

RESOLUTION NO. 2019-9822-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, RATIFYING A MEET AND CONFER AGREEMENT WITH THE TEMPLE POLICE ASSOCIATION; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the “meet & confer” process is governed by Chapter 142 of the Local Government Code - Chapter 142 allows a “police officers association” to file a petition with the City requesting that the City recognize the association as the sole and exclusive bargaining agent for all officers and adopt the meet & confer process;

Whereas, the meet and confer process allows the City to meet & confer with a police officers association over wages, salaries, rates of pay, hours of work, or other terms and conditions of employment and must occur in a meeting open to the public;

Whereas, the City and a police officers association are not required to reach agreement on any particular topic, and an agreement on any issue must be in writing and ratified by the Council and a majority of the police officers;

Whereas, a written meet & confer agreement preempts all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules and allows variation of civil service rules regarding hiring requirements, pay, benefits, promotion standards, and the disciplinary process;

Whereas, in compliance with the terms of the fiscal year 2019 Meet and Confer Agreement, City Administration and Temple Police Association (“TPA”) began meeting in December, 2018 to adopt the ground rules and discuss any issues with the current agreement;

Whereas, the fiscal year 2020 agreement includes articles covering 12 issues listed below:

- 1) Association Business
- 2) Additional Deputy Chief Position
- 3) Military Leave Time Account
- 4) Compensation
- 5) Overtime
- 6) Higher Classification Pay / Rank Structure
- 7) Education Incentives for Promotion
- 8) Lateral Entry Program
- 9) Individual Vehicle Assignment Program (IVAP)
- 10) Physical Fitness Program
- 11) Disciplinary Actions and Appeals
- 12) Grievance Procedure

Whereas, in March 2019, the Agreement was ratified to extend the current agreement six months from March 31, 2019 to September 30, 2019, to allow time for City administration and TPA to work together to complete the compensation study - in the current agreement, both Parties agreed to diligently work together to develop the criteria for a professionally prepared compensation study to be conducted in fiscal year 2019 that will include a full study of the City of Temple's Civil Service Pay Plan structure including, but not limited to, an evaluation of the step system and compression between steps;

Whereas, the draft agreement proposes the following:

- Substantive changes to 3 issues (Article 5 – Overtime Compensation; Article 7 – Promotional Process; and Article 8 – Lateral Entry Program),
- Non-substantive changes to 2 issues (Article 4 – Compensation and Article 14 – Duration of Agreement), and
- Addition of a new issue (Physical Fitness Program);

Whereas, a Meet and Confer Agreement is enforceable and binding if the governing body of the municipality ratifies the agreement by a majority vote and the recognized police officer's association ratifies the agreement by conducting a secret ballot election at which the majority of the police officers who would be covered by the agreement favored ratifying the agreement;

Whereas, a ratification election was held from September 4, 2019 to September 9, 2019 and the results of the meet and confer agreement extension election are as follows:

108 – For
22 – Against
19 – Did not vote (results in an against vote)

Whereas, this Meet and Confer Agreement will become effective immediately and continue in effect until September 30, 2021;

Whereas, all costs associated with this agreement are budgeted for in the associated accounts in the fiscal year 2020 budget; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

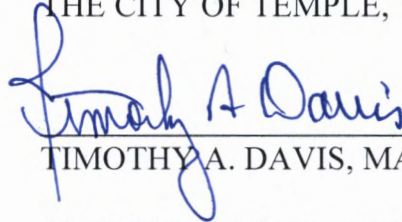
Part 1: Findings. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

Part 2: The City Council ratifies a Meet and Confer Agreement with the Temple Police Association, as outlined in Exhibit 'A,' attached hereto and incorporated herein for all purposes.

Part 3: It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the 19th day of **September**, 2019.

THE CITY OF TEMPLE, TEXAS



TIMOTHY A. DAVIS, MAYOR

APPROVED AS TO FORM:



Kayla Landeros
Interim City Attorney

ATTEST:



Lacy Borgeson
City Secretary





MEET & CONFER AGREEMENT

BETWEEN

THE CITY OF TEMPLE, TEXAS

AND

TEMPLE POLICE ASSOCIATION

**CITY OF TEMPLE FISCAL YEAR
October 1, 2019 through September 30, 2021**

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DEFINITIONS

1. "Agreement" refers to this Meet and Confer Agreement, negotiated between the City of Temple and the Temple Police Association.
2. "Association" means the Temple Police Association.
3. "City" means the City of Temple.
4. "College hours" "Degree" or "College Degree" means credit hours or degree from a college or university recognized by the Southern Association of Colleges and Schools

- or a similar regional association recognized and approved by the United States Department of Education.
5. "Commission" means the Firefighters' and Police Officers' Civil Service Commission of the City of Temple.
 6. "Day(s)" means calendar days, unless otherwise specified.
 7. "Department" means the Police Department of the City of Temple.
 8. "Department Head" means the administrative head of the Police Department or the Chief of Police, including any interim or acting Chief of Police.
 9. "Director" means the Director of the City of Temple Firefighters' and Police Officers' Civil Service Commission.
 10. "Dues" means the cost of membership in the Association.
 11. "FY" means financial year.
 12. "Guaranteed Overtime" refers to assignments compensated at a rate of time and a half, without regard to the number of hours worked in a pay period.
 13. "IVAP" means the Individual Vehicle Assignment Program.
 14. "Local rules" refers to the Rules and Regulations of the City of Temple Firefighters' and Police Officers' Civil Service Commission.
 15. "Party" or "Parties" means the City of Temple and the Temple Police Association.
 16. "Police Officer" 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 Police Department.
 17. "TCOLE" means the Texas Commission on Law Enforcement, or its successor organization.
 18. "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 Police Association (TPA) as the sole and exclusive bargaining agent for all covered police officers, pursuant to section 142.053 et. seq. Texas Local Government Code, excluding the Department Head, employees of the Temple Police 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 Police 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 officers 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 police 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 an officer 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 officer's pay. Officers who are not members are not obligated to pay Association dues. Officers 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 Police 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 police station and one (1) board at each police 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 Police Department General Orders, the City's administrative Regulations, and the applicable provisions of this Agreement, the Association may utilize electronic communications ("E-mail") to communicate with Temple police officers 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 officers for approval to distribute email communications regarding solicitations of officers (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 Police officers are on Association Business Leave, they shall not wear Temple Police 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 Police 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 officer'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 section.

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 meet and confer 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 by the City. Police administration may adjust Association representatives' schedules in order to minimize overtime expense.

ARTICLE 2

Creation of Additional Deputy Chief Position

Section 1. Intent. In adopting this article, the Parties agree to the creation of a single additional Deputy Chief position in addition to the two (2) Deputy Chief positions authorized by Section 143.014(c) Texas Local Government Code. The Parties believe this additional position is necessary to align the Departmental command structure with the organization of the Department into three (3) bureaus (Patrol, Investigations, and Administration) and to efficiently address the continued growth of the Department and the community.

Section 2. Minimum Standards. In addition to the minimum standards required by Sections 143.013(b) and 143.014(d) Texas Local Government Code, the person appointed to the additional Deputy Chief position must have:

1. obtained a minimum educational level of a Bachelor's degree within two (2) calendar years from the date the Meet and Confer Agreement is approved by the Parties.
2. successfully completed a major law enforcement management school, e.g., the FBI National Academy, Southern Police Institute, or be able to complete this requirement within the first eighteen (18) months of promotion to the position;
3. served in the rank of Sergeant or above, and have demonstrated effective supervision, leadership and management of the personnel under their control;
4. obtained the level of Master Peace Officer Certification by the Texas Commission on Law Enforcement (TCOLE) or its successor.

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

Section 3. Procedure. Upon a vacancy in any Deputy Chief position, the position will be posted for a period of 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 Department Head's discretion and that this procedure is not intended to, and does not, provide a basis for appeal of the appointment.

Section 4. Adoption and Publication of Rules. The Commission shall adopt Local Rules in accordance with this article upon approval by the City Council.

ARTICLE 3

Military Leave Time Account

Section 1. City to Maintain Account.

- (a) The City of Temple shall maintain a military leave time account for the police department. The account shall benefit a police officer who:

- (1) is a member of the Texas National Guard or the armed forces reserves of the United States;
 - (2) was called to active federal military duty while serving as a police officer for the City; and
 - (3) has served on active duty for a period of 3 continuous months or longer.
- (b) A police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account to help provide salary continuation for police officers who qualify as eligible beneficiaries of the account under this Article.
 - (c) A police officer who wishes to donate time to an account under this section must authorize the donation in writing on a form provided by the police department and approved by the City.
 - (d) The City shall equally distribute the leave time donated to the military leave time account among all police officers who are eligible beneficiaries of that account. The City shall credit and debit the applicable military leave time account on an hourly basis, regardless of the cash value of the time donated or used.
 - (e) A police officer who wishes to use military leave from the military leave time account shall submit the request in writing.
 - (f) In December of each year, the City shall provide a report to the Association that includes the current balance of the military leave time account and the amount of leave used by each police officer from the account during the previous year.

Section 2. Adoption and Publication of Rules. The Commission shall adopt Local Rules in accordance with this article upon approval by the City Council.

ARTICLE 4

Compensation Study

Article 4 - COMPENSATION STUDY

Section 1. Intent. The Parties agree to continue to work diligently together to establish a compensation study to be conducted in fiscal year 2021 for implementation in fiscal year 2022

that will include a full study of the City of Temple's Civil Service Pay Plan structure including, but not limited to, an evaluation of the step system and compression between steps.

The Parties agree to meet not later than January 15, 2021, to discuss the progress of the study and begin the process of negotiating a successor agreement.

ARTICLE 5

Overtime Compensation

Section 1. Intent. In adopting this Article, the Parties agree to the creation of a uniform Departmental policy governing overtime compensation, consistent with Section 142.0015 Texas Local Government Code, the Fair Labor Standards Act (FLSA), and City policy.

Section 2. General Guidelines.

- a. The allocation of budgeted overtime funds is solely within the discretion of the Department Head.
- b. Nothing in this Agreement is intended to, and this Agreement does not, limit the Department Head's discretion to assign employees as necessary to achieve Departmental objectives.

Section 3. Overtime Exception. The Parties understand and agree that the overtime exemption provided for by the FLSA known as the 7(k) exemption is hereby adopted by the City and shall be used to determine an applicable work period for purposes of overtime under the FLSA for certain work groups. The City reserves the right to make an initial determination regarding whether an overtime exemption applies, based on its own evaluation, or based on a request for an evaluation from the Department of Labor (DOL).

Section 4. Amendment of Work Period. The City reserves any and all rights to alter or amend the work period, if to do so serves the legitimate governmental and management interests of the City. The Parties agree that the maximum work period that will be utilized by the City is a fourteen (14) day period. The maximum number of hours that will be worked without overtime pay within a 14-day work period will be eighty (80).

Section 5. Scheduled Overtime Assignments.

- a. All scheduled overtime assignments subject to contractual agreements with third parties will be compensated at a guaranteed rate of time and a half, without regard to the number of hours worked by an officer during that pay period.
- b. Other overtime assignments for which compensation will be at a guaranteed rate of time and a half, without regard to the number of hours worked by an officer during that pay period, shall be identified and posted as such in advance.
- c. All scheduled overtime assignments for City events will be paid at time and half, unless an officer has worked less than 80 hours during the relevant pay period. In the event that an officer scheduled to work a City event has not worked 80 hours due to taking sick or vacation leave during that pay period, the officer will be compensated at his regular hourly rate for the City event. The officer shall have the option to elect whether to apply straight "additional regular" time in lieu of the leave taken, or to receive additional compensation for working the City event, but in no case shall the officer be compensated at the rate of time and a half.
- d. Supervisors shall not require officers who are scheduled to work a City event to take flex days prior to the City event in order to avoid paying the officers overtime for working the City assignment.

Section 6. Unscheduled Overtime.

a. Definitions

1. Call-Outs – time the Department requires an officer to return to duty status, on an unscheduled basis, fifteen (15) minutes or more after the officer's shift ends to work outside of the officer's regularly scheduled work hours.
 2. Extension of Duty – time the Department requires an officer to remain on duty, or to return to duty on an unscheduled basis less than fifteen (15) minutes after the end of their prior regular shift, or during their unpaid lunch hour.
 3. Prior to Duty – time the Department requires an officer to report to duty, on an unscheduled basis, less than one (1) hour prior to the officer's regular shift.
- b. Non-exempt officers who respond to a Call-Out shall be entitled to a minimum of two (2) hours of guaranteed overtime compensation (OT), regardless of actual time worked. Time worked in this circumstance shall begin when the notification is received and continue until the officer is cleared from the call.
- c. Non-exempt officers who work Extensions of Duty are entitled to additional regular compensation (AR) for the actual time worked, unless total time worked exceeds eighty (80) hours for that work period. If the officer's total time worked for the relevant work period exceeds eighty (80) hours, the Extension of Duty will be compensated at overtime rates. Time worked in this circumstance shall begin at the end of the immediate prior regular shift, or, if the officer's unpaid lunch is interrupted, when the officer is notified to return to duty, and continue until the officer is cleared from the call.
- d. Non-exempt officers who work Prior to Duty shall be entitled to guaranteed overtime compensation (OT) for a minimum of one (1) hour. Time worked in this circumstance shall begin when the notification is received and continue until the beginning of the officer's regular shift.
- e. If an officer is required to work unscheduled overtime, the officer shall have the opportunity to elect whether (s)he will be compensated with compensatory time, or paid overtime for that assignment, subject to leave balance restrictions. If the supervisor does not flex the officer's time, the overtime slip submitted by the officer will be processed as submitted. No supervisor shall amend a payment form submitted by an officer for such an assignment without the officer's prior consent.
- f. If the supervisor does flex the officer's time, the supervisor will work with the officer to schedule the flex time off, subject to the needs of the Department.

Section 7. Court Appearances. An officer who makes a required court-related appearance prior to, or after his/her regularly scheduled shift, is guaranteed a minimum of 2 hours of overtime compensation, regardless of the actual time spent in court. Time worked, in this circumstance, includes scheduled report time until released by the court.

Section 8. Compensatory Time. The Parties agree to the following:

- a. Overtime assignments for which compensation will be in the form of compensatory time off in lieu of paid overtime shall be identified and posted as such in advance.
- b. Unless an overtime assignment has been posted as a compensatory time assignment, compensation for that assignment shall be paid overtime.
- c. If an officer is required to work an overtime assignment for which the form of compensation has not been identified prior to the start of the overtime assignment, the officer shall have the opportunity to elect whether (s)he will be compensated with compensatory time or paid overtime for that assignment, subject to leave balance restrictions. If the supervisor does not flex the officer's time, the overtime slip submitted by the officer will be processed as submitted. No supervisor shall amend a payment form submitted by an officer for such an assignment without the officer's prior consent.
- d. If the supervisor does flex the officer's time, the supervisor will work with the officer to schedule the flex time off, subject to the needs of the Department.
- e. This section is not intended to limit the Department Head's ability to assign officers to work overtime assignments paid with compensatory time off as necessary to meet Departmental objectives.
- f. This section is not intended to limit the Department Head's authority to implement flex time in managing the Department's budget.
- g. Subject to staffing needs, supervisors and officers will schedule compensatory time off at a mutually agreeable time.

Section 9. Administrative Challenge. Nothing in this Agreement shall prevent or preclude an individual officer or class of officers from exercising their administrative rights to challenge the application of an exemption using applicable DOL procedures and protocols. Further, nothing in the Agreement shall prevent or preclude the City from defending its application of an exemption.

Section 10. Preemption

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.

This Article supersedes Section 142.0015(j) Texas Local Government Code and any and all other contrary state provisions to allow the adoption of the FLSA 7(k) overtime exemption and provide for an alternate work period.

The Commission shall adopt Local Rules in accordance with this Article upon approval by City Council.

ARTICLE 6

Temporary Duties in Higher Classification/Rank Structure

Section 1. Intent and Scope. The Parties acknowledge that an officer's experience, training and performance contribute significantly to his/her efficiency and ability, and the Department's ability to meet public safety needs. The Parties agree that temporarily designating an officer to

perform the duties of a higher rank may be necessary to meet Departmental staffing needs and can also provide the officer a unique and valuable training opportunity as part of career development.

Section 2. Corporal Rank

- (a) Acting Sergeant – When no Sergeant or Lieutenant is available to act as a field supervisor for a shift due to absence, illness or injury, a Corporal shall be designated as “Acting Sergeant/Field Supervisor” for that shift. When no Sergeant is available to act as a field supervisor for a shift due to absence, illness or injury, and the Lieutenant determines an additional field supervisor is needed to meet staffing needs, the Lieutenant may designate a Corporal as an “Acting Sergeant/Field Supervisor” for that shift.
1. The designation shall be made by a Lieutenant, Deputy Chief, or the Department Head, and be noted in writing on the Duty Roster.
 2. A person serving in this designation shall have full authority and responsibility for performing all of the duties of the Sergeant rank for the duration of the designation.
 3. The officer designated as Acting Sergeant shall be paid the base salary of the Sergeant rank, plus the officer’s own longevity and seniority pay, educational incentive pay and certification pay during the period of the designation.
 4. The designation shall be made on a rotating basis to all Corporals, from a list which will be distributed to the Unit.
 5. The Department Head, or his designee, retains discretion to deviate from the order of names on the list when designating an Acting Sergeant. This decision is not subject to appeal and shall not be the basis for a grievance.
 6. If no list is available, the designation will be made on the basis of seniority.
- (b) Mentoring Sergeant – A Lieutenant may designate a Corporal to act as Mentoring Sergeant under the supervision of a Sergeant or Lieutenant.
1. The designation is specifically intended for training and mentoring purposes, as part of a comprehensive career development plan. The Mentoring Sergeant designation is not to be made for the purpose of meeting Departmental staffing needs.
 2. The designated Corporal will have the immediate authority of a Sergeant for the duration of the designation, however ultimate authority and responsibility for the shift remains with the available Sergeant or Lieutenant.
 3. The designation shall be made by a Lieutenant, Deputy Chief, or the Department Head, and be noted in writing on the Duty Roster.
 4. The Mentoring Sergeant shall not receive higher classification pay during the designation period.
 5. The designation shall be made on a rotating basis to all Corporals, from a list which will be distributed to the Unit.
 6. The Department Head, or his designee, retains discretion to deviate from the order of names on the list when designating a Mentoring Sergeant. This decision is not subject to appeal and shall not be the basis for a grievance.
 7. If no list is available, the designation will be made on the basis of seniority.

Section 3. Sergeant Rank

Watch Commander – When a Lieutenant will be absent or unavailable for a period of at least twenty-eight (28) consecutive days, the Department Head, or his designee, may designate a Sergeant to perform the administrative duties of a Lieutenant/Watch Commander.

- a. The designation shall be made by a Deputy Chief, or the Department Head, and be noted in writing on the Duty Roster.
- b. A person serving in this designation shall have full authority and responsibility for performing all of the duties of the Lieutenant rank for the duration of the designation.
- c. The designated Watch Commander shall be paid the base salary of the Lieutenant rank, plus the officer's own longevity and seniority pay, educational incentive pay, and certification pay during the period of the designation.
- d. The designation shall be made on a rotating basis from a list of Sergeants. If no list is available, the designation shall be made on the basis of seniority. The Department Head retains discretion to deviate from the order of names on the list when designating a Watch Commander. This decision is not subject to appeal and shall not be the basis for a grievance.
- e. The Department Head retains authority to designate a Watch Commander, pursuant to this section, for a period of less than twenty-eight (28) days, based on Departmental needs.

Section 4. Temporary Performance of Duties in a Higher Rank

In order to meet immediate Departmental staffing needs, the Department Head shall have the authority to temporarily assign an officer to perform the duties of a position in the next higher rank under the following circumstances:

- a. when that position has been funded, but not yet created or authorized by the City's governing body, or
- b. when there is a vacancy in an existing position for which no promotional list exists. An officer temporarily assigned under this subsection has no property right or interest, in law or equity, to continued employment in the temporarily assigned position, and will be demoted to the position (s)he occupied prior to the temporary assignment immediately upon determination of the officer occupying the first position on the eligibility list. This subsection does not preclude back-pay due to the person who is ultimately promoted to fill the position from the promotional list once established.

Assignments made pursuant to this provision are temporary in nature, and specifically intended to address immediate, pressing Departmental staffing needs. Assignments made pursuant to this provision are expressly limited to such period of time as is necessary for the City to formally

create the position by ordinance or complete the process of creating a promotional list for the position.

A person temporarily serving in a higher rank shall have full authority and responsibility for performing all of the duties of the assigned rank for the duration of the assignment.

Under no circumstances is this provision intended to, and it does not, circumvent the express intent of Chapter 143 of the Texas Local Government Code, which specifies that promotions are to be made solely through the promotional testing process.

An officer temporarily assigned to a position in the next higher rank under this provision shall be paid the base salary of the rank to which (s)he has been temporarily assigned, and the officer's own longevity or seniority pay, educational incentive pay and certification pay for the period of the temporary assignment.

Under no circumstances is this provision intended to, and it does not, authorize the Department Head to, directly or indirectly, create a position that has not been funded by the City's governing body.

Section 5. Preemption. 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.

Section 6. Adoption and Publication of Rules. The Commission shall adopt Local Rules in accordance with this article upon approval by the City Council.

ARTICLE 7

Promotional Process

Section 1. 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. Further, continuing education is encouraged and recognized as a way to improve professionalism for both officers and the Department. For this reason, the Parties agree to incentivize educational and certification achievement by awarding additional promotional points to eligible officers.

Section 2. Eligibility for Police Department Promotional Examination

- (a) A police officer must meet the requirements set forth in Chapter 143.028 and 143.031 of the Texas Local Government Code to be eligible to take a promotional examination. Each promotional examination is open to each officer who, for at least two (2) years immediately before the date the promotional examination is held, has continuously held a position in the Temple Police Department in the classification that is immediately below, in salary, the classification for which the examination is to be held, or other positions as specified by the Commission.
- (b) To be eligible to take a promotional examination, probationary officers, including officers hired under the Lateral Entry Program established in Article 8 of this Agreement, must successfully complete the applicable probationary period and subsequently serve two (2) continuous years in the classification immediately below the classification for which the examination is to be held.

The probationary period for officers who attend the Academy extends for one (1) full year following completion of the Academy. The probationary period for all other new hires, including officers hired under the Lateral Entry Program established in Article 8 of this Agreement, extends for one (1) full year after the date of hire.

- (c) The two (2) year eligibility requirement to take the promotional examination will be determined based on time served in the appropriate classification as of the date of the written examination.

Section 3. Promotional Examination Grades

- (a) Scores on the written promotional examinations will be based upon a maximum of one hundred (100) points. Examination may consist of more than 100 questions. Scores for each promotional examination will be calculated by assigning one (1) point, or an equal portion of one (1) point for each question so that the maximum possible score on the examination is one hundred (100) points. The score will be determined entirely by the correctness of each examinee's answers to the questions. Only those examinees achieving a raw score of seventy (70) points or more on the written examination, before the addition of seniority or educational incentive points, will be determined to have passed the examination, and qualified to be included on the eligibility list and proceed to the Assessment Center.

- (b) **Seniority Points.** Each examinee is entitled to receive one (1) point for each year of seniority as a classified officer in his department, up to a maximum of ten (10) points. Seniority points will be calculated for whole years of service only. No credit for partial years will be given. The number of seniority points an officer is entitled to receive will be established based on the officer's tenure in the Department as of 5:00 p.m. on the date of the written examination. An anniversary that occurs after 5 p.m. on the date of the written exam will not result in an additional seniority point for purposes of calculating the officer's final score on the eligibility list.

Officers hired under the Lateral Entry Program in Article 8 of this Agreement will receive credit for seniority based on their time in service in the Department as of 5:00 p.m. on the date of the written examination. Time in service in another department will not result in additional seniority points for purposes of calculating the officer's final score on the eligibility list.

- (c) **Educational Incentive Points.** Additional points on promotional exams will be added as follows:

In addition to the points a promotional candidate is entitled to receive under Chapter 143.033 Tex. Local Gov't Code for seniority, promotional candidates are also entitled to receive points for continuing education:

- Level 1 – 0.5 point for having received an Advanced Certificate issued by the Texas Commission on Law Enforcement (TCOLE);
- Level 2 – 1.0 point for having completed 60 college credit hours with a passing grade from an accredited institution of higher education, college, or university
- Level 3 – 1.5 points for having received a Master Peace Officer certificate issued by TCOLE;
- Level 4 – 2.0 points for having received an Associate's Degree from an accredited institution of higher education, college, or university, and
- Level 5 – 3.0 points for having received a Bachelor's Degree or higher from an accredited institution of higher education, college, or university.

A promotional candidate is entitled to receive the points only for the highest level attained listed above.

All educational incentive points will be awarded based on the candidate's documented eligibility to receive the points as of 5 p.m. on the date of the written exam, not the Assessment Center.

Documentation of educational incentive points that the candidate may be eligible to receive during the promotional process must be submitted to the Training Sergeant no later than 5 p.m. on the date of the written exam. Documentation of education or certification achievements submitted after 5 p.m. on the date of the written exam will not result in additional points on the examination.

Section 4. Calculation of Final Eligibility List Score. The eligibility list will be established using the following procedures to arrive at a final score:

- (a) Forty (40) percent of the raw written exam score will be added to sixty (60) percent of the assessment center score.
- (b) One point for each year of seniority as a classified officer 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 score.
- (c) Additional educational incentive points as described in Section 3 (c), above, will be added to the established sum of the raw written exam score, assessment center score, and seniority points.
- (d) Each participant will be ranked on the eligibility list based on their final total score as determined in (a) – (c) 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.

Section 5. 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 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 8

Lateral Entry Program

Section 1. Intent and Scope. The Parties acknowledge that the ability to attract and hire qualified candidates is beneficial to the Association, the Department and City. The Parties agree that an expedited process for hiring qualified applicants with previous law enforcement experience will support and enhance this goal.

Section 2. Eligibility Requirements. To be eligible for hiring under this Article, an applicant must:

1. have a current TCOLE license;
2. be currently employed with a law enforcement agency;
3. have an honorable standing within their current department;
4. not be under any type of investigation with their current department;
5. have three (3) or more years of work experience with a municipal, county, or state law enforcement agency in a community comparable in size and population to the City of Temple;
6. complete and pass a background investigation, and the City of Temple hiring process;
7. successfully complete a modified Field Training Program of not less than eight (8) weeks, and
8. successfully complete a twelve (12) month probationary period.

The Department Head's final determination regarding whether an applicant meets the Lateral Entry Program criteria shall be final. The decision is not subject to appeal to the Commission and shall not be the basis of a grievance under this Agreement.

Section 3. Guidelines

1. Hiring: An eligibility list for lateral applicants shall be maintained in addition to an entry-level eligibility list. The score to be placed on the lateral eligibility list for each lateral applicant shall be the applicant's score from the locally given Civil Service exam. That score will be used to rank applicants on the lateral eligibility list, however, the Department Head may give preference in selection to any person on the lateral eligibility list based on the applicant's years of experience and type of experience. The lateral eligibility list shall expire at the discretion of the Department Head. To fill a vacant position within the Department, the Department Head may select an applicant from the lateral eligibility list, or follow the process defined in section 143.026 of the Texas Local Government Code.
2. Promotional Eligibility: The Lateral Entry Program is for pay purposes only, and actual work experience in another law enforcement agency will not be considered for promotional eligibility purposes.
3. Salary: Upon successful completion of the Probationary classification, applicants hired under this lateral entry program will be placed in the current pay grade on the Temple Police Department compensation plan commensurate with their full-time service as a police officer.

Officers hired under this section prior to October 1, 2019, will advance within the Temple Police Department compensation chart according to their time in rank within the Department from October 1, 2019.

Applicants with prior municipal police service in a city with a population of 30,000 or more will receive one (1) credit year for each full year of police service not to exceed five (5) credit years. Applicants with prior municipal police service in a city with a population of less than 30,000 will receive one (1) credit year for each two (2) full years of prior police service, not to exceed three (3) credit years. Applicants with prior field deputy service with a county sheriff's office with a population of 175,000 or more will receive one (1) credit year for each full year of field deputy service, not to exceed five (5) credit years. Applicants with prior field service experience with any TCOLE certified organization other than a municipal police organization or a county sheriff's office will receive one (1) credit year for each two (2) full years of prior field service, not to exceed three (3) credit years.

The "credited time" will not count as time served in the Temple Police Department for any purpose(s) except determining the starting pay grade. For example, it will not count towards any benefits, assignment, promotions, longevity or retirement. Applicants who receive prior service credit will advance to the next pay grade on the same basis as any other Temple Police officer in that pay grade without respect to the applicant's actual service in the Temple Police Department.

4. Seniority: Seniority will be based on the applicant's date of hire within the Department. No credit for prior service outside the Department will be granted for seniority purposes.

Section 4. Preemption

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 City Council.

ARTICLE 9
Individual Vehicle Assignment Program (IVAP)

Section 1. Intent. In adopting this article, the Parties agree to implement an Individual Vehicle Assignment Program for the purpose of providing take-home patrol vehicles to eligible officers. The Parties recognize the benefits of reduced vehicle maintenance expense, reduced response times, crime deterrence and enhanced police presence in neighborhoods where the vehicles are located.

Section 2. Eligibility.

- (a) For an officer to be eligible for the IVAP program, the officer must:
 - 1. be employed as a Temple Police Officer;
 - 2. have successfully completed all phases of the Field Training Program, and
 - 3. have been assigned a designated vehicle.

- (b) Except as provided by Section 5, an officer participating in the IVAP program is eligible to take a vehicle home, providing the officer's residence is no more than seven (7) miles outside the Temple city limits.

Section 3. Applicable Guidelines.

- (a) Vehicles will be assigned, when available, to new officers on the basis of their civil service ranking.
- (b) In addition to the eligibility standards established in Section 2, officers assigned a vehicle shall abide by Temple Police Department General Orders, Chapter 803, "Police Vehicles," as amended.

Section 4. Fee. Except as provided by Section 5, officers who are assigned a vehicle in the IVAP program and elect to take that vehicle home shall be assessed a fee for the use of the vehicle as follows:

- 1. Officers residing within the city limits – no charge
- 2. Officers residing outside the city limits but no more than seven (7) miles outside the city limits - \$23/pay period

Section 5. Exceptions.

- (a) Any officer who resides .5 miles or less outside the City and is assigned a vehicle that the officer elects to take home at the time this Agreement is adopted is exempt from the payment of the fees described in Section 4, unless the officer moves more than .5 miles outside the city limits after the effective date of this Agreement.

- (b) Any officer who is assigned a take home vehicle because of their assignment and who resides outside the city at the time this Agreement is adopted is exempt from the distance limitations and the payment of the fees described in this Article. Officers who are assigned a take home vehicle because of their assignment after the effective date of this Agreement may be assessed the fees described in Section 4 as a condition for accepting the position. The city may impose residential distance restrictions on officers as a

condition of eligibility for assignment to future positions in which an assigned vehicle and the ability to respond in a timely manner is a requirement for the position.

(c) One (1) Criminal Investigation Division Supervisor and three (3) Criminal Investigation Division Detectives assigned by the Department Head are exempt from the distance limitations and the payment of fees described in this Article as follows:

1. If an officer in one of the above listed positions lives more than seven (7) miles from the city limits, the officer may utilize an assigned vehicle and take that vehicle home when the officer is on-call, and the officer is exempt from the payment of the fees described in Section 4 for the use of the vehicle while on-call.
2. Any officer who is assigned to one of the above listed positions and lives outside the city limits, but within seven (7) miles from the city limits and does not elect to take the vehicle home and pay the fees described in Section 4, may utilize a take-home vehicle when the officer is on-call, and the officer is exempt from the payment of the fees described in Section 4.

Section 6. Adoption and Publication of Rules. The Department shall adopt rules in accordance with this article upon approval by the City Council.

ARTICLE 10

Physical Fitness Program

Section 1. Intent. The Parties agree that it is the goal of the Department to maintain high professional standards. Establishment of a minimum physical fitness standard as a condition of employment is necessary to reduce instances of work-related illness and injury, and to ensure that officers are physically prepared to safely perform essential law enforcement duties. Supporting officers' efforts to meet and exceed the minimum fitness standard is recognized as a way to maintain officer and Departmental professionalism.

Section 2. General Guidelines As a condition of employment, all officers shall take and pass an annual physical fitness test. The Department uses the DPS Rowing Test as the physical fitness test designed to objectively evaluate the officer's physical fitness level and state of readiness to perform the duties of a police officer while minimizing the risk of injury. The Rowing Test measures an officer's maximum aerobic capacity (VO2 max), which is a direct reflection of physical fitness. Officers must achieve a VO2 max of at least 25% on a scale that is adjusted for each individual's age, weight, and gender in order to pass.

Prior to January 1, 2020, officers must take and pass the DPS 2,000-meter rowing test for the purpose of establishing a baseline passing rate for all officers.

Effective January 1, 2020, officers must take and pass one of the following rowing test options of their choice during the Department's annual physical fitness testing:

DPS Concept 2 2,000-meter Rowing Test;

DPS Concept 2 500-meter Rowing Test, or

DPS Concept 2 4-minute Rowing Test.

If an officer is on an approved leave or medical limitation during the time of the annual Rowing Test, the officer will have thirty (30) days to complete the testing, or at a time that is convenient to the Department at its sole discretion, when released back to full duty.

The officer will perform a timed rowing test, as described above, on the Concept 2 Rower under the supervision of trained members of the Temple Police Department and a paramedic or EMT. The officer's best timed performance, adjusted for his or her weight, age, and gender, will be used to evaluate the officer's physical fitness. The officer will remain onsite for medical observation for one (1) hour following completion of the rowing test.

The City of Temple will provide a Paramedic or EMT to be present during any testing or administering of the Physical Fitness Program, and to observe officers for up to one hour after completing the test. Participating officers will be allowed to recover on site for one (1) hour following the physical fitness test. No person shall require a participating officer to engage in any police activity, or leave the designated testing and recovery area, within one (1) hour following completion of the test.

Incumbent officers who fail the Rowing Test at a time when successful completion is a condition of employment shall be subject to the following:

- a. No more than three remedial tests may be taken in a given test cycle.
- b. The first remedial test must be taken within 30 days from the initial test.
- c. The second remedial test must be taken within 60 days from the first remedial test.
- d. The third remedial test must be taken within 90 days from the second remedial test.
- e. All officers in the Police Department are subject to Section 143.081 of the Local Government Code and Section 81 of the Temple Fire Fighters' and Police Officers' Civil Service Commission Rules and Regulations.

Section 3. Incentives.

- a. Officers of all ranks that are required to meet the Physical Fitness Standard are authorized, subject to prior supervisory approval, to utilize their lunch break for the purpose of working out during their regular scheduled shift, regardless of Department assignment.
- b. If there are patrol shortages or emergencies, Department leadership will work with the TPA President or his/her designee to implement a rotation-like schedule that would allow for adjustments to provide patrol officers an opportunity utilize their lunch break for the purpose of working out during their regular scheduled shift.
- c. The Department's on-site workout facility is an approved location for obtaining points to be used for any City fitness-based financial incentive program. A copy of the sign-in sheet reflecting the time and date of the officer's workout will serve as approved documentation proving eligible fitness activity using the Department's facility.
- d. Officers, when off duty, are authorized to use assigned City vehicles on the way to or from work for travel to and from physical fitness facilities located no more than 7 miles outside the city limits of Temple, as long as the purpose of travel is physical fitness. IVAP rules and policies shall be adhered to when utilizing the assigned City vehicle. Officers will not use their City vehicles on their regular days off.
- e. Nothing in this Article is intended to, and this Article does not, limit the Department Head's discretion to assign employees as necessary to achieve Departmental objectives.

Section 4. 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 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 11
Disciplinary Actions and Appeals

Section 1. Intent. In adopting this article, the Parties understand and agree that most officers will make some errors during their career involving rule violations, including those who are good, professional police officers. The Parties agree that 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.

- (a) The Parties agree that when an officer is suspended for 36 hours or less, the officer may choose one of two methods of dealing with the suspensions as set out below:
1. Suspensions that may not be appealed. The officer may forfeit vacation, compensatory, 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, compensatory, or holiday time will not constitute hours worked. In the event an officer has received a disciplinary suspension within the preceding 24-month period, the officer may only forfeit vacation, compensatory, or holiday time with the Department Head's permission. The officer 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 officer must sign a waiver of appeal.
 2. Suspensions that may be appealed. The officer may appeal the suspension solely to the Civil Service Commission. If the officer chooses to appeal the suspension, the hearing will be conducted as set forth in Section 143.053 Texas Local Government Code.
- (b) 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 the effective date of this Agreement will no longer be considered for purposes of transfer or promotion after 24 months have passed from the date the suspension ended, 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 Internal Affairs Division (IAD) investigative file or the file maintained by the Director, whichever is appropriate, and the Department shall enter a notation reflecting this.
- (c) 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 an officer is suspended for 37 to 120 hours, the officer 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 officer to forfeit vacation, compensatory, 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, compensatory, or holiday time will not constitute hours worked. Forfeiture of vacation, compensatory, or holiday time will not preclude an officer from being paid overtime at the rate of time and a half for those overtime assignments that have been identified as “guaranteed overtime” assignments. Approval of the use of vacation, compensatory, or holiday time will be noted in the suspension paperwork. The officer 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 officer must sign a waiver of appeal.
2. Suspensions that may be appealed. The officer 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. The Parties agree that, when an officer is suspended for 121 to 720 hours, one of the two following methods for dealing with the suspension will be used:

1. Mutually Agreed. Either the Department Head or the officer 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 officer accepts the mutually agreed suspension, there shall be no right to appeal the suspension to any administrative or judicial body, and the officer must sign a waiver of appeal. It is also understood and agreed that, if the Department Head permits the forfeit of vacation, compensatory, or holiday time for suspension, said vacation, compensatory, 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, compensatory, or holiday time will not constitute hours worked. Forfeiture of vacation, compensatory, or holiday time will not preclude an officer from being paid overtime at the rate of time and a half for those overtime assignments that have been identified as “guaranteed overtime” assignments.
2. Not Agreed. If the Department Head imposes a suspension under this section, the officer 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.

- (a) In considering appropriate disciplinary action involving suspension of at least 37 hours, the Department Head may require that an officer be evaluated by a qualified professional designated by the Department Head. If that professional recommends a program of counseling and/or rehabilitation for the officer, 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 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 Department Head 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.
- (b) If the officer's misconduct involves alcohol or substance abuse related behavior, the Department Head may require that the officer submit to mandatory alcohol or drug testing for a specified period of time. If the officer fails or refuses to enter into the program, or, after entering the program of counseling and/or rehabilitation, the officer fails or refuses to complete the program, or fails to submit to mandatory alcohol or drug testing, the officer may be indefinitely suspended for failing or refusing to complete the program, or for failing or refusing to submit to mandatory alcohol or drug testing.
- (c) The officer 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.
- (d) 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

- (a) In considering appropriate disciplinary action, the Department Head may require that an officer be evaluated by a qualified professional designated by the Department Head. If that professional recommends a program of counseling and/or rehabilitation for the officer, the Department Head may offer the officer the opportunity to enter into an alternative disciplinary agreement under which the officer 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.
- (b) The program of counseling and/or rehabilitation will be completed on the officer's off-duty time, unless the Department Head approves the use of accrued vacation leave or sick

leave. The officer shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the officer's health insurance plan.

- (c) If the officer's misconduct involves alcohol or substance abuse related behavior, the Department Head may require that the officer submit to mandatory alcohol or drug testing 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 or the disciplinary action. If the officer fails to complete the program of counseling and/or rehabilitation without good cause, the officer may be indefinitely suspended without right of appeal regarding the Agreement or the disciplinary action before any administrative or judicial body.
- (d) In considering whether the officer had good cause for failing to complete the program, the Department Head will consider whether the officer 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

- (a) In considering appropriate disciplinary action, the Department Head may require that an officer be evaluated by a qualified professional designated by the Department Head. If that professional recommends a program of counseling and/or rehabilitation for the officer, the Department Head may offer the officer, as an alternative to indefinite suspension, the opportunity to enter into a Last Chance Agreement.
- (b) The Agreement may include the following provisions in addition to any other provisions agreed upon by the Department Head and the officer.
 - 1. The officer shall successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional designated by the Department Head.
 - 2. The program of counseling and/or rehabilitation will be completed on the officer's off-duty time, unless the Department Head 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 shall 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 regarding the Agreement or the disciplinary action before any administrative or judicial body.
- (c) If the officer's misconduct involves alcohol or substance abuse related behavior, the Department Head may require that the officer submit to mandatory alcohol or drug testing 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. Successful

completion of a counseling and/or rehabilitation program will be specifically defined in the Agreement.

- (d) If the officer fails to successfully complete the agreed upon program, without good cause, the officer may be indefinitely suspended without right of appeal regarding the Agreement or the disciplinary action before any administrative or judicial body.
- (e) In considering whether the officer had good cause for failing to complete the program, the Department Head will consider whether the officer 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 8. Officer's Request for Professional Evaluation

- (a) Prior to completion of an Internal Affairs investigation or the imposition of any discipline, the officer may independently request an opportunity to be evaluated by a qualified physician, psychiatrist or psychologist in order to seek counseling and/or rehabilitation.
- (b) The officer'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 officer to be evaluated and complete any program of counseling and/or rehabilitation.
- (c) The officer shall be responsible for paying all costs of the program of the evaluation and counseling and/or rehabilitation which are not covered by the officer's health insurance plan. The evaluation and the program of counseling and/or rehabilitation will be completed on the officer's accrued vacation and/or sick and/or compensatory leave time.
- (d) If the officer 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 officer shall complete the evaluation and/or the program while on unpaid leave.
- (e) The Department Head may consider any counseling and/or rehabilitation voluntarily undertaken by an officer under this section before imposing any discipline.

Section 9. Due Process – Loudermill Hearings

- (a) The Parties acknowledge the importance of protecting the due process rights of an officer facing any level of formal discipline. The essential components of due process include the officer'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 officer, the appropriate level of discipline, and the fairness and consistency of disciplinary actions throughout the Department.

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

1. 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 officer is alleged to have violated, along with a detailed description of how the officer'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 officer. The officer's counsel may attend this meeting. The Internal Affairs investigator, the officer's supervisor and the Department's legal advisor will also be present. The meeting will be recorded by the Department Head. The officer or his counsel may also record the meeting. If the officer appears without assistance of counsel, the Department Head will read the full text of the Notice aloud at the meeting. If the officer appears with counsel, the Notice will not be read aloud, but will be delivered to the officer's counsel. After the Notice has been read, or delivered to the officer's counsel, the officer will sign acknowledging receipt of the Notice of Proposed Discipline and have an opportunity to ask any questions. The Department Head will then schedule a date and time for the second meeting. The date of the second meeting will be on the 5th business day following the first meeting. If any necessary party is not available to meet on the 5th business day, the meeting will be scheduled for the next business day when all necessary parties are available, provided that the second meeting must be held no later than the 8th business day after the first meeting.
2. Second Meeting – The Officer's Response: After a period of time during which the officer may review the allegations against him/her and the evidence in support of the allegations, the officer will have an opportunity to present his/her side of the case to the Department Head. The officer 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 officer, 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 officer's counsel may be present at this meeting. The Internal Affairs investigator, the officer's supervisor and the Department's legal advisor will also be present. The meeting will be recorded by the Department Head. The officer or his counsel may also record the meeting. After the officer has completed his/her presentation, the Department Head will schedule a date and time for the final meeting. The date of the final meeting will be on the 5th

business day following the second meeting. If any necessary party is not available to meet on the 5th business day, the meeting will be scheduled for the next business day when all necessary parties are available, provided that the final meeting must be held no later than the 8th business day after the second meeting.

3. Final Meeting – Disciplinary Decision: After review of the evidence presented by the officer, the Department Head shall carefully consider the allegations and the officer'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 officer 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 officer's counsel may attend this meeting. The Internal Affairs investigator, the officer's supervisor and the Department's legal advisor will also be present. The meeting will be recorded by the Department Head. The officer or his counsel may also record the meeting. If the officer 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 officer appears with counsel, the Notice will not be read aloud, but will be delivered to the officer's counsel. After the Notice has been read, or delivered to the officer's counsel, the officer will sign acknowledging receipt of the Notice and Order. The officer 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.

- (a) The City recognizes that during the term of this Agreement, officers 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.
- (b) It is the express intention of this provision that an officer 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, or a demotion.

Section 11. Procedures for Hearings Before Commission and Hearing Examiners

- (a) 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.

- (b) The burden of proof shall be by a preponderance of the evidence.
- (c) 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 officer's counsel at the time the witness is called to testify.

Section 12. Appeal Procedures Before Hearing Examiners

- (a) 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.
- (b) 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 officer'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 officer's notice of appeal. The Director will send the list by email to the officer'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 officer's counsel making the initial strike.
 - 2. Failure by the officer's counsel to comply with the requirements of subsection (a)(1) or (a)(2) of this Section 12 shall be deemed a withdrawal of officer's appeal.
 - 3. 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.
 - 4. The officer 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.

5. At the close of the presentation of evidence to the Hearing Examiner, the Hearing Examiner shall render a decision within thirty (30) business days.
6. 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.
7. Expenses - It is agreed that the City and the officer 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 officer is not a member of the Association, and therefore financially responsible for his/her share of any fees, the officer 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 fees for a hearing exceed 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. Jurisdiction of Hearing Authority to Modify Discipline

- (a) In addition to the authority provided by section 143.053 Texas Local Government Code, the Parties agree that the Civil Service Commission, or a Hearing Examiner appointed pursuant to section 143.057 Texas Local Government Code and the provisions of this Agreement, shall have the authority to impose a disciplinary suspension of any length of time, including suspensions in excess of fifteen (15) days, and time already served between the imposition of discipline and the appeal decision.
- (b) 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 of fifteen (15) calendar days or less, or restoring the officer's former position.
- (c) 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.

Section 15. Adoption and Publication of Rules. The Commission shall adopt Local Rules in accordance with this article upon approval by the City Council.

ARTICLE 12

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

- (a) 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.
- (b) A police officer 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.
- (c) 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.
- (d) Any claim or dispute by a police officer or group of police officers 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 officer(s) knew or reasonably should have known of the claim. Disputes by the Association Executive Board or police officer shall proceed as follows:

Step 1. An aggrieved police officer must initiate a dispute with the Association Executive Board within fifteen (15) business days of the date upon which the police officer 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.

- (a) 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.
- (b) 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.

- (c) 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.
- (d) 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 members 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.
- (e) 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 matter 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.
- (f) 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.

Section 4. Decision Final and Binding.

- (a) 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.
- (b) 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.
- (c) 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.

Section 7. Association Compliance with Agreement. 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.

ARTICLE 13
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.

ARTICLE 14
DURATION OF AGREEMENT

This Agreement shall become effective after ratification by the affected employees pursuant to a vote conducted by the Temple Police 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.

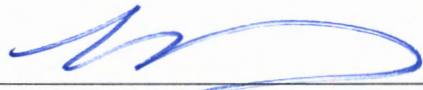
IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED TO HAVE THIS AGREEMENT TO BE SIGNED BY THEIR DULY AUTHORIZED REPRESENTATIVES ON THIS 19th DAY OF September, 2019.

THE CITY OF TEMPLE

TEMPLE POLICE ASSOCIATION



Brynn Myers, City Manager
Temple City Manager



Larry Wilkey, President,
Temple Police Association

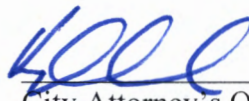
ATTEST:



APPROVED AS TO FORM:



Lacy Borgeson
City Secretary



City Attorney's Office