

**MEET & CONFER AGREEMENT**

**BETWEEN**

**THE CITY OF TEMPLE, TEXAS**

**AND**

**TEMPLE PROFESSIONAL FIRE FIGHTERS  
ASSOCIATION**

**CITY OF TEMPLE FISCAL YEAR  
2021**

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## **DEFINITIONS**

1. "Agreement" refers to this Meet and Confer Agreement, negotiated between the City of Temple and the Temple Professional Fire Fighters Association.
2. "Association" means the Temple Professional Fire Fighters Association.
3. "City" means the City of Temple.
4. "Commission" means the Fire Fighters' and Police Officers' Civil Service Commission of the City of Temple.
5. "Day(s)" means calendar days, unless otherwise specified.
6. "Department" means the Fire Department of the City of Temple.
7. "Department Head" means the administrative head of the Fire Department or the Fire Chief, including any interim or acting Chief of Police.
8. "Director" means the Director of the City of Temple Fire Fighters' and Police Officers' Civil Service Commission.
9. "Dues" means the cost of membership in the Association.
10. "FY" means financial year.
11. "Local rules" refers to the Rules and Regulations of the City of Temple Fire Fighters' and Police Officers' Civil Service Commission.
12. "Party" or "Parties" means the City of Temple and the Temple Professional Fire Fighters Association.
13. "Fire Fighter" or "Officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law, and who is employed by the City of Temple Fire Department.
14. "TLGC" means the Texas Local Government Code.

## **ARTICLE 1**

### **ASSOCIATION BUSINESS**

**Section 1. Intent.** In adopting this article, the Parties acknowledge and agree to the following provisions for the purpose of enabling the Association to adequately represent Association members and administer the terms of the Agreement.

**Section 2. Recognition.** The City recognizes the Temple Professional Fire Fighters' Association ("TPFFA") as the sole and exclusive bargaining agent for all covered fire fighters, pursuant to section 142.053 et. seq. Texas Local Government Code, excluding the Department Head, employees of the Temple Fire Department who are exempt under section 142.058(b) Texas Local Government Code, and employees occupying appointed positions pursuant to section 143.014 Texas Local Government Code. The Agreement is intended to include all permanent paid employees of the Temple Fire Department who have been hired in substantial compliance with the provisions of Chapter 143 of the Texas Local Government Code, but does not include civilian employees, other employees, or those excluded above. The Agreement is not intended to, and does not, deny local control by the City, or restrict or diminish the management rights of the City except as expressly provided by the Agreement under section 142.059 of the Texas Local Government Code.

**Section 3. Association Access to New Hires.** The Association shall have the right to meet with new fire fighters during the Academy and/or Departmental in-house employee orientation sessions to ensure they have received a copy of the Agreement, and to be able to explain and answer questions about the Association, the Agreement, and the meet and confer process.

#### **Section 4. Labor Relations**

1. To improve communications between the Department Head and the Association, and to facilitate resolution of issues related to implementing the provisions of this Agreement, the Department Head shall establish an Advisory Team comprised of three (3) members, including one (1) member of the Department designated by the Department Head, and two (2) members of the Department designated by the Association. The Association and the Department Head may designate a substitute representative to the Team in the event that the designated Team member is unable to attend a meeting. The Department Head or his designee will meet with this Team at least once every three (3) months. The purpose of the Team is advisory to the Department Head, and to provide Fire Department managers input on City and Departmental policy, procedures, and employee issues.
2. The Association President or the Department Head may request additional meetings when issues arise that warrant concern or discussion. The Department Head retains discretion regarding the scheduling of additional meetings.
3. Members of the Advisory Team will not be required to use leave in order to attend Team meetings. Members of the Advisory Team will not receive overtime compensation for attendance at Team meetings.

## Section 5. Association Rights and Indemnification

- (a) Dues Deduction. Upon receipt of a signed authorization from a fire fighter on a form supplied by the City, the dues and assessments to the Association and affiliated state organizations that existed on the date of this Agreement shall be deducted from each member fire fighter's pay. Fire fighters who are not members are not obligated to pay Association dues. Fire fighters who are currently having dues deducted as of the execution date of this Agreement are not required to submit a new dues deduction form.

The dues deduction shall be remitted promptly to the Treasurer of the Association. The City agrees to provide a list of those members for whom deductions are made each month. The Association may change the amount of the deduction for those employees who have authorized payroll deductions by providing the City with a letter, at least thirty (30) days in advance of the change, from the Association President advising the City that the amount of the dues deduction 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.

- (b) Indemnification. As a condition of being granted and continuing payroll deduction of dues, the Association shall indemnify the City and any departments of the City, and hold it harmless against any and all claims, demands, suits, or other form of liability that may arise out of, or by reason of, any actions taken by the City or any department of the City for any purpose of complying with the provisions of this Agreement.
- (c) Association Access to Premises. Subject to reasonable advance notice from the Association and approval from the Department Head or his designee, the Association may be permitted reasonable access to the premises of the Department and the Fire Academy for the purpose of administering this Agreement, including but not limited to Departmental in-house employee orientation. Such visits shall be limited to the purpose for which approval was granted and shall be conducted in a manner that does not interfere with the functions of the Department or Academy.

The Association's access to the Department facilities and equipment to communicate with its membership shall include the use of one (1) bulletin board installed at the main Fire Station and one (1) board at each Fire facility. The Department Head must approve in advance the size of, and materials used for, said bulletin boards. All costs incurred in the purchase, installation, and maintenance of said bulletin boards shall be at the Association's expense. All posted materials must be directly related to Association business. The following guidelines shall apply to materials properly posted on the bulletin boards:

1. recreation and social affairs of the Association;
2. Association meetings;
3. Association elections;

4. reports of Association Committees;
5. rulings or policies of the state or national Association, without added commentary, and
6. Legislative enactments and judicial decisions affecting public employee labor relations, without added commentary.
7. At no time shall the bulletin boards contain any political endorsement, whether at the local, state, or federal level.
8. The Department Head or his designee retains the right to remove material which is not directly related to Association or is offensive or inappropriate.

(d) Communications. Subject to the Temple Fire Department Standard Operating Procedures, the City's administrative regulations, and the applicable provisions of this Agreement, the Association may utilize electronic communications ("email") to communicate with Temple fire fighters regarding issues related to provisions of the Agreement and upcoming meet and confer sessions in accordance with the following restrictions and limitations:

1. Association email communications shall relate solely to the following subjects:
  - i. issues related to the Agreement;
  - ii. issues related to upcoming meet and confer sessions;
  - iii. issues related to the grievance policy, and
  - iv. Association meetings for the purpose of discussing issues related to the Agreement, upcoming meet and confer negotiations, and/or the grievance policy.
2. Email communications shall not contain any political commentary, any solicitation for membership in, or financial contributions to, any special interest organization or political action organization, or derogatory or offensive propaganda or commentary which reflects negatively upon the City, its officials, its employees, City employee associations or groups, or upon citizens of the City. On a case-by-case basis, the Department Head or his designee may consider requests from individual fire fighters for approval to distribute email communications regarding solicitations of fire fighters (or their families) needing financial or other forms of assistance.
3. In the event of a violation, the Department Head shall notify the Association of the violation. Subsequent violations of these guidelines will subject the Association to the loss of the privilege of using the City's electronic communications system. Such loss will not be subject to review by any administrative or judicial body, or the grievance process.

## **Section 6. Association Business Leave Time Pool**

- (a) Time Off for Association Business. An Association Business Leave Pool shall be created for the purpose of conducting Association business, defined herein as time spent

adjusting grievances, attending the annual conference of state affiliated organizations, the Association's Executive Board meetings, and regular Association business meetings.

While Temple fire fighters are on Association Business Leave, they shall not wear Temple Fire Department uniforms or insignia of any kind.

- (b) Establishment of Association Leave Time Pool. The Association Business Leave (ABL) Pool shall be funded during the first pay date of each calendar year by reduction of accrued vacation leave in the amount of two (2) hours for each member of the Temple Professional Fire Fighters' Association who provides notice in writing to the City at least thirty (30) calendar days prior to the beginning of that calendar year of his/her wish to donate said hours to the ABL Pool. Once a contribution has been made to the ABL Pool, there shall be no transfer of leave back into any individual fire fighter's leave account, and there will be no cash payout for any remaining time in the Pool. Unused ABL Pool hours will remain in the Pool to be utilized the following year. ABL Pool hours shall never have any cash or surrender value. The City will track contributions to and deductions from the ABL Pool.
- (c) Use of Association Leave Time Pool. The Association President shall request any use of Association business leave in writing and submit the request in advance for approval by the Department Head. The Department Head may waive the requirement that the request and approval be in writing. Requests for ABL time shall be made as far in advance as is practicable, but no less than forty-eight (48) hours prior to the date for which leave is requested. There shall be no entitlement for overtime pay for any hours worked on Association business, as such time is not for the benefit of the City but for the sole benefit of the Association. Unless approved by the Department Head, not more than two (2) members may be on ABL at the same time, and such leave may be cancelled by the Department Head in the event of any emergency or shortage of manpower as determined by the Department Head. Cancellation of ABL time by the Department Head under these circumstances shall not be subject to review by any administrative or judicial body, or the grievance process.
- (d) INDEMNIFICATION. THE ASSOCIATION SHALL INDEMNIFY THE CITY, ITS OFFICIALS AND EMPLOYEES, AND HOLD THEM HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS OR OTHER FORMS OF LIABILITY THAT MAY ARISE OUT OF, OR BY REASON OF, ANY ACTIONS TAKEN BY THE CITY FOR ANY PURPOSE OF COMPLYING WITH THE PROVISIONS OF THIS ARTICLE.

**Section 7. Negotiating Time for Negotiating Team Members.** The City agrees to pay up to a maximum of five members of the Association's meet and confer team their regular pay for attendance at the initial meet and confer meeting and all subsequent meetings between the City and the Association. If subcommittees are jointly assigned to work on specific matters, Association members of the subcommittee shall receive their regular pay during joint subcommittee meetings. Association team member time spent preparing for meetings or



attending internal Association meetings will not be paid the City. Fire administration may adjust Association representative schedules in order to minimize overtime expense.

## **ARTICLE 2**

### **ADDITIONAL APPOINTED POSITION**

**Section 1. Intent.** In adopting this article, the Parties agree to the creation of one (1) additional appointed Assistant Chief position in addition to the single Assistant Chief position authorized by Section 143.014(c) Texas Local Government Code, and that this will result in a total of two (2) appointed Assistant Chief positions in the Department.

#### **Section 2. Additional Appointed Position.**

- a. The person appointed to fill the additional appointed Assistant Chief position shall serve as the Fire Marshal.
- b. The additional Assistant Chief position shall be created by reclassifying one (1) position in the rank of Battalion Chief as an Assistant Chief. This reclassification:
  1. shall not create a vacancy in the Battalion Chief rank,
  2. shall not result in any member having the right to promote solely as a result of the creation of the additional Assistant Chief position, and
  3. shall not constitute a valid basis for a grievance under this Agreement.
- c. Upon vacancy, the Fire Chief may, but is not required to, fill the Additional Appointed Position.
- d. An internal candidate must be qualified in order to be considered for appointment to the Additional Appointed Position. A qualified internal candidate shall be defined as:
  1. a member in “good standing”, defined as a member who:
    - a. is not under investigation,
    - b. has not received a negative evaluation or been placed on a performance improvement plan for the two (2) year period immediately prior to the appointment, and
    - c. has not received a written reprimand within six (6) months, or a suspension within eighteen (18) months, immediately prior to the appointment.
  2. actively functioning as an officer for a minimum of two (2) years;
  3. demonstrating competencies to function in the Captain or Battalion Chief rank, as determined solely by the Fire Chief, and
  4. willing to accept the appointment and all duties associated with the position.

- e. In the event that there are no qualified internal candidates at the time of the appointment, the Fire Chief shall have the right to appoint a qualified external candidate to fill the Additional Appointed Position.

The minimum standard required by Section 143.014(e)(1) Texas Local Government Code is specifically waived in the event that the Fire Chief elects to appoint a qualified external candidate to fill the Additional Appointed Position under this Article.

- f. **Minimum Standards.** In addition to the minimum standards required by Sections 143.013(b) and 143.014(e) Texas Local Government Code, except as noted in (c), above, the person appointed to the Additional Appointed Position must have:

1. obtained the level of Intermediate certification by the Commission on Fire Protection Personnel Standards and Education, or the equivalent as determined by the Fire Chief, or be able to complete this requirement within the first eighteen (18) months of appointment to the position;
2. obtained the TCFP Fire Investigator and Fire Inspector I and II certifications;
3. the ability to obtain the Basic Texas Peace Officer certification from the Texas Commission on Law Enforcement within the first year of appointment;
4. served in the rank of Captain or Battalion Chief or their equivalents and have demonstrated effective supervision, leadership, and management of the personnel under their control;
5. have been employed as a certified firefighter for at least five (5) years at the time of the appointment, and
6. obtained or agreed to obtain a Associate's degree in Fire Science, Public Administration, Management, or a similar field within two (2) years of appointment.

The Parties agree that these minimum standards shall apply to the subsequent appointment of any person to an Assistant Chief position.

- g. **Procedure.**

The Department Head retains sole discretion over the decision to fill any Assistant Chief position. Nothing in this Article shall be construed as creating an absolute right to an appointed position.

Upon a vacancy in any Assistant Chief position, the position will be posted for a period of at least ten (10) calendar days during which eligible candidates may submit documentation of their qualifications, e.g., resumes, transcripts, certifications, for review by the Department Head. The Parties agree that the final appointment will be made solely

at the discretion of the Department Head and that this procedure is not intended to, and does not, provide a basis for appeal of the appointment.

### **ARTICLE 3**

### **HIGHER CLASSIFICATION PAY**

**Section 1. Intent.** The Parties acknowledge that fire fighters are often required to step up to perform the duties of a higher classification when a fire fighter in the higher rank is absent due to illness, injury, military duties, vacation or other valid reason. The Parties agree that stepping up to perform the duties of a higher classification facilitates the efficient, reliable provision of public safety services and provides valuable training and experience to fire fighters in advance of promotion. The Parties further agree that compensation for stepping up must align with the objectives of the 2019 Civil Service Compensation Plan and budgetary constraints while adequately compensating fire fighters' who perform the duties of a higher classification.

**Section 2. Process.** The following compensation rates for fire fighters stepping up to perform the duties of a higher classification will be effective upon ratification of this Meet and Confer Agreement:

- a. Driver:                      \$2.75/hour, \$66/shift
- b. Captain:                    \$3.75/hour, \$90/shift
- c. Battalion Chief:         \$4.50/hour, \$108/shift

These rates will be re-evaluated in conjunction with the 2021 Civil Service Compensation Study for implementation in fiscal year 2022.

**ARTICLE 4**  
**GEOGRAPHICAL RESTRICTION**

**Section 1. Intent.** The Parties agree that expanding the geographical area from which eligible candidates may be hired will enhance recruiting efforts and increase the pool of qualified applicants.

**Section 2. Process.** The following geographical restriction will be implemented:

Fire fighters must reside within 120 minutes' travel time to the Central Fire Station.

A firefighter who has acted in substantial reliance on the terms of this provision during the term of this agreement shall not later be considered ineligible for employment if this agreement lapses and this geographical restriction is reduced.

**ARTICLE 5**  
**ADDITIONAL TEST POINTS FOR NEW HIRES**

**Section 1. Intent.** The Parties agree that it is the goal of the Department to maintain high professional standards through a competitive recruiting and hiring process. The Parties acknowledge that candidates who have demonstrated a commitment to achieving advanced training or experience prior to employment with the Department should receive prioritized hiring consideration due to their accomplishments, which are an immediate benefit to the Department and the community. For this reason, the Parties agree to allow additional test points for accomplished applicants during the hiring process.

**Section 2. Procedure.** Applicants will receive a maximum of five (5) additional test points according to the following criteria:

- Military Service 5 points
- Current/Valid Paramedic License 3 points
- TCFP certified, or equivalent, and EMT Basic 2 points

## **ARTICLE 6**

### **PROMOTIONAL PROCESS**

#### **Section 1. Establishment of Standard Annual Promotional Examinations**

- a. **Intent.** In adopting this article, the Parties agree to the adoption of a standardized date for conducting promotional examinations. The Parties believe this will increase the predictability and efficiency of the promotional examination process and allow candidates to prepare and perform optimally on the examinations.
- b. **Procedure.** The Parties agree that:
  1. the current Battalion Chief promotional list expired March 11, 2020, and the current Driver and Captain promotional lists expired on June 1, 2020;
  2. to transition to a Standard Annual Promotional Examination testing date beginning in October of 2021 (fiscal year 2022), the 2020 promotional examinations for the ranks of Battalion Chief, Driver and Captain will occur on the following dates:
    - a. Driver and Captain rank: June 12, 2020
    - b. Battalion Chief rank: May 8, 2020;
  3. beginning in 2021 (fiscal year 2022) and continuing until terminated by Agreement of the Parties, Standard Annual Promotional Examinations will occur in the month of October;
    - a. the eligibility list resulting from any Standard Annual Promotional Examination will expire on September 30 of the following year, and
    - b. candidates shall be eligible for promotion from the list resulting from a Standard Annual Promotional Examination only on or after October 1, regardless of the actual date the Standard Annual Promotional Examination is given in October.
  4. the Director shall post a notice listing the sources from which the Standard Annual Promotional Examination questions will be taken no later than July 1, regardless of the actual date in October the examination is scheduled;
  5. the Director shall post a notice of the Standard Annual Promotional Examination no later than September 1, regardless of the actual date in October the examination is scheduled;
  6. vacancies that occur after expiration of the 2020 promotional lists will remain open until promotional lists based on the results of the Standard Annual Promotional Examinations and alternative testing method are established in October of 2021, and



7. candidates promoted from the promotional lists resulting from the October 2021 Standard Annual Promotional Examinations to fill vacancies that occurred after the expiration of the 2020 promotional lists are not entitled to backpay.

## Section 2. Promotional Eligibility

- a. **Intent.** The Parties agree that it is the goal of the Department to maintain high professional standards through an objective, fair and competitive promotional process. The Parties agree to establish minimum training and certification prerequisites for promotional eligibility to ensure that candidates possess the training and skills necessary to perform the duties of the promotional position.
- b. Candidates for promotion in the year 2021 (fiscal year 2022) must possess or be able to obtain within twenty-four (24) months of promotion the following certifications:
  - Battalion Chief
    - TCFP Advanced Firefighter
    - Fire Officer 2
    - Fire Instructor 2
    - Fire Inspector 1 & 2
    - All Captain requirements
  - Captain
    - TCFP Intermediate Firefighter
    - Fire Officer 1
    - Fire Instructor 1
  - Driver
    - Driver Operator Certification
    - Aerial Operator Certification
- c. Failure to provide valid documentation of the certifications required for the promotional position within 24 months of the date of promotion will result in automatic, non-disciplinary demotion to the fire fighter's previous position. A fire fighter demoted due to failure to obtain or maintain the required minimum certifications for the promoted position under the terms of this Article shall have no right to appeal the demotion.
- d. The Parties understand and agree that, beginning in the year 2022 (fiscal year 2023), the certifications listed in subsection (b) above will be prerequisites for eligibility to take the written promotional examination.

### Section 3. Alternative Testing Methods

- a. **Intent.** The Parties agree that it is the goal of the Department to maintain high professional standards through a competitive promotional process. The Parties acknowledge that including an assessment of practical skills in the promotional testing process is an effective method of ensuring that promotional candidates possess the knowledge and practical skills required in the new position, increasing the level of professionalism for both fire fighters and the Department. For this reason, the Parties agree to incorporate alternative testing methods in the promotional examination process.
- b. **Procedure**
  1. **Alternative Testing and Assessment Centers.** Promotional candidates must pass the written promotional examination with a raw score of at least 70 in order to advance to the Alternative Testing or Assessment Center phase of the promotional process.
    - a. Alternative Testing: Fire fighters testing for promotion to the Driver rank will complete a Cone and Street Driving Course and a Pumping Simulation.
      - Internal assessors selected by agreement between TPFPA and Department management will be used for the Alternative Testing for the Driver positions. At no time will there be fewer than two (2) assessors evaluating a fire fighter's performance on the Alternative Tests;
      - Each assessor will be equipped with a body-worn camera to record the assessment of every candidate;
      - All apparatuses will be of similar type used for the Cone and Street Driving Course tests and shall have identical wheel bases, unless a maintenance issue occurs;
      - Each apparatus will be equipped with a stationary camera mounted behind the candidate's shoulder to record the candidate's performance; and
      - For purposes of the Driver Alternative Tests, displacement of a traffic cone will be defined as contact causing any portion of the base of the traffic cone to come to rest outside the outer edge of the marked perimeter of the cone's position.

- b. Assessment Center: Drivers and Captains testing for promotion to the Captain and Battalion Chief ranks, respectively, will engage in Assessment Center testing.
- The Assessment Center will be conducted by external assessors selected by the Director;
  - A chief officer, selected by the Department Head, will be available at the testing site as a resource for the assessors regarding local policies and tactics;
  - The Assessment Center will consist of one (1) emergency scene management/tactical exercise and three (3) stations selected by the assessors prior to testing from the following list:
    1. Employee disciplinary issue
    2. Citizen complaint
    3. Report writing exercise
    4. Inspection/code violation
    5. Public education presentation
    6. Employee/ambulance employee issue
    7. Development of a budget request
    8. In-basket exercise
- c. Candidates may appeal their Alternative Test or Assessment Center score to the Civil Service Commission by filing written notice of appeal with the Director within five (5) business days after the Alternative Test or Assessment Center date. In computing this period, a Saturday, Sunday, or legal holiday is not considered a business day.

#### **Section 4. Promotional Examination Scores.**

- a. Promotional candidates must pass the written promotional examination with a raw score of at least seventy (70) percent to advance to the Alternative Testing or Assessment Center phase of the promotional process. Seniority points will not be added to a raw examination score.
- b. Promotional candidates must achieve a passing score in the Alternative Testing or Assessment Center phase to successfully complete the promotional examination process and receive a final examination score.
- c. Promotional candidates' final examination scores will be made up of the following components:
- Driver Test
    - Raw written Exam 50% of final points

- Cone and Street Driving Courses 25% of final points
  - Pumping Simulations 25% of final points
  - Captain Test
    - Raw written exam 50% of final points
    - Assessment Center 50% of final points
  - Battalion Chief Test
    - Raw written exam 50% of final points
    - Assessment Center 50% of final points
- d. The eligibility list will be established using the following procedures to arrive at a total final score:
- **Captain and Battalion Chief promotional examinations:** Fifty percent (50%) of the raw written exam score will be added to fifty percent (50%) of the Assessment Center score;
  - **Driver's promotional examinations:** Fifty percent (50%) of the raw written examination score will be added to twenty five percent (25%) of the Cone and Street Driving Course and twenty five percent (25%) of the Pumping Simulations;
  - One point for each year of seniority as a classified fire fighter in the Department, up to a maximum of ten (10) points, will be added to the established sum of the raw written exam and Assessment Center or Alternative Test scores;
  - A candidate's seniority points to be added to the promotional examination score will be determined as of 5 p.m. on the date of the written promotional examination. An anniversary that occurs after the date of the written promotional examination but before the final eligibility list is established will not affect the seniority points added to the candidate's total score.

Each participant will be ranked on the eligibility list based on their final total score as determined by the process described in this section. The person with the highest final score will be ranked number one, the person having the second highest final score being ranked number two, and so forth.

## **ARTICLE 7**

### **WELLNESS PROGRAM**

**Section 1. Intent.** The Parties agree that a comprehensive wellness program that promotes and supports fire fighters' physical health and fitness is consistent with maintaining a safe and efficient Department by minimizing illness and injuries and time lost due to sick leave.

**Section 2. Guidelines.** The following Wellness Program guidelines will be implemented in all Temple Fire Department stations:

- a. Subject to supervisory approval and staffing needs, fire fighters will be allowed to work out while on-duty;
- b. Within budgetary restrictions, the City will make its best effort to provide cardio work-out equipment at each station for fire fighters to use for the purpose of working out while on-duty;
- c. Subject to supervisory approval and staffing needs, fire fighters will be allowed to swap out with fire fighters assigned to a different district to utilize the exercise facilities in the other district while on-duty, and
- d. Supervisors will develop a schedule to ensure adequate staffing at each station during each shift.

**Section 3. Required Physical Health Screening/Examinations.** The Parties agree to implement NFPA best practices by adopting enhanced physical testing standards specific to the known risk factors associated with firefighting. The following standards will apply to physical health screenings for all fire fighters:

- a. The Department will engage an independent health screening provider to implement a comprehensive occupational health screening program for the entire Department.
- b. Every fire fighter will participate in an annual Physical Health Screening/Exam:
  - i. Short Physical: Annually, every fire fighter will receive the following assessment:
    1. Individualized Health Risk Appraisal
    2. Questionnaire and Screening
    3. Annual Behavioral Health Assessment
    4. Physical Examination + consultation with State licensed medical provider
    5. Laboratory Analysis
      - a. Complete CBC
      - b. Lipid panel
      - c. Comprehensive metabolic panel
      - d. Urinalysis, with microscopic

6. Audiogram
  7. Resting 12-lead EKG
- ii. Long Physical: Fire Fighters will receive all elements of the Short Physical described in (i), above, plus:
    1. Fecal occult blood laboratory analysis
    2. Prostate Specific Antigen (male only) or CA-125 (female only);
    3. Chest X-ray with radiologist interpretation will be every 5 years or as indicated by a medical professional regardless of age
    4. Cardiopulmonary Exercise Test with cardiologist interpretation
    5. Cancer detection Ultrasound (thyroid, testicular, abdominal)
  - iii. Fire fighters will receive Long Physicals according to the following schedule:
    1. 20-40 years of age: every 5 years, at ages 20, 25, 30, 35 and 40.
    2. 42-50 years of age: every 2 years, at ages 42, 44, 46, 48 and 50.
    3. 50+ years of age: annually, at ages 51, 52, 53, 54, 55, 56, etc.
  - iv. Any fire fighter who has received a Long Physical prior to ratification of this Agreement will not be eligible for a subsequent Long Physical until the next recommended Long Physical period described in subsection 3.b.(iii), above.
- c. Additional Physical Health Screenings/Exams: A fire fighter may request more frequent physical health screening on the basis of a recommendation by either the Departmental provider or the fire fighter's personal physician. The cost associated with additional recommended physical examination, screening, testing, or diagnosis is the personal responsibility of the individual fire fighter.

Fire fighters shall provide complete and accurate personal health information on any health questionnaire required by, or in any interview with, the Departmental health screening provider.

## **ARTICLE 8**

### **DISCIPLINARY ACTIONS AND APPEALS**

**Section 1. Intent.** In adopting this article, the Parties understand and agree that most fire fighters will make some errors during their career involving rule violations, including those who are good, professional fire fighters. The Parties agree that some disciplinary suspensions are for the purpose of reinforcing the need for compliance with Departmental standards and not necessarily as punishment.

#### **Section 2. Suspensions of Thirty-Six (36) Hours or Less.**

The Parties agree that when a fire fighter is suspended for 36 hours or less, the fire fighter may choose one of two methods of dealing with the suspensions as set out below:

1. Suspensions that may not be appealed. The fire fighter may forfeit vacation or holiday time equal to the length of the suspension, to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, or promotion. The forfeited vacation or holiday time will not constitute hours worked. In the event a fire fighter has received a disciplinary suspension within the preceding 24-month period, the fire fighter may only forfeit vacation or holiday time with the Department Head's permission. The fire fighter must agree that there is no right to appeal the suspension before any administrative or judicial body if this method of suspension is chosen, and the fire fighter must sign a waiver of appeal.
2. Suspensions that may be appealed. The fire fighter may appeal the suspension solely to the Civil Service Commission. If the fire fighter chooses to appeal the suspension, the hearing will be conducted as set forth in Section 143.053 Texas Local Government Code.

#### Consideration of Suspensions of 36 Hours or Less

The Parties agree that disciplinary suspensions of 36 hours or less that were imposed on or after January 1, 2020, will no longer be considered for purposes of transfer or promotion after 24 months have passed from the date of the suspension, without regard to whether the suspension was appealed.

After the 24 months have passed, the Department Head shall notify the Civil Service Commission in writing. A copy of the notification document shall be included in the IAD investigative file or the file maintained by the Director, whichever is appropriate, and the Department shall enter a notation reflecting this. The Parties agree that the Department and the Civil Service Commission will not alter, destroy, conceal, or remove any documents related to the temporary suspension, including but not limited to the notice of temporary suspension that was filed with the Commission as required by Section 143.052(c) Texas Local Government Code, or the IAD investigative file itself. The original suspension paperwork shall still be subject to open records requests and as evidence to negate any civil liability claim.

### **Section 3. Suspensions of Thirty-Seven (37) to One Hundred and Twenty (120) Hours**

The Parties agree that, when a fire fighter is suspended for 37 to 120 hours, the fire fighter may choose one of two methods for dealing with the suspension, as set out below:

1. Suspensions that may not be appealed. The Department Head may allow the fire fighter to forfeit vacation or holiday time equal to the length of the suspension, to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, or promotion. *Forfeiture of vacation or holiday time will not preclude a fire fighter from being paid overtime at the rate of time and a half for those overtime assignments that have been identified as "guaranteed overtime" assignments.* The forfeited vacation or holiday time will not constitute hours worked. Approval of the use of vacation or holiday time will be noted in the suspension paperwork. The fire fighter must agree that there is no right to appeal the suspension before any administrative or judicial body if this method of suspension is chosen, and the fire fighter must sign a waiver of appeal.
2. Suspensions that may be appealed. The fire fighter may appeal the suspension to the Civil Service Commission, or a Hearing Examiner as provided in Section 143.057 Texas Local Government Code.

### **Section 4. Suspensions of One Hundred and Twenty-One (121) to Seven Hundred and Twenty (720) Hours**

4. Mutually Agreed. Either the Department Head or the fire fighter facing discipline may offer to impose or accept a suspension without pay for a period from one hundred and twenty-one (121) to seven hundred and twenty (720) hours. If the fire fighter accepts the mutually agreed suspension, there shall be no right to appeal the suspension to any administrative or judicial body, and the fire fighter must sign a waiver of appeal. It is also understood and agreed that, if the Department Head permits the forfeit of vacation or holiday time for suspension, said vacation or holiday time shall be considered as equal discipline to unpaid hours of suspension. In no case will sick leave be substituted for unpaid hours of suspension. The forfeited vacation or holiday time will not constitute hours worked. *Forfeiture of vacation or holiday time will not preclude a fire fighter from being paid overtime at the rate of time and a half for those overtime assignments that have been identified as "guaranteed overtime" assignments*
5. Not Agreed. If the Department Head imposes a suspension under this section, the fire fighter may appeal to the Civil Service Commission or to a Hearing Examiner as provided in Section 143.057 Texas Local Government Code.

**Section 5. Alternative Discipline by the Department Head.** In considering appropriate disciplinary action *involving suspension of at least 37 hours*, the Department Head may require that a fire fighter be evaluated by a qualified professional designated by the Department Head. If that professional recommends a program of counseling and/or rehabilitation for the fire fighter,



the Department Head may, as an alternative to demotion, or temporary or indefinite suspension, or in combination with demotion or temporary suspension, require that the fire fighter successfully complete the recommended program. The program of counseling and/or rehabilitation will be completed on the fire fighter's off-duty time, unless the Department Head approves the use of accrued vacation leave or sick leave. The fire fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the fire fighter's health insurance plan. If the fire fighter's misconduct involves alcohol or substance abuse related behavior, the Department Head may require that the fire fighter submit to mandatory alcohol or drug testing for a specified period of time. If the fire fighter fails or refuses to enter into the program, or, after entering the program of counseling and/or rehabilitation, the fire fighter fails or refuses to complete the program, or fails to submit to mandatory alcohol or drug testing, the fire fighter may be indefinitely suspended for failing or refusing to complete the program, or for failing to submit to mandatory alcohol or drug testing. The fire fighter has the right to appeal to the 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 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 Department Head, 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 Department Head may require that a fire fighter be evaluated by a qualified professional designated by the Department Head. If that professional recommends a program of counseling and/or rehabilitation for the fire fighter, the Department Head may offer the fire fighter the opportunity to enter into an alternative disciplinary agreement under which the fire fighter would accept demotion or a temporary suspension of up to seven hundred and twenty (720) hours and agree to successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Department Head. The program of counseling and/or rehabilitation will be completed on the fire fighter's off-duty time, unless the Department Head approves the use of accrued vacation leave or sick leave. The fire fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the fire fighter's health insurance plan. If the fire fighter's misconduct involves alcohol or substance abuse related behavior, the Department Head may require that the fire fighter submit to mandatory alcohol or drug testing for a specified period of time. If the fire fighter accepts the opportunity for agreed alternative discipline, the fire fighter may not appeal any terms of the Agreement or the disciplinary action. If the fire fighter fails to complete the program of counseling and/or rehabilitation *without good cause*, the fire fighter may be indefinitely suspended without right of appeal regarding the Agreement or the disciplinary action before any administrative or judicial body. *In considering whether the fire fighter had good cause for failing to complete the program, the Department Head will consider whether the fire fighter was prevented from completing the program by circumstances not reasonably within his/her control, e.g. serious illness or death in the family, unavailability of the professional.*

**Section 7. Last Chance Agreement.** In considering appropriate disciplinary action, the Department Head may require that a fire fighter be evaluated by a qualified professional

designated by the Department Head. If that professional recommends a program of counseling and/or rehabilitation for the fire fighter, the Department Head may offer the fire fighter, 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 Department Head and the fire fighter.

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

If the fire fighter's misconduct involves alcohol or substance abuse related behavior, the Department Head may require that the fire fighter submit to mandatory alcohol or drug testing for a specified period of time. If the fire fighter accepts the opportunity for a Last Chance Agreement, the fire fighter may not appeal any terms of the Agreement. Successful completion of a counseling and/or rehabilitation program will be specifically defined in the Agreement. If the fire fighter fails to successfully complete the agreed upon program, the fire fighter may be indefinitely suspended without right of appeal regarding the Agreement or the disciplinary action before any administrative or judicial body.

**Section 8. Fire Fighter's Request for Professional Evaluation.** Prior to completion of an Internal Affairs investigation or the imposition of any discipline, the fire fighter may independently request an opportunity to be evaluated by a qualified physician, psychiatrist or psychologist in order to seek counseling and/or rehabilitation. The fire fighter's request will toll the 180-day deadline for imposing discipline under Section 143.052(h) Texas Local Government Code for the duration of time required for the fire fighter to be evaluated and complete any program of counseling and/or rehabilitation. The fire fighter shall be responsible for paying all costs of the program of the evaluation and counseling and/or rehabilitation which are not covered by the fire fighter's health insurance plan. The evaluation and the program of counseling and/or rehabilitation will be completed on the fire fighter's accrued vacation and/or sick and/or compensatory leave time. If the fire fighter has insufficient accrued vacation and/or sick and/or compensatory leave time to successfully complete the evaluation and any program of counseling and/or rehabilitation, the fire fighter shall complete the evaluation and/or the program while on unpaid leave. The Department Head may consider any counseling and/or rehabilitation voluntarily undertaken by a fire fighter under this section before imposing any discipline.

## **Section 9. Due Process – Loudermill Hearings**

The Parties acknowledge the importance of protecting the due process rights of a fire fighter facing any level of formal discipline. The essential components of due process include the fire fighter's right to have adequate notice of the allegations against him/her, the factual basis for the allegations, and an opportunity to be heard by the Department Head prior to the imposition of discipline. This process is also important to the Department Head in determining the nature of the alleged violations, the unique circumstances of the individual fire fighters, the appropriate level of discipline, and the fairness and consistency of disciplinary actions throughout the Department.

Following completion of an Internal Affairs investigation, the Department Head shall conduct the following meetings:

- a. Initial Meeting – Delivery of Notice of Proposed Discipline: After review of the Internal Affairs investigation and related documents, the Department Head shall draft a Notice of Proposed Discipline. This document shall contain the text of any Civil Service rules, Departmental General Orders, City personnel policies, City ordinances, City Charter provisions, state or federal laws the fire fighter is alleged to have violated, along with a detailed description of how the fire fighter's conduct violated said policies, rules or laws. Any documents or recordings that form the basis for the allegations shall be attached to the Notice as exhibits. The Notice will also state the level of discipline the Department Head is proposing to impose. The Notice of Proposed Discipline is not a public document, is not subject to an open records request and is confidential by law pursuant to section 143.089(g) of the Texas Local Government Code. At the initial hearing, the Notice will be delivered to the fire fighter. The fire fighter's counsel may attend this meeting. The Internal Affairs investigator, the fire fighter's supervisor and the Department's legal advisor will also be present. The meeting will be recorded. If the fire fighter appears without assistance of counsel, the Department Head will read the full text of the Notice aloud at the meeting. If the fire fighter appears with counsel, the Notice will not be read aloud, but will be delivered to the fire fighter's counsel. After the Notice has been read or delivered to the fire fighter's counsel, the fire fighter will sign acknowledging receipt of the Notice of Proposed Discipline and have an opportunity to ask any questions. The Department Head will then establish a date and time at least 3 to 5 business days later for the second meeting.
- b. Second Meeting – The Fire Fighter's Response: After a period of time during which the fire fighter may review the allegations against him/her and the evidence in support of the allegations, the fire fighter will have an opportunity to present his/her side of the case to the Department Head. The fire fighter may present mitigating evidence, in any form, that he/she believes to be relevant and/or helpful to Department Head in coming to a fair and consistent disciplinary decision. The evidence presented by the fire fighter, to the extent it has not already been publicly released or is considered 'super-public' pursuant to Chapter 552 of the Texas Government Code, is not public

information, not subject to an open records request and is confidential by law pursuant to section 143.089 of the Texas Local Government Code. The fire fighter's counsel may be present at this meeting. The Internal Affairs investigator, the fire fighter's supervisor and the Department's legal advisor will also be present. The meeting will be recorded. After the fire fighter has completed his/her presentation, the Department Head will establish a date and time at least 3 to 5 business days later for the final meeting.

- c. Final Meeting – Disciplinary Decision: After review of the evidence presented by the fire fighter, the Department Head shall carefully consider the allegations and the fire fighter's evidence. The purpose of the final meeting is to deliver the Department Head's decision regarding the appropriate level of discipline to be imposed. If formal discipline in the form of a demotion, suspension or an indefinite suspension is to be imposed, the Department Head shall draft a Notice and Order of Demotion, Suspension or Indefinite Suspension, as appropriate, for delivery to the fire fighter at this meeting. This document, including any supporting exhibits, is a public document and is subject to an open records request. Any remedial measure other than a demotion, suspension, or indefinite suspension imposed by the Department Head is confidential by law, pursuant to section 143.089 of the Texas Local Government Code. The fire fighter's counsel may attend this meeting. The Internal Affairs investigator, the fire fighter's supervisor and the Department's legal advisor will also be present. The meeting will be recorded. If the fire fighter appears without assistance of counsel, and formal discipline is to be imposed, the Department Head will read the full text of the final Notice aloud at the meeting. If the fire fighter appears with counsel, the Notice will not be read aloud, but will be delivered to the fire fighter's counsel. After the Notice has been read or delivered to the fire fighter's counsel, the fire fighter will sign acknowledging receipt of the Notice and Order. The fire fighter will leave with a signed copy of the Notice and Order.

**Section 10. Texas Local Government Code, Section 143.057– Hearing Examiner Retained for Suspensions in Excess of Thirty-Six (36) Hours.** The City recognizes that during the term of this Agreement, fire fighters have the right to an appeal of an indefinite suspension 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. It is the express intention of this provision that a fire fighter may not appeal to a Hearing Examiner pursuant to section 143.057, Texas Local Government Code unless the suspension exceeds thirty-six (36) hours or is an indefinite suspension.

**Section 11. Procedures for Hearings Before Commission and Hearing Examiners.** It is expressly agreed that Commission hearings and hearings before Hearing Examiners under section 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. The burden of proof shall be by a preponderance of the evidence. 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 supply a copy of that statement to the fire fighter's counsel at the time the witness is called to testify.

## **Section 12. Appeal Procedures Before Hearing Examiners**

The Parties recognize and agree that protracted, unnecessary delay of disciplinary appeals to third-party Hearing Examiners dilutes the primary instructive function of the underlying discipline. The Parties agree that the following procedures are intended to promote the efficient and effective conclusion of such appeals.

1. The Parties agree to select a third-party Hearing Examiner:
  - a. by agreement, no later than ten (10) business days from the date the fire fighter's notice of appeal is filed with the Director of the Civil Service Commission, or
  - b. from a list of seven (7) Hearing Examiners provided by the American Arbitration Association. The Director will request the list within ten (10) business days of receipt of the fire fighter's notice of appeal. The Director will send the list by email to the fire fighter's counsel and counsel for the City within ten (10) business days of receipt. The selection process will be completed no later than ten (10) business days from the date the list is received by counsel, using a process of alternately striking names from the list, with the fire fighter's counsel making the initial strike.
  - c. Failure by the fire fighter's counsel to make the initial strike by the tenth business day following receipt of the list of Hearing Examiner names from the Director shall be deemed a withdrawal fire fighter's appeal.
2. The Department shall furnish the charge letter to the Hearing Examiner by delivering a copy far enough in advance so that the Hearing Examiner receives the copy at least five (5) business days prior to the start of the hearing.
3. The fire fighter may furnish a position statement to the Hearing Examiner by delivering copies to the Hearing Examiner and the Department far enough in advance so that the Hearing Examiner and the Department receive the copies at least five (5) business days prior to the start of the hearing.
4. At the close of the presentation of evidence to the Hearing Examiner, the Hearing Examiner shall render a decision within thirty (30) business days.
5. Post-hearing briefs shall only be allowed by mutual agreement of the Parties and shall be sent simultaneously to both the Hearing Examiner and the opposing side using the same mutually agreed method.

6. Expenses - It is agreed that the City and the fire fighter disciplined under this Article shall equally share the expenses associated with a third-party Hearing Examiner. The cost of an expert witness or any other witness not employed by the City is to be paid by the Party that subpoenas that witness. In the event a Party desires a court reporter, that Party shall bear 100% of that cost. In the event the fire fighter is not a member of the Association, and therefore financially responsible for his/her share of any fees, the fire fighter shall deposit with the Director of the Civil Service Commission his/her share of the fees three (3) days prior to the Hearing Examiner's deadline to cancel. Failure to deposit the funds shall result in the appeal being dropped.

In the event the fee for a hearing exceeds the deposited amount, the non-Association member shall pay the remaining amount due within thirty (30) days of receipt of the bill or authorize the City to deduct the amount due from his/her next four (4) paychecks.

### **Section 13. Authority of Civil Service Commission/Hearing Examiner**

If a fire fighter is temporarily suspended for a period in excess of thirty-six (36) hours, or indefinitely suspended, the Parties agree that the fire fighter 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 section 143.057 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 the Hearing Examiner may affirm or reduce the suspension imposed by the Department Head to a temporary suspension not to exceed 180 days. The Commission or Hearing Examiner may consider reducing a suspension to time already served between the imposition of discipline and the appeal decision.

It is the specific intent of the Parties to override the judicial limitation imposed on the authority of the Commission or Hearing Examiner by the case styled *City of Waco v. Kelley*, 309 S.W.3d 536 (Tex.2010), which restricts the jurisdiction of the hearing authority to imposing only indefinite suspensions, temporary suspensions in of fifteen (15) calendar days or less, or restoring the fire fighter's former position.

It is not the intent of the Parties to modify any right or privilege of further appeal or appellate review that is otherwise authorized by law to review the decision of the Commission or Hearing Examiner.

**Section 14. Preemption.** The provisions of this Article preempt all contrary local ordinances, administrative directives, legislation or rules adopted by the State or by a political subdivision, including a Civil Service Commission. It is the specific intent of the Parties to the Agreement that any express written provision that specifically provides for a procedure, standard, or practice other than what is provided for in Subchapter D, chapter 143 of the Texas Local Government Code is intended to override the applicable statutory provision as allowed by subchapter C, Chapter 142 of the Texas Local Government Code. The Commission shall adopt Local Rules in accordance with this article upon approval by the City Council.



**ARTICLE 9**  
**COMPENSATION STUDY**

**Section 1. Intent.** The Parties agree to meet no later than January 15, 2021, to discuss the criteria for completion of a Civil Service compensation study for implementation in fiscal year 2022.

## **ARTICLE 10**

### **GRIEVANCE PROCEDURE**

**Section 1. Intent and Scope of Procedure.** The Parties acknowledge that from time to time, disagreements between the Parties may arise as to the application or interpretation of this Agreement. The Parties therefore agree that the purpose of this dispute resolution procedure is to provide a just and equitable method for resolving disagreements between the Parties regarding the application or interpretation of the provisions of this Agreement. Only matters involving the interpretation, application, or alleged violations of a specified provision of this Meet and Confer Agreement shall be subject to this dispute resolution procedure. Any matter for which the right of appeal or review is afforded by Chapter 143 of the Texas Local Government Code are excluded from the scope of this Article.

#### **Section 2. Application of Procedure**

If the Association has a dispute with the City regarding this Agreement, the Association Executive Board, or the Association President's designee, should reduce the dispute to writing and deliver it to the City's designated representative, who shall be its Department Head or his designee.

A fire fighter may not file a request for contract dispute resolution directly with the City. All resolution requests must be approved and come from the Association Executive Board.

Each dispute shall be submitted in writing, and must include, at a minimum, the following information:

1. a brief statement of the dispute, and the facts or events on which it is based;
2. the section(s) of the Agreement alleged to have been violated;
3. the remedy or adjustment sought, and
4. the bargaining unit member's signature or, if filed by the Association Executive Board, the signature of the Association President or his designee.

Any claim or dispute by a fire fighter or group of fire fighters under this Agreement which includes a claim for pay or benefits for any past pay periods, must be filed by the employee with the Association Executive Board within fifteen (15) business days of the date when the fire fighter(s) knew or reasonably should have known of the claim. Disputes by the Association Executive Board or fire fighter shall proceed as follows:

**Step 1.** An aggrieved fire fighter must initiate a dispute with the Association Executive Board within fifteen (15) business days of the date upon which the fire fighter knew of or reasonably should have known of the facts giving rise to the dispute. A copy of the notice or receipt of the dispute shall be forwarded to the Department Head by the Association Executive Board within three (3) business days of the receipt of the dispute. The Association Executive Board shall within their sole discretion determine if a dispute exists within fifteen (15) business days of receipt of the dispute.



If the Association determines that no dispute exists, the grievance will be deemed denied, and the Association shall notify the Department Head in writing that no further proceedings will be necessary. If the Association Executive Board determines that the dispute is valid, the Association will notify the Department Head of such, and forward a copy of the grievance to the Department Head within fifteen (15) business days after their determination.

**Step 2.** Any grievance found to be valid by the Association Executive Board shall be submitted to the Department Head within fifteen (15) business days of the Step 1 decision. After receipt of the dispute, the Department Head shall, within fifteen (15) business days, submit his/her response in writing to the Association Executive Board. If there is no timely reply from the Department Head, the grievance is deemed denied and will proceed to Step 3.

**Step 3.** If the dispute is not resolved in Step 2, the Association Executive Board shall advance the dispute in writing to the City Manager or his/her designee within fifteen (15) days from receipt of the Step 2 decision by the Department Head. The City Manager or designated representative shall review the matter and render a decision in writing to the Association Executive Board and the Department Head within fifteen (15) business days of the receipt of the dispute in Step 3. The City Manager or designee may, at his/her discretion, conduct a conference to further explore the merits of the dispute and to explore resolution options.

**Step 4.** If the dispute is not resolved in Step 3, either Party shall have the right to seek mediation of the dispute by requesting the same in writing within fifteen (15) business days from the City Manager's response. The mediation will proceed before either a mediator with the Federal Mediation and Conciliation Service, or before a mutually agreed mediator. The mediation shall be held in available City of Temple facilities.

**Step 5.** If the dispute is not resolved at Step 4, the Association Executive Board shall have fifteen (15) business days from the date mediation concludes to determine whether it will pursue the dispute under this Article through arbitration. Under this step, the Association Executive Board must deliver a letter indicating its election to proceed to arbitration to the Department Head and the City Manager within three (3) business days of that election.

### **Section 3. Arbitration Option**

The Parties have agreed that all disputes under this Agreement, which concern the application and interpretation of this Agreement, shall be submitted to final and binding arbitration, and the Parties exclude from this Agreement disputes involving statutory application and interpretation for rights and claims not arising under sections 142 or 143 of the Texas Local Government Code. The terms of the Agreement, and any factual issues which are determinative in applying the Agreement, shall be the sole province of the designated arbitrator, and his or her decision shall be final. However, the City will only agree to arbitration on the condition that legal issues which are determinative in any contract dispute are subject to judicial review. This represents an agreement by the Parties to submit disputes to arbitration within its scope, and otherwise preserves the existing jurisdiction of Texas Courts over any contract rights and claims not exclusively committed to arbitration. The Parties have agreed that questions of law, which involve either the interpretation and application of state statutes or the application of legal

principles from Texas appellate court opinions (or the failure to properly apply such legal principles or opinions) to controversies under this article shall be submitted initially to arbitration, but that either Party shall have a limited right of appeal from an arbitration award in the Courts, solely for the purpose of reviewing disputed issues of law. No such appeal from arbitration shall include review of any factual determinations by the arbitrator, including credibility of witnesses or weight of the evidence. If an appeal from arbitration based on erroneous application of the law is not successful, the appealing Party shall bear all costs of such appeal.

If a dispute is submitted to arbitration, within seven (7) business days, the Department Head and/or the City and the Association may mutually agree on the selection of an arbitrator or, if unable to agree, within thirty (30) days shall select an arbitrator by alternately striking names from the Parties' pre-determined panel of six (6) qualified neutral arbitrators. The process will be as follows: the Association shall strike the first name under this article with the first dispute brought under this article. Thereafter, the first strike shall alternate between the Parties. Should any panel member subsequently refuse or be unable to continue to serve on the panel, the Parties may mutually agree to his replacement. The remaining member of the panel will continue to serve for the duration of the Agreement. The arbitration should be held at the earliest available date, but may be continued for good cause shown, or upon mutual agreement.

Upon written request delivered at least fourteen (14) calendar days prior to the date of the hearing, a Party to the proceeding shall provide, no later than seven (7) days prior to the hearing, to the opposing Party the names and addresses of witnesses expected to be called at the hearing. In the absence of good or excusable cause, the arbitrator may exclude the testimony of a witness upon the failure of a party to disclose such a witness. The Parties, in writing, may request discovery from each other concerning the grievance. Should the opposing Party not agree to provide the requested information within seven (7) calendar days of the request, the request shall be deemed denied. The requesting Party may then apply to the arbitrator, who shall order such discovery consistent with, but not bound by, the rules of discovery in Texas civil cases. In considering the application, the arbitrator shall consider the burden and expense of producing the information, the need of the requesting Party, the amount of time available prior to the hearing, and such other matters as he may deem material. In no event shall discovery be requested within thirty-five (35) calendar days prior to the hearing, unless agreed to by the Parties.

The hearing shall be held in available facilities of the City of Temple and shall be conducted informally, without strict evidentiary or procedural rules. The conduct of the hearing shall be governed by the standard rules of the American Arbitration Association. The arbitrator shall consider and decide only the issue(s) in the dispute 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 based on a preponderance of the evidence within thirty (30) days after close of the hearing, or after receipt of post-hearing briefs, if applicable.

If the Association fails to comply with and adhere to its respective obligations under this Agreement, the City shall notify, in writing, the Association of the alleged failure. No breach of the Agreement may be found to have occurred if the alleged failure by the Association is remedied within thirty (30) business days of the receipt of such notice. If the Association does

not remedy the alleged failure within thirty (30) days of the receipt of such notice, the City may (i) terminate this Agreement by the delivery of written notice to the Association; (ii) enforce specific performance of the Agreement; and/or (iii) pursue any remedies available to it at law or in equity.

**Section 4. Decision Final and Binding.** If arbitration is selected, 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 dispute submitted to the arbitrator. Each Party shall be responsible for its own expenses in preparing for and representing itself at arbitration, but the fees and expenses of the arbitrator shall be borne equally by the Parties. The written decision of the arbitrator shall be final and binding on both Parties and may not be appealed by either Party, except for any decision procured by fraud or collusion, or which exceeds the arbitrator's jurisdiction, or which is based on legal conclusions or interpretations which are clearly contrary to existing law.

**Section 5. Mutual Extension.** All deadlines within this article may be extended by mutual agreement of the Parties.

**Section 6. Grievances of Non-Association Members.** Grievances of Non-Association members must follow the same procedure outlined by this article. A Non-Association member is entitled to be represented by counsel at the hearing at his or her own expense. However, should the grievance of a Non-Association member require that Association resources be used, the Non-Association member will be required to pay all expenses incurred while pursuing final disposition of their grievance. These shall include costs for payment of Arbitrator fees, counsel fees, and any other fees directly related to the grievance. All disciplinary appeals shall follow the procedures as outlined in chapter 143 of the Local Government Code, or those procedures set out elsewhere in this Agreement.

**ARTICLE 11**  
**SAVINGS AND DURATION**

**Savings Clause.** Should any provision of this Agreement be found to be inoperative, void, or invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement, it being the intention of the Parties that no portion of this Agreement or provision herein shall become inoperative or fail by reason of the invalidity of any other portion or provision.

**Duration of Agreement.** This Agreement shall become effective after ratification by the affected employees pursuant to a vote conducted by the Temple Professional Fire Fighters' Association and upon approval by the City Council after compliance with any procedural or publication requirements imposed by law. It shall continue in effect until September 30, 2021; provided however, the Agreement may be extended by mutual consent of the Parties.

**ARTICLE 12**  
**FUNDING OBLIGATION**

The City presently intends to continue this Agreement each fiscal year through its term, to pay all amounts due and to fully and promptly perform 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 for those obligations, including tax revenues, reasonably anticipated and appropriated for such purpose by the City Council in compliance with the Texas Constitution, Article 11, Sections 5 and 7.

In making funding determinations in the second and subsequent fiscal years of this Agreement following ratification, the City Council may consider operational and administrative costs including its debt service obligations, the increases in other employee personnel cost, and the obligations arising under this Agreement.

If at any time it is determined by the City that it would not be able to meet its financial obligations hereunder after considering the above factors, the Association and the City mutually agree to renegotiate the financial provisions of this Agreement. The City and Association agree to meet no later than thirty (30) days from the date the parties become aware of a funding issue that negatively impacts any of the City's financial obligations under this Agreement for the purpose of renegotiating the individual provisions affected. If, ninety (90) calendar days after these negotiations begin, no agreement has been reached on those provisions, this Agreement shall terminate and be null and void in its entirety.

In the event the City Council fails to appropriate funds in any fiscal year of this Agreement in an amount sufficient to meet the City obligations hereunder, this agreement shall terminate and shall be null and void in its entirety on the first date that such funding is not met pursuant to this Agreement.

If at any time during the term of this Agreement, or any extension thereof, the electorate of the City subjects the Government of the City to a rollback election, and, as a result of such rollback election, the City suffers a reduction in revenues due to a reduction in the tax rate, the Association agrees to reopen the salary and other compensation provisions of this Agreement for the purpose of renegotiating the same. If ninety (90) calendar days after these negotiations begin, no agreement has been reached, this Agreement shall terminate and be null and void in its entirety.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED TO HAVE THIS AGREEMENT TO BE SIGNED BY THEIR DULY AUTHORIZED REPRESENTATIVES ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

11/13/2020 | 11:58 AM CST

THE CITY OF TEMPLE, TEXAS

TEMPLE PROFESSIONAL FIRE  
FIGHTERS ASSOCIATION

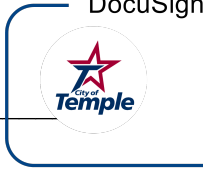
DocuSigned by:

DocuSigned by:

*Brynn Myers*

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Brynn Myers, City Manager



DocuSigned by:

*Charles Branham*

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Charles Branham Lead Negotiator

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

*Jana Lewellen*

BE00E0D886A84BA

Jana Lewellen  
City Secretary

DocuSigned by:

*Nan Rodriguez*

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City Attorney's Office