCIATION and the Chief, and individually assigned Departmental pagers or cell phones. Use of pagers or cell phones 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 2. 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/Detective

a) Eligibility

(1) A Police Officer shall be eligible to sit for the Corporal/Detective promotional examination after completing four (4) years of continuous service in the rank of Police Officer immediately before the date of the written examination from the date of initial commission with APD.

(2) The job description for the Corporal/Detective 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.

(3) Any Corporal/Detective designated to perform duties as an acting Sergeant, 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.

(4) Positions in the rank of Corporal/Detective shall be filled from an eligibility list created by a promotional procedure consisting of a written examination conducted in accordance with this Article.

(5) There shall be a pass/fail rate for the Written Examination which shall be 70 or higher. If the written examination is not passed, the candidate shall not be allowed to continue in the testing process and shall be struck from the eligibility list for that testing cycle.

b) Scoring

For the rank of Corporal/Detective the eligibility list shall be calculated as follows:

Written Examination Points:

(See Section 5)

Maximum Exam Points	100
Maximum Education Points	2
Master Peace Officer	1
Maximum Seniority Points	<u>+15</u>
Total Maximum Points:	118**

* If a candidate does not pass the Written Examination in accordance with Section 1 (a)(5) above, no additional points will be given; the candidate shall not be allowed to continue in the testing process; and the candidate shall be struck from the eligibility list for that testing cycle.

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

c) 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.

d) Education Points

(1) The following education points shall be added to each candidate's score, in accordance with the accreditation standard referenced in Article 7, Section 9 for education incentive pay. No cumulative points shall be allowed for more than one degree or Certification.

- (i) Add .5 point for 60 college hours
- (ii) Add 1.0 point for Bachelor Degree
- (iii) Add 2.0 points for Master's Degree

(2) It is the responsibility of the Officer seeking education or certification points to ensure that the Training Academy has the necessary supporting documentation for education or certification points. The documentation must be received by the Training Academy no later than 5:00 p.m. on the seventh (7th) business day before the written examination is administered. No education or certification points will be counted unless proper documentation is timely received by the Training Academy.

e) Master Peace Officer Certificate

(1) One (1) point shall be added to each candidate's score for having a TCOLE Master Peace Officers certification.

Section 2. Sergeant, Lieutenant, and Commander

a) Promotional Procedure for Rank of Sergeant, Lieutenant and Commander

(1) Positions in the rank of Sergeant, Lieutenant, and Commander shall be filled from an eligibility list created by a promotional procedure consisting of a written examination and at the option of the Chief of Police, either a Technical Skills Evaluation or an Assessment Center conducted in accordance with this Article.

(2) For each promotional cycle, the Chief of Police will determine whether the process will include a Technical Skills Evaluation or an Assessment Center. The notice for the Written Examination shall indicate whether the process will include a Technical Skills Evaluation or an Assessment Center.

(3) A Corporal/Detective or a Sergeant or Lieutenant becomes eligible for promotion to the next immediate level after two (2) years in rank.

b) Optional Technical Skills Evaluation

(1) The Technical Skills Evaluation will be developed by a consultant chosen by the Chief of Police from a list generated by the Director of Civil Service. The Evaluation will consist of one or more written scenario(s) to which the candidate shall submit a written response. The written Technical Skills evaluation should be closely related to the job functions of the rank being tested for and ascertainment of evaluative skillsets. If a specific format or formulaic response is favored, this should be clearly established in the instructions so as to not penalize a candidate for simply failing to follow a favored format. Candidates should be provided sufficient time to complete such evaluation.

(2) The Evaluation will be administered by the Civil Service Commission immediately following the Written Examination and before the grading of the Written Examination. The candidate's written responses to the Evaluation will be sealed and held for scoring by assessors selected by the consultant based on the same criteria used for selecting Assessment Center assessors in Section 6 below. The candidate's written responses to the Evaluation will not be graded unless the candidate scored at least seventy percent (70%) on the Written Examination.

(3) Scoring of the written responses will be based on a key provided to the assessors by the consultant. The scoring key will award points based on whether the response includes applicable topics or concepts and shall not allow partial credit for topics or concepts, to ensure that the scoring is objective in nature and does not reflect the assessor's subjective judgment.

c) Scoring

If applicable after the Assessment Center or Technical Skills Evaluation scoring has been completed for the rank of Sergeant, Lieutenant, and Commander the eligibility list shall be calculated as follows:

Written Examination Points: **Assessment Center or**
(See Section 5) **Technical Skills Evaluation**

Maximum Exam Points 100 Maximum Points 100

PROMOTION ELIGIBILITY LIST FORMULA

Written examination points

If an Assessment Center or Technical Skills Evaluation is administered, written examination score x .70 adjustment factor for the rank of Sergeant or .50 adjustment factor for the ranks of Lieutenant or Commander

+

If administered, Assessment Center or Technical Skills Evaluation Points x .30 adjustment factor for the rank of Sergeant, or .50 adjustment factor for the ranks of Lieutenant and Commander

+

$$\begin{array}{r}
\text{Time in Rank Points} \\
+ \\
\text{Education Points} \\
= \\
\text{Total points for promotion list**}
\end{array}$$

* If a candidate does not pass the Written Examination in accordance with Section 1 (a)(5) above, no additional points will be given; the candidate shall not be allowed to continue in the testing process; and the candidate shall be struck from the eligibility list for that testing cycle.

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

d) Time in Rank Points

Each Officer testing for the rank of Sergeant shall be entitled to up to a maximum of seven (7) Time in Rank points to be added to the final score, equivalent to one (1) point per year of service at the current rank at the time of testing, which shall be prorated for partial years. Each Officer testing for the rank of Lieutenant or Commander shall be entitled to up to maximum of five (5) Time in Rank points to be added to the final score, equivalent to one point per year of service at the current rank at the time of testing, which shall be prorated for partial years.

e) Education Points

(1) The following education points shall be added to each candidate's score. These points shall be added to the final score in accordance with the point formula below, and shall only apply to college degrees from an accredited college or university, meeting the accreditation standard referenced in Article 7 Section 9 for education incentive pay. No cumulative points shall be allowed for more than one degree or Certification.

- (i) Add .5 point for 60 college hours
- (ii) Add 1.0 point for Bachelor Degree
- (iii) Add 2.0 points for Master's Degree

(2) It is the responsibility of the Officer seeking education or certification points to ensure that the Training Academy has the necessary supporting documentation for education or certification points. The documentation must be received by the Training Academy no later than 5:00 p.m. on the seventh (7th) business day before the written examination is administered. No education or certification points will be counted unless proper documentation is timely received by the Training Academy.

Section 3. Commanders

a) If, during the term of this AGREEMENT, the number of classified positions at the rank of Commander is increased from the current number of eighteen (18) authorized Commanders to either twenty (20) or twenty-one (21), such newly created positions shall be filled as follows:

(1) Upon creation of the twentieth (20th) classified position at the rank of Commander, the Chief of Police shall be entitled on a one-time basis to fill that position by discretionary appointment of any Officer on the Commander Eligibility List in existence on the date the position is created. It is expressly understood and agreed by the Parties that no Officer shall have a right to fill such position by virtue of being on a reinstatement list.

(2) Upon creation of the twenty-first (21st) classified position at the rank of Commander, the Chief of Police shall be entitled on a one-time basis to fill that position by discretionary appointment of any Officer on the Commander Eligibility List in existence on the date the position is created. It is expressly understood and agreed by the Parties that no Officer shall have a right to fill such position by virtue of being on a reinstatement list.

(3) The Officers appointed in accordance with this Article will have full civil service protection.

(4) This provision expires at the end of this AGREEMENT.

Section 4. Written Examination to the Rank of Corporal/Detective, Sergeant, Lieutenant, and Commander

All candidates for the ranks of Corporal/Detective, Sergeant, Lieutenant, and Commander shall first take and pass 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 as described in this Section. The CITY may engage an independent consultant to professionally develop the written examination questions after consultations with the Director of Civil Service. 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.

A materials selection committee (MSC) shall be established annually. All but one (1) of the MSC members shall be chosen by the Chief of Police. The remaining member shall be chosen by the President of the APA and the selected Officer's name shall be submitted in writing to the Chief of Police a minimum of ten (10) days prior to the MSC's first meeting. The APA's selected member, along with the majority of the members selected by the Chief of Police shall be employees already at a rank minimally equivalent to the rank of the vacant position.

The MSC shall have at least 30 days to select materials that would be qualitative and relevant to the rank of the vacant position. The list of materials discussed within the MSC (including both materials selected and not selected shall be strictly confidential.

The CITY shall make reasonable efforts to provide a six (6) month study time window prior to promotional examinations, but it is agreed that, at the discretion of the Chief, expiration or exhaustion of a list may be considered in his/her determination of whether an earlier

examination is given. The amount of time provided for a promotional examination notice that is at least equivalent to the time prescribed in Section 143.029, Texas Local Government Code, is not grievable, may not be appealed either to the Fire and Police Civil Service Commission, hearing examiner, or to the district court.

Section 5. Assessment Center Process for Promotion to the Ranks of Sergeant, Lieutenant, or Commander

a) 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 (unless a Technical Skills Evaluation is used for the rank of Sergeant).

b) Prior to the written test being administered, the Chief shall determine whether to establish assessment criteria based on job content and responsibility or whether to establish a Technical Skills Evaluation Process. The Director of Civil Service 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), or the Technical Skills Evaluation Committee (TSEC) plus one (1) alternate. The ASSOCIATION shall also select three (3) individuals to serve on the ACRC or TSEC and one (1) alternate. All ACRC or TSEC members shall be selected from the tested rank or above. The ACRC or TSEC shall meet and consider the list of consultants approved by the Chief and recommend an Assessment Center or Technical Skills Evaluation Consultant from the list, subject to Council approval, pursuant to City purchasing policies and procedures.

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

d) 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.

e) The Consultant also selects the assessors for the Assessment or Evaluation, who shall meet the following criteria:

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

f) The Consultant shall conduct an orientation for candidates prior to administering the Assessment Center or Technical Skills Evaluation. If the Consultant deems the orientation mandatory, all candidates must attend in order to participate. 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.

g) 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 or Technical Skills Evaluation. The assessment sessions will be videotaped, and candidates may review their own session pursuant to procedures established by the Civil Service Director, 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 Civil Service Director shall make blocks of time available for Officers to review examination results for the Assessment Center or the Technical Skills Evaluation from 8:00 a.m. to 5:00 p.m., and, in addition, shall provide at least two (2) evening options until 10:00 p.m. However, the Civil Service Director will not provide these time periods and the required staff 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 or Technical Skills Evaluation process may be appealed either to the Police Civil Service Commission, hearing examiner, or the District Court.

h) Eligible Officers who do not participate in the Assessment Center process or the Technical Skills Evaluation process without legitimate excuse shall be removed from the eligibility list.

Section 6. Eligibility Lists for the Ranks of Corporal/Detective, Sergeant, Lieutenant, and Commander

a) 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.

b) All promotional eligibility lists shall be valid for twenty-four (24) months from the date the final eligibility list is initially posted. In the event of any occurrence which results in a change to the eligibility list, the changed list shall be effective on the day the original list was effective, even after termination of this AGREEMENT. In the event of a clerical or electronic error in computing the test scores, the expiration date of any promotional examination eligibility list may be amended by written agreement between the President of the ASSOCIATION and the City Manager.

c) If a written promotional examination for a rank has been given prior to the expiration of this AGREEMENT, the promotional process for that rank may continue to completion, the expiration of this AGREEMENT notwithstanding, and the resulting eligibility list shall have a life of twenty-four (24) months from the date the final eligibility list is initially posted. In the event of any occurrence which results in a change to the eligibility list, the changed list shall be effective on the day the original list was effective, even after termination of this AGREEMENT.

d) Once a promotional eligibility list has been established, the list shall be distributed to the Association and the Department concurrently. The Association may not disclose the contents of the list until either 72 hours after the receipt or after the Department posts the list, whichever occurs first.

Section 7. Appeals Criteria Committee

a) An Appeals Criteria Committee (ACC) will 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:

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

b) 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 the Police Civil Service Commission, a hearing examiner, or to District Court.

Section 8. Appeal Process after Written Examination

Within 72 hours after a promotional examination is held, the Commission shall post the individual raw scores by PID numbers only on a bulletin board located in the main lobby of the city hall. Any Officer who has taken a written promotional examination may, within seven (7) business days of the posting of the written promotional exam results, review his/her examination results. The process shall be established by the Director of Civil Service; 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 Civil Service Director shall make blocks of time available for Officers to review examination results from 8:00 a.m. to 5:00 p.m., and, in addition, shall provide at least two (2) evening options until 10:00 p.m. However, the Civil Service Director will not provide these time periods and the required staff 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 Civil Service Commission, a hearing examiner, or to the District Court of any facet of the examination review process.

Section 9. Review by Employee Review Committee

An Employee Review Committee (ERC) will be appointed to screen written examination appeals to the 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:

- a) 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
- b) One (1) member appointed by the Director of Civil Service.

Appeals may advance from the ERC to the 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 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 10. Time Limit to Fill Vacant Positions

It is expressly understood and agreed that the provisions in Chapter 143.036(d), 143.036(e) and 143.014(f) of the Local Government Code prescribing time limits for filling vacancies shall be followed from the date the vacancy occurs during the term of this AGREEMENT.

Section 11. 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 to the Chief.

Section 12. Military Promotions/Demotions

The following changes are made to Sections 143.036 and 143.072 of the Texas Local Government Code:

- a) 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, with such rights as prescribed in this Article.
- b) The same result applies to all other promotions in lower ranks which resulted from the first promotion and subsequent demotion.
- c) All other provisions of Sections 143.036 and 143.072 not specifically changed by this AGREEMENT shall remain in effect.

Section 13. Vacancy Created by Indefinite Suspension or Successful Appeal of a Promotional Bypass

- a) Notwithstanding any provision in this Article or any provision in Local Government Code Chapter 143, an indefinite suspension of an Officer (despite any pending appeal) shall create a vacancy, but shall not expand the size of the classified service. In the event that an indefinite suspension is overturned on appeal and the Officer is reinstated to active duty in the Department, or in the case of a successful promotional bypass appeal, 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, with such rights as prescribed in this Article.
- b) The same result applies to all other promotions in lower ranks which resulted from the first promotion and subsequent demotion.

Section 14. Reinstatement List

- a) There shall be only one reinstatement list for each rank for persons demoted by virtue of Sections 12 and 13 of this Article.
- b) Any person placed on the reinstatement list shall remain on the list indefinitely.
- c) Persons on the list shall be entitled to reinstatement to the rank from which they were demoted in the same order as the demotion occurred. This results in the first demoted at that rank being the first reinstated. Reinstatements must occur off of the reinstatement list for that rank before any promotions from a promotional eligibility list. Until such reinstatements occur and the reinstatement list is exhausted, there shall be no “vacancy” created at that rank for the purpose of any promotional eligibility list.
- d) 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.

Section 15. Bypass

Promotional bypass will be in accordance with the provisions of Section 143.036 (f) and (g) included below for reference.

- a) Unless the Police Chief has a valid reason for not appointing the person, the Police Chief shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the Police Chief has a valid reason for not appointing the eligible promotional candidate having the highest grade, the Police Chief shall personally discuss the reason with the person being bypassed before appointing another person. The Police Chief shall also file the reason in writing with the commission and shall provide the person with a copy of the written notice. On application of the bypassed eligible promotional candidate, the reason the Police Chief did not appoint that person is subject to review by the commission or, on the written request of the person being bypassed, by an independent third-party hearing examiner under Section 143.057.
- b) If a person is bypassed, the person’s name is returned to its place on the eligibility list and shall be resubmitted to the Police Chief if a vacancy occurs. If the Police Chief refuses three times to appoint a person, files the reasons for the refusals in writing with the commission, and the commission does not set aside the refusals, the person’s name shall be removed from the eligibility list.

Section 16. Vacancy

A vacancy for promotional purposes is created when:

1. An officer retires;
2. An officer resigns;
3. An officer dies;
4. An officer is promoted;

5. An officer is indefinitely suspended;
6. An officer is on authorize military leave of absence;
7. When an officer is appointed to the rank of Assistant Chief or Commander; or
8. When a temporary vacancy occurs, at the Chief's discretion in accordance Article 11, Section 3(f).

Section 17. Effect of Contract Expiration

The provisions of this Article shall remain in full force and effect after expiration of this AGREEMENT as to:

- a) All promotional eligibility lists created during this AGREEMENT; and
- b) All reinstatement lists created pursuant to this Article.

ARTICLE 14
HIRING PROCESSES

Part A. Application of Chapter 143 Processes

The ASSOCIATION, recognizing the CITY's need for flexibility in the hiring of both experienced police officers and Cadets for the Department's regular Training Academy program, hereby agrees to the deviations from Chapter 143 hiring procedures specifically authorized by this Article. Except as allowed by this Article, the CITY will comply with the hiring procedures specified in Chapter 143, and retains all prerogatives granted to it by the statutory procedures.

Part B. Initial Hiring Process

Section 1. Submission of Proper Application

a) 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.

b) The Police Chief shall establish the eligibility requirements for applicants for the position of police cadet, consistent with Chapter 143 and this AGREEMENT.

Section 2. Maximum Age of Applicants

For all applicants, the maximum age for application to the cadet position shall be forty-five (45) years old.

Section 3. Screening and Testing of Applicants

a) The Police Chief will develop and implement the screening and testing procedures used to determine whether an applicant will be offered a position as a police cadet in a Police Academy class. The screening and testing procedures will include, at a minimum, a structured Oral Interview Board and a background investigation. Nothing in this AGREEMENT or in Chapter 143 will restrict the nature of the tests administered to applicants or the procedures used to administer those tests.

b) Applicants who successfully complete all of the screening and testing procedures will be placed on an eligibility list per Department policy or procedure. Applicants on the eligibility list may be offered a position as police cadet in any upcoming Police Academy class.

c) Each eligibility list created as a result of the process described in this Section shall remain effective for twenty-four (24) months after certification by the Civil Service Commission.

Section 4. Police Internship Program

a) In a joint effort to promote diversity the City and Association agree that the Austin Police Department may create and implement a Police Internship Program for individuals who are interested in becoming Austin Police Officers. Anyone hired into or volunteers to participate in the Police Internship Program must pass the same screening and testing procedures as applicants for the position of Police Cadet, either at the beginning, or at the end of their participation in the Program, and/or at the time they become eligible for placement on an eligibility list, at the discretion of the Chief. The duration of the Police Internship Program will be at least the equivalent of a college semester.

b) Any intern who successfully completes the Police Internship Program shall be placed at the top of the current or next eligibility list for hire as a Police Cadet. Up to thirty-eight percent (38%) of each Police Academy class may consist of interns who successfully completed the Police Internship Program. Placement on eligibility lists under this section shall include any intern who completes an otherwise eligible internship program, even if it was begun prior to the effective date of this Agreement. If they are not eligible due to age, they will be placed at the top of the first eligibility list for which they are eligible and for which they remain otherwise eligible. If an intern remains enrolled as a full-time student, they shall be able to defer being placed on an eligibility list until completion of their then current course of enrollment.

c) The City may offer the same or similar Police Internship Program to any accredited college or university, or any high school.

d) The City of Austin Youth and Family Services Office shall implement a pilot Police Internship Program at a college or university, including but not limited to, Huston Tillotson University, or a high school, including but not limited to, Reagan High School or Akins High School, if one has not been created by the effective date of this Agreement.

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. 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. Annual Review

The Chief will notify the Association prior to the annual review of the hiring process and two Association representatives will be permitted to participate in that review.

Part C. Modified Hiring Process

Section 1. Applicability

The Modified Hiring Process applies only to the hiring of experienced police officers who may not need to attend the Department's regular Training Academy program.

Section 2. Eligibility Requirements

a) The Chief of Police shall establish the eligibility requirements for applicants for the Modified Hiring Process. The requirements need not be the same as those established by Chapter 143 or those applicable to applicants for the position of Cadet in the Department's regular Training Academy. The requirements may be modified by the Chief of Police, but shall include at least the following:

- At the time of application, each applicant must be actively employed as a police officer for a municipal, county, or state law enforcement agency that handles a full array of urban police work. Each applicant must have a total of at least three years of active service as a police officer for one or more municipal, county, or state law enforcement agency. Employment by or experience with a school or university law enforcement agency is not acceptable.
- Each applicant shall hold a current peace officer license from the Texas Commission on Law Enforcement Officer (TCOLE) or shall meet criteria established by the Chief for obtaining the TCOLE license.
- Each applicant will be subject to a background investigation.

b) The Chief of Police or his designee may, at his or her sole discretion, deny the application of any applicant for the Modified Hiring Process and may determine whether a particular applicant meets the eligibility requirements.

c) Once the hiring process for a modified class has been identified, the CITY will provide the process to the ASSOCIATION prior to accepting applications. The CITY agrees not to change the hiring process for that hiring cycle unless a court, the DOJ, the EEOC/TWCCRD, or a third party vendor that participated in designing the process, determines that the process outcome is unlawful under Title VII or Chapter 21 of the Texas Labor Code.

Section 3. Selection and Placement

a) The Chief of Police shall establish the selection criteria and procedures for the Modified Hiring Process, which need not be the same as those established by Chapter 143 or those applicable to applicants for the position of Cadet in the Department's regular Training Academy. Applicants who meet the selection criteria and procedures may be hired without being placed on an eligibility list.

b) Upon hire, the applicant will be placed in the position of "Cadet Senior," regardless of any rank or position the officer previously held in another law enforcement agency, to the same extent as if they had been hired under the processes prescribed by Chapter 143. Each Cadet Senior must complete a Modified Training Academy and probationary period.

Section 4. Training and Probation

a) The Chief of Police shall establish the training requirements for a Modified Training Academy. All Cadet Seniors hired through the Modified Hiring Process must successfully complete the Modified Training Academy.

b) Each Cadet Senior shall successfully complete the same probationary period as officers hired through the Department's regular hiring process.

Section 5. Civil Service Status

a) A Cadet Senior who successfully completes the Modified Training Academy will be placed in the Civil Service classification of Police Officer and automatically becomes a full-fledged Civil Service employee and has full Civil Service protection, subject to successfully completing probation. Until completion of probation, each officer hired through this Modified Hiring Process is an at-will employee who may be discharged by the Chief of Police at any time, without right of appeal.

b) Until completion of probation, an Officer hired through the Modified Hiring Process is excluded from the coverage of Articles 17 and 18 and cannot file grievances pursuant to Article 20 regarding disciplinary actions.

Section 6. Pay and Seniority

a) The Chief of Police may determine the pay rate for each Cadet Senior during the Modified Training Academy. Upon completion of the Academy, the Chief of Police may determine the pay rate for each Police Officer hired through this Modified Hiring Process. Any pay rate established by the Chief shall not exceed that of an Officer with two years' experience in the Austin Police Department.

b) Regardless of the pay rate established for each Cadet Senior, seniority for purposes of longevity pay shall begin when the Officer successfully completes the Modified Training Academy.

Section 7. Promotional Eligibility

Officers hired through the Modified Hiring Process must meet the same promotional eligibility requirements as Austin Police Department Officers hired through the Department’s regular initial hiring process.

Section 8. Implementation

The Modified Hiring Process described by this Article may be used at any time, for any number of applicants, as authorized by the Chief of Police.

Part D. Additional Provisions

Section 1. Benefit of the Bargain

The ASSOCIATION and the CITY share the goal of recruiting and hiring the most qualified applicants to become Austin Police Officers. The ASSOCIATION acknowledges the significant effort and skill of the Department’s Recruiting Unit in trying to meet this goal, but recognize that the Department needs to be able to adjust hiring procedures as necessary, without having to wait until the next Meet & Confer negotiation process. The parties agree that the degree of flexibility incorporated into this Article is of benefit to both parties and that this AGREEMENT would not have been reached without the flexibility provided by this Article.

Section 2. Effect of Contract Expiration

The provisions of this Article shall remain in full force and effect after expiration of this Agreement as to:

- a) Any hiring process which has been commenced in substantial reliance upon the provisions of this Article;
- b) The length of the “at will” probationary period for individuals in that status prior to the expirations of this AGREEMENT;
- c) Any eligibility list created under the terms of this Article will remain in effect for 24 months, notwithstanding the expiration of this AGREEMENT;
- d) Any interns who are participating in the Police Internship Program at the expiration of this AGREEMENT may be placed at the top of the first eligibility list created after expiration of this AGREEMENT.

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

a) 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.

b) 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, and under the supervision of the Chief, who 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 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; or
- 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
CIVILIAN OVERSIGHT OF
THE AUSTIN POLICE DEPARTMENT

Section 1. Civilian Oversight

a) Civilian Oversight means the process which incorporates civilian 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 Civilian Oversight of the Austin Police Department. Civilian Oversight may include an Office of the Police Oversight and a Community Panel/Board.

b) The purpose of Civilian 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 civilians;

(2) To provide an independent and objective review of the policies and procedures of the Austin Police Department; and

(3) To provide a non-exclusive location for accepting administrative complaints of officer misconduct.

(4) To provide transparency in policing and thereby fostering trust between the community and the Police Department.

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) Except as specifically permitted in this Article, the Civilian 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 Civilian 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 Director of OPO, 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. Definitions

In this Article:

a) “Anonymous Complaint” means any complaint under subsection (b) herein which the Complainant does not identify him or herself or does not wish to be identified. There shall be no duty to determine or reveal the identity of a Complainant.

b) “Complaint” means either (1) an affidavit or (2) any other written or verbal communication 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. The Parties specifically agree that anonymous written or verbal communications meet this definition of “Complaint.”

c) “Complainant” means a person, including an Officer, claiming to be a witness to or the victim of misconduct by an Officer. “Complainant” does not include the Department designee in the case of an administrative referral, except that the OPO may act as complainant in any allegation on its own initiative, and in the case of an anonymous complaint, the OPO or whichever entity that receives an anonymous complaint may act as Complainant. If the OPO acts as the complainant, the Director of OPO shall document the source of the complaint.

d) “Critical Incident” means:

- (1) Any force resulting in death.
- (2) Any force that resulted in a substantial risk of death.
- (3) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
- (4) Any unintentional firearm discharge resulting in another person’s injury or death.
- (5) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
- (6) Use of an impact weapon, including kinetic energy projectiles, and improved weapons that strikes the head of a subject resulting in serious bodily injury or death.
- (7) In custody deaths: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as critical incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.
- (8) The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.

*The definition of “serious bodily injury” found in the Texas Penal Code, Section 1.07(a)(46) will apply.

e) “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 Police Oversight; or
- (3) A volunteer member of the Panel.

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.

*For the purposes of this Agreement the term OPM shall mean OPO and the term OPO shall mean OPM

Definitions in this Section shall specifically preempt definitions contained within Chapter 143 of the Texas Local Government Code for purposes of this Article.

Section 3. The Office of Police Oversight (OPO)

- a) Access to Confidential Information

The Director of the OPO will have unfettered access to the Internal Affairs investigation process, except as provided herein. The Director of the OPO 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) Complaint Intake

(1) The OPO shall not gather evidence, or interview witnesses (except the complainant as provided herein), or otherwise independently investigate a complaint or other information of police misconduct. The OPO 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 an Officer appear or present evidence to the Director of the OPO. The OPO is authorized to accept complaints of Officer misconduct as provided in this Section.

(2) The OPO may obtain the following information in connection with the filing of a complaint of officer misconduct:

- (a) The complainant’s personal information;
- (b) The nature of the complaint;

- (c) Witness information;
- (d) The incident location, date, and time; and
- (e) The APD Officer(s) involved.

(3) If the intake is in person, the OPO shall digitally audio record the taking of the information provided in Section 3(b)(2). The OPO will promptly forward the completed complaint and audio recording to IAD when requested by IAD. A complainant may be subsequently interviewed by the IAD investigator for purposes of clarification or to obtain additional information relevant to the investigation. The OPO may attend any such subsequent interviews.

For external complaints, the OPO may make a recommendation for classification of the complaint to IA. The nature of the complaint and OPO's recommended classification may be made public, but shall not include the name of the complainant or officer, witness information, or the incident location, date, and time.

(4) Personnel from the OPO shall assist an individual in understanding the complaint process and the requirements for filing a complaint but shall not solicit or insist upon the filing of a complaint by any individual.

c) Access to Investigation Interviews

A representative from the OPO may attend an interview of the Officer who is the subject of the investigation or administrative inquiry, as well as all witness interviews. The OPO representative may directly question the Officer who is the subject of the investigation and any witness Officer only if agreed to by the subject Officer or witness Officer or his/her representative and the IAD investigator. At the conclusion of or during a break in any interview, the OPO 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.

d) Access to Dismissal Review Hearings

The Director of the OPO and/or one other member of the OPO may attend any Dismissal Review Hearing (or other administrative hearing or meeting conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct). Neither the Director of the OPO, and/or other member of the OPO nor the Internal Affairs Representative(s) may remain in the Hearing while the chain of command and the Chief of Police or his/her designee 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.

e) Quarterly Meetings

On a quarterly basis, the Director of the OPO, the Chief of Police, the Commander of the Internal Affairs Division, and the ASSOCIATION President shall meet to discuss any issues related to the civilian oversight process.

Section 4. Civilian Panel/Board (“Panel”)

a) The City Manager may create a Civilian Panel/Board that separately oversees certain acts of conduct of police officers utilizing the following guidelines. If the Manager creates such an entity, the City Manager and the ASSOCIATION shall meet and confer for at least thirty (30) days prior to presentation to the City Council. Nothing in this Article shall limit the Authority of the City Manager to assign duties and/or tasks to the Panel/Board that are not inconsistent with this AGREEMENT.

The City Manager is entitled to use and employ the Civilian Panel proceeds set forth in this Agreement, or to develop and implement a separate and different Civilian Panel process outside of this Agreement, under his existing legal authority and subject to the limitations of that authority. If the City Manager chooses to implement a separate and different Civilian panel process, the provisions of this Article regarding the Civilian Panel shall be null and void. The City Manager alternately may propose changes or modifications to the Civilian Panel process in this Agreement, and should the City Manager take that option, the parties agree to meet and confer in good faith toward the implementation of reasonable changes consistent with the spirit, intent, and purpose of these provisions. Changes shall be agreed to between the ASSOCIATION President and the City Manager and ratified by the City and ASSOCIATION if required by state law.

b) Function

The Panel shall serve to make recommendations and review individual cases of Officer conduct as authorized in this Article. Panel members shall perform their duties in a fair and objective manner.

c) 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.

d) Training

Each member must complete the training prescribed herein prior to commencing their service on the Panel, except as specified herein. The required training shall include:

(1) Attending a three to four (3-4) day training by APD tailored specifically for Panel members including, at a minimum, the following:

- (a) Special Investigations Unit;

- (b) Officer Involved Shootings;
- (c) Response to resistance;
- (d) The Police Training Academy;
- (e) Crisis Intervention Team;
- (f) Firearms, including FATS training (annually);
- (g) Bomb and SWAT;
- (h) Annual ride-outs on at least two shifts (14 hours) in different parts of the City during the term of a panelist, one of which must include a Friday or Saturday night in Downtown Command from 11 pm to 3 am. The Downtown Command ride-out must be completed within six months of selection as a Panelist (panelist shall be encouraged to make quarterly ride-outs), and
- (i) A presentation by the ASSOCIATION.

(2) Attending six (6) hours of training provided by the Internal Affairs Division.

These training requirements are subject to change by unanimous agreement of the Chief of Police, the ASSOCIATION President, and the Director of the OPO.

e) Resign to Run

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

f) Cases Subject to Review by Panel

Regarding Officer conduct, the Panel may review “critical incidents.”

g) Nature of Proceedings

(1) 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.

(2) Not less than five (5) business days prior to a Panel meeting, the OPO shall provide the Internal Affairs Division and the individual designated by the President of the ASSOCIATION 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.

Civilian's wanting to address the Panel during the public input/communications section of the meeting must complete a speaker sign-up card listing the agenda item they wish to address, and will be limited to addressing the topic identified. 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.

(3) 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.

h) Access to Confidential Information by Panel

(1) Panel members shall have full access to all administrative investigative and disciplinary files necessary to perform their functions under this AGREEMENT as defined in Section 4f above. Panel members may ask questions and obtain specific facts, details and information from the Director of the OPO, IAD, or the Chief's office. As part of such access, the Director of the OPO shall make available to individual Panel members all IAD case files scheduled for review pursuant to Section 4(f) above. Individual Panel members may review the IAD case file in the presence of a member of the OPO either at the OPO office or another City facility (such as City Hall, Library, Police Sub-station) so long as it is a secure location. The prohibitions and restrictions in Section 8 of this Article apply to any confidential information viewed by Panel members during this review opportunity. Panel members shall not copy or remove any portion of the file. The Director of the OPO shall be responsible for security of the file.

(2) In an effort to ensure the Panel has a more complete view of the types of cases the APD reviews, the Director of the OPO shall meet with the Panel twice a year to provide them an overview of APD activity up to that point in the calendar year.

i) Private Case Briefing Session

(1) Regarding Section 4f above, the Panel may meet in Private Session to be briefed concerning the facts of the particular case to be reviewed. The Director of the OPO and/or the IAD representative shall present to the Panel the information obtained from the IAD investigation. The duties of the IAD representative may be performed by others, including the chain of command, training staff, and/ or forensics. Members of the Panel may be provided with READ ONLY electronic access to all or part of the IAD files, or the physical files themselves, during these presentations.

(2) An APD Officer designated by the President of the ASSOCIATION and one individual from the Internal Affairs Division shall be present during the Panel Private Session case briefing, subject to the following provisions:

(a) The ASSOCIATION'S Representative will not participate in the briefing and is present only as an observer, with the following exceptions:

(i) The ASSOCIATION'S Representative may request that the Director of the OPO allow the representative to present information relevant to a case before the Panel.

(ii) A Panel member may request that the ASSOCIATION'S Representative present information relevant to a case before the Panel.

(iii) Any information provided by the ASSOCIATION'S Representative shall be presented in a neutral manner.

(b) The ASSOCIATION'S Representative may not be involved in the case as a witness, investigator, relative, or officer in the chain of command.

(c) Information in the possession of the ASSOCIATION'S Representative 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.

(3) 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 civilian's complaint, as well as information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests.

(4) In addition to those individuals involved in briefing the Panel, and the ASSOCIATION'S Representative, the Director of the OPO, the Director's designee a designated attorney(s) from the City Attorney's Office may be present during the Private Case Briefing Session. No other individual may be present unless the Panel requests further information.

i) Public Session and Comments

After the Private Session, the Panel shall meet in Public Session to receive public input/communications. During the public session, the Director of the OPO 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 civilian communications with the City Council shall apply to the public session of the Panel meetings. The Director of the OPO, in consultation with the Panel, shall set the time

limits for such proceedings, and shall be responsible to prevent discussion of matters not on the Session agenda.

k) Deliberations

After receiving public input, if any, the Panel shall discuss the particular case under review in private session. The Director of the OPO, Director's designee, and a designated attorney(s) from the City Attorney's Office may be present during such discussion. No other individual may be present unless, the Panel requests further information; if the Panel does so, the Director of the OPO, the Director's designee, and the IA Commander or Lieutenant, must also be present.

l) Action and Recommendations

(1) The Panel shall not take action or make recommendations not authorized by this Article. At the conclusion of the review process set forth above, the Panel, upon a majority vote of its total members, may make the following written recommendations to Chief of Police:

- (a) Further investigation by the Department is warranted;
- (b) Department policies warrant review and/or change;
- (c) A non-binding recommendation on discipline, limited to cases involving a "critical incident" as defined in this Article;
- (d) Changes to the training of Officers, or
- (e) Changes to any other practice or procedures of the APD.
- (f) Any other recommendations that are based off information that is publicly available.

(2) The Director of the OPO may make non-binding written disciplinary recommendations on "critical incidents" as defined in the Article. If such a recommendation is made, it shall be released after a disciplinary decision has been rendered by the Chief.

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. Neither the OPO 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. A deliberate 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 be permanently removed from the Panel upon a violation of this standard.

(3) Members must attend the meeting and hear the merits of the case in order to vote on a recommendation. The Panel's recommendations shall be reduced to writing. The Panel's written recommendations shall explain the Panel's issues(s) or concern(s).

(4) The Director of the OPO shall consult with the Panel in formulating any recommendations to the Chief of Police.

(m) Subject Officer Interviews of Critical Incident Cases

For internal affairs interviews in which the subject officer(s) of the investigation is interviewed, at the discretion of the Director of the OPO, a member of the Panel may observe, by video, the interview from an adjacent room. The Officer being interviewed shall be advised if a panel member is observing the interview. The time spent in observing the interview under this section does not count towards the panelist's time under Section 4(g)(1). The panel member is still held to the same confidentiality requirements of the article and may not discuss or give a public opinion on the interview. However, the panel member may discuss the interview with the OPO and other panelists. Any panel member that violates this confidentiality provision shall be permanently removed from the panel and is not eligible for reinstatement.

(n) Term Limits for Panel Members

There shall be term limits for panel members. Each panel member shall serve for two (2) years on evenly staggered terms. No member may serve for more than two (2) consecutive terms. Panel members are subject to removal by the City Manager for any reason.

If, at any time during the life of this AGREEMENT, should the term limitations of this Section result in less than five (5) panel members, the City may allow a panelist to stay past their four (4) year limitation so that the Panel still has enough members to operate. However, the City shall make reasonable efforts to find a replacement panelist.

(o) Access to previous Panel Recommendations

Panelists shall have the authority to access and review any and all Panel recommendations made in the past.

Section 5. Independent Investigation

a) The Chief of Police and the City Manager retain all management rights to authorize an Independent Investigation concerning police conduct.

b) The Director of the OPO may recommend that an Independent Investigation is warranted. The Director shall provide a public report setting forth the basis and concerns of the Director supporting any recommendation for an Independent Investigation. In addition, the Director shall provide a public report setting forth the Director's conclusions and recommendations after its review of any Independent Investigation.

Section 6. Public Release of Information

a) Documents Subject to and Timing of Public Release:

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 the following documents in the manner prescribed by this Section:

(1) A Panel and/or the Director of the OPO recommendation that Department policies warrant review and/or change, as authorized by Section 4(l)(1)(b). Such recommendations shall be subject to public release, in their entirety, upon delivery to the Chief of Police.

(2) A Panel and/or Director of the OPO recommendation that further investigation by the Department is warranted, as authorized by Section 4(l)(1)(a). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), and only if the Police Chief imposes discipline.

(3) The Director of the OPO recommendation that an Independent Investigation is warranted, as authorized by Section 5(b). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(4) A Panel report setting forth the Director of the OPO's/Panel's conclusions and recommendations after its review of any Independent Investigation, as authorized by Section 5(b). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(5) A Director of the OPO/ panel non-binding recommendation on discipline in a case involving a critical incident, as authorized by Section 4(l)(1)(c). Such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(6) The body of a final report (but not exhibits) prepared by an investigator who conducts an Independent Investigation authorized by the Chief of Police or City Manager concerning police conduct, whether or not recommended by the Panel. The body of such report shall be subject to public release, in its entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

(7) Panel recommendations made under Section (4)(l)(1)(d), (4)(l)(1)(e) and Section (4)(1)(1)(f).

(8) For external non-critical incident cases in which discipline is imposed at the level of an oral reprimand or greater, OPO recommendations may be made public along with the corresponding oral reprimand (or greater).

- (9) The Chief's response to the panel or OPO, if any, shall be made public.

It is expressly understood and agreed by the parties that any recommendation and/or report released pursuant to this Section may contain information which would otherwise be made confidential by Section 143.089(g) of the Texas Local Government Code.

- b) The public release of information authorized in this AGREEMENT will be reviewed 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) Unauthorized Release of Confidential Documents/Information:

- (1) Except as permitted by this AGREEMENT, employees of the OPO shall not publicly comment on the specifics of pending complaints and investigations. Members of the Panel shall not publicly comment on the specifics of pending investigations prior to a Panel decision. All public comments and communications by the OPO 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.

- (2) 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 prejudgment on the merits of a particular case that is under investigation or subject to review, prior to the completion of the civilian 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 prejudge the merits, or demonstrate a bias on the case. In the event of a deliberate violation of this standard, the Panel member shall be permanently removed from the Panel as set forth below.

- (3) 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 OPO or Panel members will make reference to or identify an Officer by name, unless such release is then permitted by law or this AGREEMENT, 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 to 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.

- (4) All OPM written publications shall be provided to the APD and the APA simultaneously with distribution to the public. Annual Reports from the OPO shall be given to the APA five (5) working days in advance of the public release of the report.

- (5) Any deliberate release of information that is made confidential by law or by this AGREEMENT shall result in the permanent removal of the offending member from the Panel.

Any deliberate premature release of information before it may properly be released likewise will result in the permanent removal of the offending member from Panel.

d) Director of the OPO's Closeout Meeting

After the Chief of Police has made a disciplinary decision on a case in which a complaint has been filed, the OPO may be allowed to have a "Closeout Meeting" with the complainant. The Chief shall be notified in writing in advance of any closeout meeting and shall be allowed to have an IAD investigator present during the meeting, if the complainant agrees. Such meeting shall be recorded. During the Closeout meeting, the OPO may notify the complainant of the outcome of the disciplinary decision as provided by the Austin Police Department, even if the discipline was something less than a suspension. The OPO may also give a verbal overview of the IAD investigative findings without providing names of any individuals involved in the investigation. The OPO, may at his/her discretion review appropriate video footage during such meeting.

The OPO shall send a "close-out" letter informing the complainant of the final disposition of the complaint, disciplinary action taken, if any, along with which general orders were reviewed.

Section 7. Dispute Resolution

a) Complaints concerning the conduct of OPO employees shall be filed with the Director of the OPO, or if the complaint concerns the personal conduct of the Director, 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 Director (or City Manager if the complaint concerns the personal conduct of the Director) 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(c) 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 OPO'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 OPO, and shall not be disclosed by any person, unless otherwise authorized by law or this AGREEMENT. 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 Civilian Oversight process, including OPO and Panel, are granted a right of access to the information contained within the 143.089(g) files of Officers to the extent authorized by this AGREEMENT.

b) Individuals involved in the Civilian Oversight process, including OPO and Panel, shall not be provided with information contained within a personnel file, including the 143.089(g) file of an 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 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 Civilian 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.

(4) A credible allegation as determined by the City Manager shall result in an investigation.

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 Civilian Oversight, including OPO and Panel, are subject to these confidentiality provisions even after their association with the Oversight process has terminated.

f) Following any review of an alleged violation of the confidentiality provisions of this AGREEMENT, the City Manager's office will provide information about the outcome of that review to any Officer(s) directly affected by the alleged violation.

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

Opinions or recommendations from individuals involved in Civilian 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 and this AGREEMENT. No party to an arbitration or Civil Service proceeding may use or subpoena any member of the Panel or the OPO (unless the Director took the complaint in the relevant case) as a witness at an arbitration or Civil Service proceeding including, but not limited to live or deposition testimony, which concerns their 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 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 an 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. Dismissal of Current Lawsuit

The ASSOCIATION will dismiss without prejudice its pending lawsuit concerning civilian oversight (case No. D-1-GN-18-000923, Dist. Ct. of Travis County) within 10 days of the effective date of this AGREEMENT. The ASSOCIATION agrees that during the term of this AGREEMENT (including any agreed extensions) it will not file, authorize, support, or participate in any lawsuit raising any of the claims against the City that are included in the scope of its pending lawsuit concerning civilian oversight.

Section 12. 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 Director of the OPO'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 ASSOCIATION on behalf of the Officer, halts the Department's investigative or disciplinary process. In no event will the actual time exceed 180 calendar days, as defined and provided for in Chapter 143 of the Texas Local Government Code, as modified under other provisions of this AGREEMENT. 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"), and in effect at the time of the dispute. To be appointed, the arbitrator must be available to hear the arbitration within thirty (30) calendar 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.

Section 13. Mediation

The OPO may initiate a mediation program within the office wherein complainants with a "C" or "D" classification may meet the officer that is the subject of the complaint with a certified mediator to see if a resolution to the complaint may be reached. Participation in such mediation is strictly voluntary on the part of the officer. If mediation is agreed to, the CITY and ASSOCIATION agree that the mediation may be given access to 143.089(g) information from the case to help achieve a resolution to the case. The mediator will sign a confidentiality agreement

prohibiting the public release of such information. Once mediation has been agreed to, the matter cannot be returned to the Department to be handled as a disciplinary matter.

ARTICLE 17
PROTECTED RIGHTS OF OFFICERS

Section 1. Effect of Article

a) 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.

b) To be considered by the CITY as a basis for investigation and/or discipline, there must be a complaint as defined in this Article and Article 16.

Section 2. Definitions

In this Article:

- a) "Complaint" shall mean "Complaint" as defined in Article 16.
- b) "Complainant" shall mean "Complainant" as defined in Article 16.
- c) "Disciplinary Action" means suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.
- d) "Investigation" means an administrative investigation of alleged misconduct by a police Officer that could result in disciplinary action.
- e) "Investigator" means an agent or employee of the Department or an Independent Investigator who is conducting an investigation.
- f) "Statement" means any communication (oral or written) setting forth particulars or facts regarding the alleged misconduct under investigation.
- g) "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 Community Panel or the Director of OPO, 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. This paragraph does not apply to a Dismissal Review Hearing or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct.

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 and/or ASSOCIATION representatives who are not involved in the investigation.

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 Dismissal Review Hearing (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an officer for alleged misconduct):

(i) The Officer and his representative shall be allowed up to eight hours to review any and all evidence gathered or obtained during the investigation. The evidence available for review shall include the IA summary, if any; and

(ii) The Department shall provide written notice of the alleged policy violations and the specific range of discipline being considered. The Chief of Police shall not be restricted to the alleged policy violations and/or the range of discipline provided pursuant to this Subsection in making the final decision as to discipline, if any.

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 up to eight 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 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. Dismissal Review Hearings (The Officer’s Loudermill Hearing)

When a Dismissal Review Hearing (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct), is held, the following procedures shall apply:

a) It shall be optional for the Officer who is the subject of the investigation to attend and answer any questions at the hearing. Questions posed at the DRH do not constitute an “investigation” as defined in Section 2(d). No negative inference will be permitted should the Officer elect not to attend or answer questions. If the Officer chooses not to attend or has determined he / she will not answer any questions at the hearing, the Officer must give 48 hours notice to the Department by filling out the necessary waiver form.

b) Should the Officer choose to attend, the Officer may audio tape the portions of the hearing in which the chain-of-command and Chief of Police or his designee discuss 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) Information provided or made available for review remains confidential in the hands of the Officer and his/her representative pursuant to 143.089(g), APD policy, and orders of non-communication about internal investigations, except for consultations with counsel and/or ASSOCIATION representatives who are not involved in the investigation.

b) 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.

c) If an Officer is suspended for an alleged violation of Section 6(b), 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. Sections 143.053(e) & (f) of the Texas Local Government Code are hereby superseded 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 or an ASSOCIATION representative or both during an interview provided the attorney/representative complies with the Internal Affairs interview protocol. An Officer shall have the right to be represented by an attorney or an ASSOCIATION representative or both of the Officer's choice during a Dismissal Review Hearing (or 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 violation may be considered by the Civil Service Commission or a Hearing Examiner in any disciplinary appeal hearing if the violation substantially impaired the Officer's ability to defend against the allegations of misconduct.

Section 9. Scheduling of Indefinite Suspension Appeal

If an Officer appeals an indefinite suspension to an Independent Third Party Hearing Examiner, the parties will make a good faith effort to schedule the appeal of an indefinite suspension within 90-180 days of the date the Officer was indefinitely suspended

ARTICLE 18
DISCIPLINARY ACTIONS, DEMOTIONS & APPEALS

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

a) Appealable and Non-Appealable Suspensions

It is understood that 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.

(1) 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.

(2) 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.

b) 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.

(c) The Department will continue to promote programs that emphasize counseling and training for policy violations described by the Chief to be minor in nature and for which the Chief believes the behavior can be corrected through training and counseling.

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 Temporary Suspensions of Sixteen (16) to Ninety (90) Days

a) The Police Chief may, in cases the Chief deems to warrant indefinite suspension, offer to impose instead 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.

b) In cases where the Officer's TCOLE license is suspended, the Chief of Police may impose a non-appealable suspension commensurate with the period during which the license is suspended.

Section 4. Payment for Accrued Leave upon Indefinite Suspension

a) An Officer who has been indefinitely suspended may, upon request, be paid in a lump sum for up to two hundred forty (240) hours of accrued vacation and up to one hundred sixty (160) hours of accrued exception vacation.

b) If the indefinite suspension is overturned as a result of the appeal, the Civil Service Commission or a Hearing Examiner may restore such leave, but a total award of leave and back-pay, if any, shall be offset by the amount paid to the Officer under Section 4(a) above.

Section 5. 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 6. 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 7. Last Chance Agreement

a) 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.

(1) The Officer will successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Police Chief.

(2) 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.

(3) 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.

b) 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 8. Extending Disciplinary Deadline by Agreement

a) For the purposes of this Article:

1) The Chief may not complain of an act that occurred earlier than the 180th day preceding the date the Chief suspends the officer; or

2) If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the police officer is subject to a criminal penalty, the Chief may not complain of an act that is discovered earlier than the 180th day preceding the date the Chief suspends the police officer. For the purposes of this section discovered shall mean the time at which a supervisor at the rank of Assistant Chief or above has notice of the potential misconduct. The Chief must allege that the act complained of is related to criminal activity. The Chief shall not be required to prove a criminal culpable mental state under this section, nor shall the Chief be required to prove charges under a criminal “beyond a reasonable doubt” standard.

b) An Officer and the Chief, or designee, may agree to extend this deadline for imposing discipline for a period not to exceed additional thirty (30) day increments. Either the Officer or the Chief may offer or request the extension. The agreement to extend his deadline shall be in writing and shall be signed by both the Officer and the Chief, or designee.

c) Any disciplinary action taken by the Chief before the extended deadline shall be considered timely. An agreement to extend the deadline does not affect an Officer’s right of appeal from the disciplinary action.

Section 9. 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 10. 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.

Section 11. 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) nor 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 12. 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 posthearing conference with counsel for the Department and the Officer and advise counsel what issue(s) the hearing officer wants covered in posthearing 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 13. Submission of Briefs in Lieu of a Hearing

a) If the Officer and the CITY agree, the appeal may be decided through the submission of written briefs to the Civil Service Commission or a Hearing Examiner, without holding a public hearing. The Agreement shall be reduced to writing and signed by the Officer and the Police Chief, or their respective representatives.

1. The parties shall endeavor to agree to the parameters of the briefs, including the submission of exhibits, affidavits and issues to be decided.
2. Written briefs shall be submitted within thirty (30) days of the date the written agreement is signed.
3. Reply briefs shall be submitted within fifteen (15) days of the date the initial brief is submitted.
4. No additional briefs shall be allowed except upon permission of the Hearing Examiner / Civil Service Commission Chairperson.
5. The parties may mutually agree to extend the time periods; however, if no agreement is reached additional time shall be granted to the parties only under extraordinary circumstances as determined by the Hearing Examiner / Civil Service Commission Chairperson.
6. The Hearing Examiner/ Civil Service Commission Chairperson may hold a telephone conference call(s) with the parties to address the contents of the briefs or any other relevant issues.

b) If the parties do not agree to decide the appeal through the submission of briefs, the appeal shall proceed to a public hearing as provided for in Chapter 143.

c) The Hearing Examiner / Civil Service Commission shall endeavor to issue a ruling within thirty (30) days after the receipt of the final briefs. This provision specifically supersedes the statutory requirement in Chapter 143 that the Commission must issue its decision on the same day a case is heard.

d) Failure of the Hearing Examiner / Civil Service Commission to meet his/her/its obligations as set out in this Subsection does not jeopardize the rights of either the CITY or the Officer.

Section 14. Special Appeal Process for Demotions

a) This Section applies only to involuntary demotions based on misconduct or performance issues. It does not apply the following:

- (1) Demotions related to the return from military service of another Officer;
- (2) Demotions caused by a reduction in force;
- (3) Demotions related to the reinstatement of another Officer after recovery from a disability;
- (4) Demotions from the rank of Assistant Chief of Police;
- (5) Demotions related to the reinstatement of another Officer after indefinite suspension; or
- (6) Demotions due to return to work of an ASSOCIATION representative on ABL.

b) If the Chief chooses to demote an Officer, the Chief shall file with the Civil Service Commission a written statement giving the reasons for the demotion. A copy of the written statement shall be furnished immediately to the affected Officer.

c) The Officer may appeal the demotion by filing a written appeal notice with the Director of Civil Service within ten (10) days after the date of the demotion. The Officer may elect to appeal to an independent third-party Hearing Examiner selected in accordance with the provisions of Section 143.057 of the Local Government Code, as amended by this AGREEMENT. The Officer's election to appeal to a Hearing Examiner must be contained in the Officer's initial notice of appeal.

d) During the pendency of the appeal, the Officer's rank and pay shall not be changed but the Chief may reassign the Officer to perform duties appropriate to the rank held by the Officer immediately prior to the promotion. The Officer's absence from his promoted position shall not create a vacancy, but the Chief may pay higher classification pay to another Officer to perform the duties of the promoted position.

e) If the Officer appeals to the Civil Service Commission, the decision of the Commission is final and may not be appealed further. If the Officer appeals to a Hearing Examiner, the decision may be appealed only on the grounds that the Hearing Examiner was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means.

f) If the Commission or Hearing Examiner upholds the Chief's demotion, the Officer shall be returned to the rank held immediately prior to the promotion, the Officer's pay shall be adjusted accordingly, and the Officer's name shall be permanently removed from the promotional eligibility list if the list is still in effect. The Officer's time in grade in the promoted position shall not count toward eligibility for future promotion.

g) If the Commission or Hearing Examiner overturns the Chief's demotion, the Officer shall be returned to the promoted rank in an assignment to be determined by the Chief.

h) In addition to the provisions listed in Section 18 *Preemption*, below, this Section shall be entitled to preemption including but not limited to Sections 143.010, 143.015, 143.054, 143.057 and all provisions of Subchapter B of the Texas Local Government Code Chapter 143.

Section 15. Substitution of Demotion for Indefinite Suspension

In the appeal of an indefinite suspension, the Civil Service Commission or a Hearing Examiner may substitute a demotion for the indefinite suspension imposed by the Chief.

Section 16. Mediation

The CITY shall implement a voluntary mediation process concerning both citizen and internal 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 complainant 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 17. Effect of Contract Expiration

The provisions of this AGREEMENT shall remain in full force and effect after expiration of this AGREEMENT as to:

- a) Any investigation assigned a Control Number by the Internal Affairs Division prior to the expiration of this AGREEMENT;
- b) Any disciplinary decision by the Chief prior to the expiration of this AGREEMENT; or
- c) Any appeals of such disciplinary action.

Section 18. Authority of the Civil Service Commission/Hearing Examiner

If an Officer is indefinitely or temporarily suspended, 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 may affirm or reduce the suspension imposed by the Chief of Police to a temporary suspension not to exceed 180 days.

Section 19. Access to IAD File

If an Officer appeals a disciplinary action, and provides a written request, the CITY will provide to the Officer and his/her representative a copy of the un-redacted IAD file within 5 business days of receiving the request. The file remains confidential in the hands of the Officer and his/her representative to the extent the release of such information is still protected from public disclosure by Local Government Code Section 143.089(g) or other law. Additionally, 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). The Officer and his/her representative shall not be provided information contained within an IAD file 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.

ARTICLE 19
ASSIGNMENT CHANGES

Section 1. Advance Notice of Assignment Changes

a) 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 is not required 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.

b) Hardship Transfers

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.

Section 2. Requested Job Assignment Transfers

a) A list of all currently vacant positions throughout the Department will be maintained on the APD intranet and available for review by Officers. Absent exigent circumstances, a vacancy will be posted on the APD intranet as near as possible to 10 days prior to the application deadline.

b) 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.

c) The posting process shall not apply to vacancies that the Department fills by promotion, vacancies filled during Department-wide leveling, involuntary transfers, or mutually agreed swaps.

d) All Officers are eligible to seek transfer to any vacancies within the Department for which they are qualified. Oral or written reprimands shall not affect an Officer'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.

e) 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.

Section 3. Proposed Adjustments to Work Schedules

a) It is recognized that Command Staff, through the authority of the Chief of Police, retains the right to adjust work schedules, days off, and other similar conditions of employment within the Department.

b) In the event of a proposed adjustment to work schedules that would have a significant impact upon working conditions of affected Officers, the Commander or Assistant Chief contemplating that adjustment shall notify the President of the ASSOCIATION in writing of the proposed work schedule adjustment at least thirty (30) calendar days prior to its implementation. Advanced notice shall not be required in emergency situations. The ASSOCIATION, after receiving such notification may request in writing a meeting with the involved Commander/Assistant Chief to discuss the merits/necessity of the work schedule change, and to suggest an implementation plan that accomplishes the goals of the Department and has least possible impact upon the affected Officers. The involved Commander/Assistant Chief shall be required to meet with the President of the ASSOCIATION within five (5) business days of this written request. If the ASSOCIATION and the Commander/Assistant Chief do not resolve the ASSOCIATION's concerns, the President of the ASSOCIATION may schedule a meeting with the Chief of Police and involved Commander/Assistant Chief to further consult on the matter. The final decision to implement the proposed work schedule adjustment shall be retained by the Chief of Police.

c) For purposes of this Article, significant impact upon working conditions caused by an adjustment to work schedules refers to a change to an organizational component's hours or days off.

d) This Section shall not apply to any work hour adjustments made as a result of an emergency or unforeseen event, staffing shortages, or emergency crime threats to the community, and nothing in this Article is intended to diminish the capability of the Chief of Police to move personnel in response to unforeseen events and emergencies.

e) This Article shall not apply to reasonable work hour adjustments within units that by their very nature must remain flexible in scheduling capability in response to crime trends, ongoing investigations, and community outreach requirements.

f) The failure to notify and meet with the President of the ASSOCIATION as provided in this Article is subject to the AGREEMENT grievance procedure set forth in Article 20 of this AGREEMENT, and any remedy shall be limited to requiring notice and review of the decision in accordance with this Article, and not any change in hours or days off.

Section 4. Proposed Adjustments to Policies and Procedures

a) It is recognized that Command Staff, through the authority of the Chief of Police, retains the right to set policy and procedures for employees, which may vary from one operational unit or division to another. On the other hand, the ASSOCIATION has a legitimate interest in

providing input on behalf of its members as to the choices to implement variations in policy that have an impact on members.

b) In the event of a proposed adjustment to policies which differ or vary between units or divisions, the Commander or Assistant Chief contemplating that adjustment shall notify the President of the ASSOCIATION in writing of the proposed change at least thirty (30) calendar days prior to its implementation. Advanced notice shall not be required in emergency situations. The ASSOCIATION, after receiving such notification may request in writing a meeting with the involved Commander/Assistant Chief for the purpose of discussing the merits/necessity of the change, and to suggest an implementation plan that accomplishes the goals of the Department and has least possible impact upon the affected Officers. The involved Commander/Assistant Chief shall be required to meet with the President of the ASSOCIATION within five (5) business days of this written request. If the ASSOCIATION and the Commander/Assistant Chief do not resolve the ASSOCIATION's concerns, the President of the ASSOCIATION may schedule a meeting with the Chief of Police and involved Commander/Assistant Chief to further consult on the matter. The final decision to implement the proposed policy or procedure change shall be retained by the Chief of Police.

c) This section shall not apply to any policy and procedure changes made as a result of an emergency or unforeseen event, staffing shortages, or emergency crime threats to the community, and nothing in this Article is intended to diminish the capability of the Chief of Police to make changes in policy and procedure in response to unforeseen events and emergencies.

d) The failure to notify and meet with the President of the ASSOCIATION as provided in this Article is subject to the AGREEMENT grievance procedure set forth in Article 20 of this AGREEMENT, and any remedy shall be limited to requiring notice and review of the decision in accordance with this Article, and not any change in policy or procedure.

Section 5. Special Event Assignments

a) Definitions

In this Section:

(1) "Special Event(s)" means the following listed events only:

- Mardi Gras
- South by Southwest
- Texas Relays
- Halloween
- F-1 Race
- New Year's Eve (beginning 2019)

(2) "Significant schedule change" or "schedule change" means a change to an Officer's regularly assigned duty-hours or days off initiated or approved by the Chief of Police or Assistant Chief of Police.

(3) "Department Overtime" or "Elective Department Overtime" means voluntary participation in job or duty related assignments originating from within the Department, which are

outside an employee's regularly scheduled 40 hours of work per week, and for which the employee normally, but not necessarily, receives overtime compensation from the City of Austin. Compensation either can be at the expense of the Department or reimbursed through outside funding, and will be included in the Officer's regular City payroll. This does not include Court Overtime, late calls, overtime related to workload or emergency holdovers.

(4) "Outside Law Enforcement Agency" means a municipal, county, or state police agency that serves a minimum population base of 50,000.

b) Special Event Staffing

The Chief of Police shall have the responsibility of staffing Special Events. The number of Officers needed at any such Event shall be within the exclusive prerogative of the Chief.

c) Department Overtime Policies

Department policies regarding Department Overtime, Elective and Secondary Employment, and Attendance and Leave shall apply to Special Event assignments.

d) South by Southwest

(1) This Subsection shall only apply to South by Southwest staffing assignments. This Subsection is established in order to lessen the need for reassigning Officers from their normal duty assignments while still adequately staffing the Event to protect our citizens and visitors. Subject to the provisions set out below, nothing in this Subsection shall be construed as limiting the Police Chief's authority and discretion to determine personnel assignments.

(2) The Department shall establish a South by Southwest volunteer sign-up roster (hereinafter referred to as the "South by Southwest Volunteer Roster") for non-exempt Officers who wish to work South by Southwest as an Elective Department Overtime assignment. Sergeants on the South by Southwest Volunteer Roster may be assigned to work in a non-supervisory assignment after eligible Police Officers and Corporal / Detectives have been assigned.

(3) The Department shall first be required to call or otherwise make available the opportunity for eligible Officers on the South by Southwest Volunteer Roster to work South by Southwest as an Elective Department Overtime assignment. The South by Southwest Volunteer Roster shall be open for at least twenty-one (21) days, after which the Department may fill any remaining need for certified personnel with (1) paid or volunteer peace officers employed by Outside Law Enforcement Agencies, (2) paid Reserve Officers, (3) by a schedule change for Officers not on the South by Southwest Volunteer Roster, or (4) by any combination thereof. Officers not on the South by Southwest Volunteer Roster whose schedules are changed to work South by Southwest may use vacation leave or may modify their regular schedules, with supervisory approval, so that the South by Southwest shift(s) qualify for overtime.

(4) Officers on the South by Southwest Volunteer Roster may be denied the ability to work South by Southwest:

(i) In accordance with Department overtime, elective and secondary employment, and attendance policies; or

(ii) If assigning an Officer from the South by Southwest Volunteer Roster creates a need for backfill.

(5) The parties agree that denial of an Officer's ability to work South by Southwest, the failure for any reason to select or use an Officer on the South by Southwest Volunteer Roster, or the reassignment of an Officer from their normal duty assignment shall not provide the basis for a dispute, claim, or complaint under Article 20 of this AGREEMENT. This provision does not prohibit a dispute, claim, or complaint under Article 20 of this AGREEMENT for the failure to comply with the process set forth herein.

(6) Non-exempt Officers selected from the South by Southwest Volunteer Roster shall receive overtime pay, at the rate of 1.5 times the Officer's base salary, for productive hours worked in excess of 40 in a work week.

e) Notice of Significant Schedule Change for Special Events

(1) Subject to Section 5(e)(2) below, an Officer subjected to a significant schedule change to perform duties at a Special Event will be provided a twenty-eight (28) calendar-day notice of the schedule change. If such notice is not provided, the Officer will be granted 20 hours of Administrative Leave. Failure to utilize any part of these hours by December 31st of the year accrued will result in forfeiture of the accrued Administrative Leave hours.

(2) An Officer subjected to a significant schedule change to perform duties at the South by Southwest Event will be provided a twenty-one (21) calendar-day notice of the schedule change. If such notice is not provided, the Officer will be granted 20 hours of Administrative Leave. Failure to utilize any part of these hours by December 31st of the year accrued will result in forfeiture of the accrued Administrative Leave hours. An Officer subjected to a significant schedule change to perform duties at the South by Southwest Event will be provided notice of the schedule change pursuant to subsection (e) (1) above.

(3) When the ASSOCIATION President knows or should know of the Department's failure to provide advance notice as required by this Section, the ASSOCIATION President shall promptly notify the Chief or designee and the Labor Relations Office.

(4) This Subsection shall not apply to:

(a) A significant schedule change caused, less than twenty-eight (28) days prior to the Special Event (twenty-one (21) days prior to the South by Southwest Event), by the need to back-fill for any law enforcement personnel assigned to work the Special Event pursuant to this Section but who is not available for the assignment.

(b) A significant schedule change caused, less than twenty-eight (28) days prior to the Special Event (twenty-one (21) days prior to the South by Southwest Event), by an unforeseen change in the schedule or scope of the Special Event.

f) Reserve Police Officers

To enhance the Department's ability to staff Special Events and to lessen workforce disruption caused by short-term significant schedule changes, the CITY and the ASSOCIATION agree that the Department may employ Reserve Officers, as defined in this AGREEMENT, under the following circumstances:

- (1) Reserve Officers shall be temporary employees.
- (2) Employment and assignment of Reserve Officers shall be limited to performing duties at Special Events. Subject to the discretion of the Chief, Reserve Officers may perform any and all duties of a commissioned peace officer while working such assignments only.
- (3) Reserve Officers may be required to attend and complete training as determined by the Chief.
- (4) Reserve Officers shall not be approved by the Department for any secondary employment that is conditioned on the actual or potential use of law enforcement powers by the Reserve Officer, or for elective Department overtime.

g) Conflict Preemption

To the extent of any conflict between this Section and portions of any state statute, local ordinance, City or Department policy, the provisions of this Section shall preempt such statute, local ordinance, City or Department policy only to the extent of such conflict.

ARTICLE 20
AGREEMENT GRIEVANCE PROCEDURE

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

As used in this Article, a “grievance” is defined as any dispute, claim, or complaint involving the interpretation, application, or alleged violation of any provision of this Agreement. A grievance may be filed under this procedure by the ASSOCIATION or by any individual Officer to whom this AGREEMENT applies. A grievance which does not relate to the application and/or interpretation of any provision of this AGREEMENT shall be processed in accordance with a procedure to be established in writing by the Chief of Police. 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. Timelines

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. If any timeline or deadline for a decision is missed by the ASSOCIATION, the grievance is considered to be resolved and dismissed.

Section 4. Steps of Grievance Procedure

The steps of this grievance procedure are as follows:

Step 1

- a) Filing of Grievance

The ASSOCIATION President or an aggrieved Officer who desires to file a grievance under this procedure must file his/her grievance with the Association Grievance Committee within thirty (30) business days after the ASSOCIATION President or the Officer knew of or should have known of the facts or event(s) giving rise to the grievance. A copy of the grievance shall be forwarded to the Chief of Police, or designee, by the Association Grievance Committee within three (3) business days after receipt of the grievance.

- b) Response by Association Grievance Committee

Within fifteen (15) business days after its receipt of a grievance filed by an individual Officer or filed on behalf of the ASSOCIATION under this procedure, the Association Grievance Committee shall determine, in its sole discretion, if a valid grievance exists. If the Association Grievance Committee determines that the grievance is valid, the grievance shall proceed to Step 2 of this procedure. If the ASSOCIATION determines that the grievance is not valid, the ASSOCIATION President will notify the Chief that no further proceedings are necessary.

Step 2

Any grievance found to be valid by the Association Grievance Committee shall be submitted to the Chief of Police within fifteen (15) business days of the Step 1 ruling. Each grievance shall be submitted on a form agreed to by the parties and must include:

- (1) A brief statement of the grievance and the facts or events upon which it is based;
- (2) The Section(s) of the AGREEMENT alleged to have been violated;
- (3) The steps taken, if any, by the grievant to resolve the issue; and
- (4) A proposed resolution of the grievance.

A grievance submitted in substantial compliance with this Section shall not be denied on the basis of form. Within fifteen (15) business days after receipt of the Step 2 grievance, the Chief of Police shall submit a written response to the Association Grievance Committee.

Step 3

If a grievance is not resolved at Step 2, the ASSOCIATION may within fifteen (15) business days after receipt of the Chief's Step 2 response, submit the grievance to arbitration in accordance with the provisions of this AGREEMENT. The grievance arbitration procedure shall be implemented by the ASSOCIATION notifying the Chief of Police in writing of its intent to submit the grievance to arbitration.

Step 4

The arbitration hearing will be scheduled by agreement at the earliest date possible, preferably within thirty (30) business days after submitting the grievance to arbitration. 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 Grievance Committee 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) calendar days after close of the hearing, unless the parties mutually agree otherwise

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. The fees of the arbitrator shall be borne by the losing party. In the event of a composite decision, the arbitrator shall determine the portion of such cost to be borne by each party. The written decision of the arbitrator may be appealed only on the grounds that the arbitrator was without jurisdiction or exceeded his jurisdiction; that the decision was procured by fraud, collusion, or other unlawful means; or that the arbitrator's decision is based upon a clear and manifest error of law.

Section 5. Election of Remedies

It is specifically and expressly understood that filing a grievance under this Article, which has as its last step final and binding arbitration, constitutes an election of remedies.

Section 6. Statutory Appeals and Hearings

Except as specifically provided in this AGREEMENT, all statutory rights of appeal to the Civil Service Commission or Hearing Examiner, including disciplinary matters, promotional bypasses, and demotions will be governed by Chapter 143 and are not subject to this contract grievance procedure.

ARTICLE 21
TERM OF AGREEMENT

Section 1. Term of Agreement

a) This AGREEMENT shall be effective as of the date it is ratified by the City Council, except as to any provisions herein specifically made effective on any other date. It shall remain in full force and effect, subject to the provisions of this Article, until September 30, 2022, and thereafter until superseded by a new agreement, whichever occurs later provided however, that in no event shall this Agreement continue in effect after March 31, 2023.

b) Any Amendment to this AGREEMENT shall be effective as of the date it is ratified by the City Council, except as to any provisions in the Amendment specifically made effective on any other date. Any Amendment to this AGREEMENT shall remain in full force and effect, subject to the provisions of this Article, until September 30, 2022, and thereafter until superseded by a new agreement, whichever occurs later provided however, that in no event shall this Agreement continue in effect after March 31, 2023.

c) The provisions of this AGREEMENT, do not apply to any Officer who separates from CITY employment before the effective date of this AGREEMENT or before the effective date of any specific provisions hereof.

d) The Parties will make all reasonable efforts to begin meet and confer negotiations for a successor agreement by October 2021.

Section 2. Continuing Relationship

a) The parties acknowledge their longstanding history of successful Meet & Confer negotiations and their joint efforts to continue to build on the framework of each previous agreement. This AGREEMENT is the product of that relationship and negotiation history. 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 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.

b) 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 provide an alternate resolution. If a negotiated resolution of the issue is not achieved, the CITY may terminate this AGREEMENT after ninety (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.

c) 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 provide an alternate resolution. If a negotiated resolution of the issue is not achieved, the CITY may terminate this AGREEMENT after ninety (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.

Section 3. Notice and Renegotiation

If either the CITY or the ASSOCIATION desires to engage in negotiation for a successor Agreement, then either or both shall give the other party written notice of its desire to negotiate for a new Agreement no less than 120 days before the expiration of the present AGREEMENT. In the event that notice of intent to renegotiate is given by either party, and the parties agree, the parties will begin negotiations for a new Agreement not later than sixty (60) days after notice is given, unless the parties agree otherwise.

Section 4. Continuation during Negotiations

If the parties are engaged in negotiations for a successor Agreement at the time this Agreement expires, the ASSOCIATION'S and the CITY'S negotiating teams shall have the authority to extend this Agreement in thirty (30) calendar day increments by mutual written agreement, during any period of good faith negotiations after such termination date, not to exceed a total of six (6) months.

Section 5. Effect of Termination

a) In the event that a successor Agreement has not been ratified before the expiration date of this AGREEMENT (the expiration date of September 30, 2022, or any extended expiration date under Section 4 above), all provisions of this AGREEMENT, both economic and non-economic, shall expire and no longer be in full force and effect, except as to specific Articles or Sections hereof which provide that some or all of their terms will continue beyond expiration of this AGREEMENT.

b) 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 6. 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.

In the event of any change in state law that modifies the City's budgetary and revenue authority, such that the City's anticipated revenues are impaired, the City Council shall have the authority to make proportionate adjustments to any additional costs in the relevant fiscal year of this AGREEMENT, after a full opportunity for the ASSOCIATION to address that action in a posted public meeting. Before making any such adjustments the City will meet and confer in good faith with the ASSOCIATION for a period of at least thirty (30) calendar days concerning the manner in which such proportionate adjustments are to be effected. For the purposes of this Article, proportionate adjustments shall be in relation to the total reduction in tax rate availability from the immediately prior fiscal year. (For example, if there is a scheduled base wage increase of 1% and the legislature reduces the City's revenue authority from 8% to 6% through a legislative tax cap, the effect on the base wage increase for the relevant year could be a decrease of up to 2%, resulting in a 0.98% increase for that year).

ARTICLE 22

NOTICES

Section 1. Association Notices

Notices the ASSOCIATION is required to provide to the CITY under this AGREEMENT or Chapter 143, unless specifically noted otherwise, will be provided in writing to the office of the Chief of Police, the Labor Relations Office and the designated lawyer in the City Attorney's Office.

Section 2. City Notices

Notices the CITY is required to provide to the ASSOCIATION under this AGREEMENT or Chapter 143, unless specifically noted otherwise, will be provided in writing to the ASSOCIATION President's office and the ASSOCIATION's designated attorney.

Section 3. Designation of Notice Recipients

Within 10 calendar days after the effective date of this AGREEMENT, both parties will provide the other written notice of the correct mailing and e-mail addresses of its designated recipients.

Section 4. Timeliness of Mail Notice

A notice provided by mail will be deemed timely if addressed to the two correct mailing addresses for the CITY or the ASSOCIATION and postmarked no later than the date such notice is due.

Section 5. Adequacy of Email Notice

Use of email communications under this paragraph shall be preceded by confirmed exchanges at the outset of the AGREEMENT, from the sending to receiving servers, prior to using the email option for notices under this Section. Each party agrees to provide notice of any change in email addresses of any designated recipient following the initial exchange of emails. In recognition of the fact that email systems are dependent on a number of technical factors, the parties agree to confirm the receipt of email notices by sending a "read receipt" to the other party or sending a brief acknowledgment of receipt. A notice sent by e-mail will be deemed timely if addressed to the two correct e-mail addresses for the CITY or the ASSOCIATION and sent by 4:59 p.m. on the due date.

Section 6. Notice of Address Changes

The parties agree to provide written notice of any changes of physical address or e-mail address to the other party within 7 calendar days of the change.

ARTICLE 23
ENTIRE AGREEMENT

Section 1. Subjects and Issues

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.

Section 2. Amendment of the Agreement

a) Except as explicitly provided for in 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 143.

b) 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.

Section 3. Benefit of the Bargain

a) In the event that the Texas Legislature amends any provision of Texas Local Government Code Chapters 141, 142 or 143, which 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 wages and benefits include, but are not limited to, base salary, longevity, assignment pay, sick leave, vacation, health insurance, and weapon provision mandates.

b) During the negotiation of this AGREEMENT, the CITY and the ASSOCIATION have agreed on the stated enhancements to employee compensation and benefits, in reliance on the cost of those enhancements. Both parties acknowledge that this AGREEMENT would not have been reached, as reflected in this document, if the cost to the CITY had been higher. In the event of any proceeding in which the ASSOCIATION asserts the right to additional compensation or pay enhancements based on the provisions of this AGREEMENT, the decision-maker shall

consider the cost of the contractual pay and benefits enhancements as part of the mutual agreement and meeting of the minds that resulted in approval of this AGREEMENT by both parties.

ARTICLE 24

SAVINGS CLAUSE/PREEMPTION

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.

Section 2. Preemption of Local Government Code & Other Provisions

a) “**Conflict preemption**” intended unless otherwise specified. Texas Local Gov’t Code §143.307 authorizes the parties to preempt “any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality” through a labor agreement. To the full extent authorized by §143.307, the parties agree that the provisions of this AGREEMENT shall preempt those portions of any state statute, executive order, local ordinance, or rule with which they specifically conflict only to the extent of such conflict; remaining portions of such provisions will continue to govern the parties’ actions.

b) “**Total preemption**” only where specified. However, to the extent allowed by §143.307, the parties may totally preempt a state statute, executive order, local ordinance, or rule, by placing a provision in this AGREEMENT that: (1) specifically states it is intended to “totally preempt” the law in question, and (2) specifically identifies the law(s) being totally preempted.

Section 3. Change in Authorized Representative

During the term of this AGREEMENT, if there is a lawful withdrawal of recognition of the Austin Police Association 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.

ARTICLE 25
CONSOLIDATION OF PUBLIC SAFETY OFFICERS INTO APD

Section 1. Definitions

The following definitions apply to terms used in this Article and this AGREEMENT, unless a different definition is required by the context in which the term is used:

a) "PSEM" refers to the City of Austin Public Safety and Emergency Management Department, which was dissolved as a result of the consolidation of certain PSEM law enforcement officers into the Austin Police Department.

b) "PSEM law enforcement officer(s)" refers to individuals who, on September 30, 2008 were:

(1) PSEM employees and

(2) Were commissioned by TCOLE as peace officers.

c) "Transition Completion Date" refers to the date that the last PSEM law enforcement officer successfully completes the modified cadet training program designed by APD specifically for the transition process.

Section 2. Completion of Transition and Civil Service Status

a) The parties acknowledge that the consolidation of former PSEM law enforcement officers into APD has been fully accomplished. All former PSEM law enforcement officers who successfully completed the modified cadet training program, as determined by the Chief, are Civil Service employees, subject to the provisions of this AGREEMENT.

b) The parties hereby ratify the initial placement of PSEM law enforcement officers into the APD Civil Service Rank of Police Officer, regardless of their previous positions or rank in PSEM. Any change in rank resulting from the consolidation transition shall not be construed as a demotion under either Civil Service law or the City's Personnel Policies. A former PSEM law enforcement officer whose rank changed as a result of the consolidation transition may not file a grievance regarding that change in rank under the grievance process set out in this AGREEMENT or under the CITY's Personnel Policies.

Section 3. Wages and Benefits

a) The parties hereby ratify the initial placement of PSEM law enforcement officers into the APD Base Salary Schedule. The parties agree that after initial placement, former PSEM officers will advance through the step pay program in sequence based on the PSEM officer's initial

placement without regard to the PSEM officer's years of service with APD or PSEM prior to October 1, 2008.

b) Each former PSEM law enforcement officer will receive longevity pay as provided in Article 7 of this AGREEMENT based on the PSEM officer's cumulative years of service with both PSEM and APD.

c) Any change in compensation resulting from the consolidation transition shall not be construed as a demotion or promotion under Civil Service law, this AGREEMENT, or the City's Personnel Policies. A former PSEM law enforcement officer whose compensation changed as a result of the consolidation transition may not file a grievance regarding that change in compensation under the grievance process set out in this Agreement or under the CITY's Personnel Policies.

Section 4. Transfer of Special Vacation Balances

Special vacation balances of former PSEM law enforcement officers due to settlement of claims regarding vacation accrual rates have been transferred to APD and shall remain subject to the terms of the applicable settlement agreement.

Section 5. Payment of Accrued Sick Leave

Accrued sick leave will be paid to a former PSEM law enforcement officers under the following conditions:

a) An Officer who retires under both the City of Austin Employees Retirement System and the Austin Police Retirement System, will be paid for all accrued sick leave in accordance with the provisions of Article 9 of this AGREEMENT, except that the 12-year service requirement shall not apply.

b) An Officer who was hired by the City of Austin prior to October 1, 1986, who separates from the City for any reason other than retirement will be paid for a maximum of 720 hours of accrued sick leave.

c) An Officer who was hired after October 1, 1986, who separates from the CITY after the effective date of this Article for any reason other than retirement will be paid for accrued sick leave in accordance with Article 9 of this Agreement, but years of service with PSEM will not be counted as years of service with APD for purposes of the 12-year service requirement.

Section 6. Promotional Eligibility

A PSEM law enforcement officer who successfully completes the transition and becomes an APD Officer shall be eligible to take the promotional examination for the rank immediately above Police Officer upon completion of five (5) years of service. For purposes of calculating the required five (5) years of service, all service with APD after the Transition Completion Date plus

up to three (3) years of continuous service in PSEM immediately prior to the effective date of this Article shall be counted toward the requirement.

Section 7. Conditions Precedent

Approximately six (6) years after the System began participating in the Proportionate Retirement Program, the System's actuary must conduct a five-year experience study to determine whether the CITY's contribution rate should be increased or decreased based on utilization of the Proportionate Retirement Program during that period.

[INSERT APPENDIX WAGE TABLES]