

**MEET AND CONFER
AGREEMENT BETWEEN
SAN MARCOS POLICE OFFICERS'
ASSOCIATION AND
THE CITY OF SAN MARCOS, TEXAS**



Final Agreement

June 8, 2023 - September 30, 2026

Ratified by SMPOA _____, 2023

Approved by the City Council _____, 2023

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ARTICLE 1

RECOGNITION

The CITY recognizes the ASSOCIATION as the sole and exclusive bargaining agent for all covered police officers, pursuant to Section 142.053 et seq. of Chapter 142, excluding the Chief of Police and employees of the Police Department exempt under Texas Local Government Code Section 142.058(b), employees appointed under Texas Local Government Code Section 143.014. It is intended to include all permanent paid employees of the 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.

This Agreement is not intended to deny local control by the City nor restrict or diminish the management rights of the City except as expressly provided by this Agreement under section 142.059 of the Texas Local Government Code.

ARTICLE 2

DEFINITIONS

1. "Agreement" refers to this Meet and Confer Agreement, negotiated between the City of San Marcos and the San Marcos Police Officers' Association.
2. "Association" means the San Marcos Police Officers' Association.
3. "Day" means each calendar day inclusive of weekends and holidays.
4. "Chief" means the Chief of Police of the City of San Marcos, including any interim or acting Chief of Police.
5. "City" means the City of San Marcos.
6. "College hours" "Degree" or "College Degree" shall mean 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.
7. "Commission" means the Firefighters and Police Officers Civil Service Commission of the City of San Marcos.
8. "Department" means the Police Department of the City of San Marcos.
9. "Director" means the Director of the Firefighters' and Police Officers' Civil Service Commission.
10. "PTO" means Police Training Officer
11. "Party" or "Parties" means the City of San Marcos and the San Marcos Police Officers' Association.
12. "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 San Marcos Police Department.
13. "Promotional bypass" means the right of the Chief to not appoint the top person on the promotional eligibility list as per Section 143.036 of the Texas Local Government Code and the Officers right to request review.
14. "TCOLE" means the Texas Commission on Law Enforcement.
15. "TLGC" means the Texas Local Government Code.

ARTICLE 3

HIRING

Section 1. Procedure for Filling Vacant Entry Level Positions

A. Officer Entrance Process:

1. Entrance testing for non-TCOLE certified candidates:

- a. Entrance tests will be administered to candidates who are not TCOLE certified. Tests will be administered based on business needs. It will be the goal to conduct two tests each year in the spring and the fall as needed to meet business needs and maximize recruiting strategies. Target dates are:
 1. A spring test will be administered in January or February each year.
 2. A fall test will be administered in August or September each year.
- b. An eligibility list will be developed for each test as outlined in the local civil service rules. If there is a current eligibility list from the previous test that is not a year old, the two lists shall be combined based on total rank score to form the new eligibility list. The Local Civil Service rules regarding tie breaking will be used if needed.
- c. Applicants will remain on the active list for one (1) year from the date of their written test or until they are struck from the list due to a civil service disqualifier. On the one-year anniversary of each test, all applicants who have remained on the list for a full calendar year will expire and will be dropped from the list.
- d. If a candidate tests twice within one year, the most recent test score will be placed on the list and the prior score will be removed.

2. Alternate application process for TCOLE Certified Candidates:

Applicants who have attained TCOLE Basic Peace Officer Certification (or out of state equivalent) may bypass the entrance testing requirement and apply for a police officer position/vacancy. Eligible candidates may apply for "Police Officer" through the online application process. The position will remain open continuously. All other hiring requirements for Police Officer shall apply. Eligible candidates may be eligible for the lateral entry program outlined in this article. Out of state candidates must obtain TCOLE basic peace officer certification as outlined in the lateral entry section.

- B. The Commission shall adopt rules in accordance with this article and Chapter 143 provisions incorporated by this article to fill vacant positions through the Department hiring process for entry-level positions.
- C. The Civil Service Director may administer the written entry-level examinations at different dates, times, and locations at his/her discretion to create an eligibility list.
- D. If multiple tests are administered, an applicant may take the test only once.
- E. Once the test has been administered at the last test location, an eligibility list will be prepared

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including the results from all tests and posted within five (5) business days on the City's Human Resources webpage. Each candidate who has taken the test will be notified by email at the email on the City's online application system.

- F. A person who is older than 50 years of age may not take the entrance examination. Appointment to a Vacant Position

To fill a vacant position in the Department, the Chief shall request in writing from the Director, who shall certify to the Chief, the names of suitable persons from the entry-level eligibility list and any reinstatement list under Section 143.085. Upon exhaustion of any reinstatement list, if there is a single vacancy, the Chief may fill the vacant position by appointing any qualified person meeting current hiring standards who is on the eligibility list. The next two vacancies shall be filled as provided in section 143.026, it being the intent that the Chief may fill every third vacancy from any qualified person on the eligibility list who meets current standards.

The city and the Association recognize the value of hiring certified candidates to meet staffing demands. The Chief may seek approval to fill additional vacancies on the eligibility list with certified candidates through a committee comprised of the Chief of Police, the Director of Human Resources/Civil Service, and the Association President, or his or her designee.

- G. The Chief, in his/her discretion, and as an alternative to requesting a current eligibility list, may reappoint a police officer who voluntarily resigned from the Department within the past twelve (12) months to an original position without taking another entrance examination and may deem a vacancy to have occurred in an original position if a vacancy occurs in a higher-level position that is filled by promotion from the original position.

- H. Lateral Entry Program

The program will help recruit qualified applicants for the position of entry-level police officers. Upon successful completion of the hiring process, the Chief of Police will meet with the interview board to confirm that the applicant meets the criteria to take advantage of this program.

1. Eligibility Requirements - Applicants must:

- a. Be licensed by TCOLE or be a certified or licensed out of state peace officer and successfully obtain TCOLE licensing (basic peace officer or higher) within 90 days of hire. At the Chief's discretion, a maximum of two (2) 30-day extensions may be granted.
- b. Have at least one (1) year prior work experience as a full-time commissioned peace officer with similar duties in a comparable law enforcement agency; and
- c. May not be older than 50 years of age on the date of application.

2. Guidelines:

- a. 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 requirements.
- b. The Chief of Police shall determine eligibility for lateral entry of police applicants. Eligible applicants may be placed up to Step 19.09 of the pay schedule. Officers placed through this lateral entry program will progress through the remaining steps as he/she completes years of service.

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- c. Longevity pay will be calculated in the same manner as all Police Officers. No credit will be given to completed years of service in other law enforcement agencies.
 - d. Entry-level police officers placed up to Step 19.09 of the pay schedule must also complete a new hire probationary period as outlined in Article 4.
 - e. The Chief of Police's determination of whether an applicant meets the criteria of the lateral entry program and placement in the pay structure shall be final and non-appealable to the Civil Service Commission, arbitrator or to any court.
3. Applicants who meet eligibility for the lateral entry program may apply for employment through the continuous Police Officer posting (no entrance testing required).
- I. Non-classified Part-time Police Officers:
- The Chief may appoint part-time police officers for limited purposes which will not be members of the classified service at appointment and will not have the protections of civil service at employment or for the duration of employment. Part-time officers shall not work more than 1000 hours per year and not more than 30 hours in any week unless approved by the Director of Human Resources, or their designee, in writing.

Section 2. Eligibility List

- A. This Article shall supersede Section 143.025 of the Texas Local Government Code to allow for more than one eligibility list to be in effect at the same time which subsequent list shall be utilized upon the exhaustion or expiration of the prior list.

Additional points may be awarded only to an applicant with a passing score of 70 or more as outlined below:

Section 1: Prior Experience - eligible for a maximum of 5 points

- 1. Two (2) years prior civilian law enforcement experience
- 2. Two (2) years prior honorable military experience
(Honorable discharge from United States Armed Forces)

*No cumulative points for law enforcement or military experience are allowed. The maximum total additional points are five (5) points.

Section 2: Education - eligible for 5 points for meeting educational requirements below:

Completion of a social science bachelors, masters or doctorate degree as described below³.

The maximum additional points for candidates having points in section 1 and section 2 is 8 points.

Additional points, if any, shall be added only to the applicant's passing score.

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No cumulative points for law enforcement or military experience are allowed. The maximum total additional points are eight (8) points. An applicant will be eligible for eight (8) total points if they have prior experience (law enforcement or military) and a degree as described below.

¹To be eligible for law enforcement experience points, the applicant must provide either a copy of their TCOLE report, or other agency equivalent, or a letter from the current/previous employer showing at least two (2) years of service as a law enforcement officer. This does not include corrections or telecommunication service. This document must be provided prior to the written exam to be awarded the points.

²To be eligible for military experience points, the applicant must provide a valid DD214 form by the written examination which shows at least two (2) years of service from the United States Armed Forces with an honorable discharge status. An applicant who has not been issued a DD214 yet (still active duty), may present a letter signed by their commanding officer showing that the applicant has been employed by the United States Armed Forces for at least two (2) years of service and there is no known reason for a dishonorable discharge at the time of the letter. This letter must be provided prior to the written exam to be awarded the points.

³To be eligible for education points, the applicant must provide transcripts showing an advance degree has been conferred by the written exam date. Degrees may include a bachelor's degree, master's degree, or doctorate degree. A two-year associate degree is not eligible for points. A degree must be obtained from an institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges, or an international college or university evaluated and accepted by a United States accredited college or university. The degree or major area of study must be either in social work, sociology, psychology, human services, or human relations.

Section 3. Statutory Preemption

To the extent that any of these provisions are in conflict with the TLGC Chapter 141, 152 or 143, (143.023; 143.025) this provision shall prevail.

ARTICLE 4

NEW HIRE PROBATIONARY PERIOD

The probationary period for newly hired Police Officers shall commence from date of hire and continue through the 365th day following the date of the officer's successful completion of the Police Training Program. During this probationary period, employees are not members of the classified service. To the extent that this provision is in conflict with the Texas Local Government Code, Chapter 143, including Section 143.027, this provision shall prevail.

ARTICLE 5

WAGES AND COMPENSATION

Section 1. Hourly Base Pay

A. The base pay for Cadet, Police Officer, Corporal, Sergeant and Commander shall be determined as follows:

Year 1 Effective 6/08/2023					
Step	Cadet	Officer	Corporal	Sergeant	Commander
	(Cadet)	(PG 19)	(PG 20)	(PG 21)	(PG 22)
Step 0	\$55,995.26	\$63,694.92			
Step 1		\$66,879.67			
Step 2		\$70,223.65	\$73,734.84		
Step 3		\$72,330.36	\$75,946.88		
Step 4		\$74,500.27	\$78,225.28	\$85,265.56	
Step 5		\$76,735.28	\$80,572.04	\$87,823.53	
Step 6		\$78,653.66	\$82,586.35	\$90,021.74	\$107,125.87
Step 7		\$80,620.01	\$84,651.01	\$92,272.29	\$109,804.02
Step 8		\$82,635.50	\$86,767.29	\$94,579.10	\$112,549.12
Step 9		\$83,461.86	\$87,634.95	\$95,524.88	\$115,925.60
Step 10		\$84,296.48	\$88,511.30	\$96,480.13	\$118,823.73
Step 11		\$85,139.45	\$89,396.42	\$97,444.94	\$121,794.33
Step 12		\$85,990.84	\$90,290.38	\$98,419.39	\$124,839.18
Step 13		\$86,850.75	\$91,193.29	\$99,403.58	\$126,087.58
Step 14		\$87,719.26	\$92,105.22	\$100,397.62	\$127,348.45
Step 15		\$88,596.45	\$93,026.27	\$101,401.59	\$128,621.94

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Year 2 Effective 10/1/2024					
Step	Cadet	Officer	Corporal	Sergeant	Commander
	(Cadet)	(PG 19)	(PG 20)	(PG 21)	(PG 22)
Step 0	\$58,795.02	\$66,879.67			
Step 1		\$70,223.65			
Step 2		\$73,734.84	\$77,421.58		
Step 3		\$75,946.88	\$79,744.23		
Step 4		\$78,225.29	\$82,136.55	\$89,528.84	
Step 5		\$80,572.05	\$84,600.65	\$92,214.70	
Step 6		\$82,586.35	\$86,715.67	\$94,522.83	\$112,482.16
Step 7		\$84,651.01	\$88,883.56	\$96,885.90	\$115,294.22
Step 8		\$86,767.28	\$91,105.65	\$99,308.05	\$118,176.58
Step 9		\$87,634.96	\$92,016.70	\$100,301.13	\$121,721.88
Step 10		\$88,511.30	\$92,936.87	\$101,304.14	\$124,764.92
Step 11		\$89,396.42	\$93,866.24	\$102,317.18	\$127,884.05
Step 12		\$90,290.38	\$94,804.90	\$103,340.36	\$131,081.14
Step 13		\$91,193.29	\$95,752.95	\$104,373.76	\$132,391.96
Step 14		\$92,105.22	\$96,710.48	\$105,417.50	\$133,715.87
Step 15		\$93,026.27	\$97,677.59	\$106,471.67	\$135,053.04

Year 3 Effective 10/1/2025					
Step	Cadet	Officer	Corporal	Sergeant	Commander
	(Cadet)	(PG 19)	(PG 20)	(PG 21)	(PG 22)
Step 0	\$61,734.78	\$70,223.65			
Step 1		\$73,734.83			
Step 2		\$77,421.58	\$81,292.66		
Step 3		\$79,744.23	\$83,731.44		
Step 4		\$82,136.55	\$86,243.38	\$94,005.28	
Step 5		\$84,600.65	\$88,830.68	\$96,825.44	
Step 6		\$86,715.66	\$91,051.45	\$99,248.97	\$118,106.27
Step 7		\$88,883.56	\$93,327.74	\$101,730.20	\$121,058.94
Step 8		\$91,105.64	\$95,660.93	\$104,273.45	\$124,085.41
Step 9		\$92,016.71	\$96,617.54	\$105,316.18	\$127,807.97
Step 10		\$92,936.87	\$97,583.71	\$106,369.35	\$131,003.17
Step 11		\$93,866.24	\$98,559.56	\$107,433.04	\$134,278.25
Step 12		\$94,804.90	\$99,545.15	\$108,507.37	\$137,635.20
Step 13		\$95,752.95	\$100,540.60	\$109,592.45	\$139,011.56
Step 14		\$96,710.48	\$101,546.01	\$110,688.37	\$140,401.67
Step 15		\$97,677.58	\$102,561.47	\$111,795.25	\$141,805.69

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- B. Progression within the pay plan:
1. Cadets will begin at the cadet rate.
 2. When sworn in, officers will be placed on step 19.00.
 3. Officers hired through the lateral entry program may be placed up to step 19.09 at the Chief's discretion as outlined in lateral entry.
 4. Upon promotion, an officer will move to the same step in the new rank (slide over to the same step in the next rank). For example, an officer at 19.10 promotes to Corporal 20.10 on August 15th and has a November step date. Following promotion, the Corporal receives a step increase to 20.11 in November.
 5. Officers will increase to the next step in their rank/step each year on their anniversary date until reaching the maximum step.
 6. This plan was implemented October 1, 2019. Officers who were topped out in rank in the prior pay plan were placed on a new step date effective October 1, 2019.

Section 2. Shift Differential Pay

A. Evening Shift:

Each Patrol Officer who completes the FTO program and who reports to work for his regularly schedule shift which begins between the hours of 4:00 PM (on or after) and 6:59 PM shall receive shift differential pay in the amount of \$125 per month. To be eligible for the shift differential pay for a calendar month, at least half of the shifts (80 hours or more) worked during that month must have been worked during the hours identified by this section.

B. Midnight Shift:

Each Patrol Officer who completes the FTO program and who reports to work for his regularly schedule shift which begins between the hours of 7:00 PM (on or after) and 12:00 midnight shall receive shift differential pay in the amount of \$225 per month. To be eligible for the shift differential pay for a calendar month, at least half of the shifts (80 hours or more) worked during that month must have been worked during the hours identified by this section.

Section 3. Longevity Pay

A. Employees with time in the Department:

1. Employees will earn longevity pay by the attached longevity schedule for years of service with "the Department." Longevity pay is capped after 20 years of service.
2. Employees with prior service time in other departments of the city preceding the Agreement will also receive compensation for that prior service time at the rate outlined in the City of San Marcos Employee Handbook.

B. Employee transfers following implementation of Agreement:

1. Transfers between the Fire and Police Department after October 1, 2009, will receive compensation for time in "the department" as defined in item A above, at the rate in the longevity schedule for the department they are transferring to as outlined in the Agreement.
2. Employees not covered by an Agreement will receive longevity as outlined in the City of San Marcos Employee Handbook.
3. The total longevity payment will not exceed the maximum cap established in the Longevity

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Schedule attached to the approved Agreement (20 years of service).

4. Longevity Pay will be paid annually in November.

Section 4. Education and Certification Incentive Pay

Educational Incentive Pay shall be provided to officers who qualify for such payment by furnishing documented proof of an Associate, Bachelor, or Master's degree. Incentive payments will be provided at the highest single degree as follows:

Associate Degree	\$50 per month
Bachelor's degree	\$75 per month
Master's Degree	\$100 per month

Effective October 1, 2023 (Year 1):

Certification pay will be added as detailed below at the highest single limit of education or TCOLE certification per month (October 1, 2023).

Associates Degree	\$50 per month	TCOLE Intermediate Certification	\$ 55 per month
Bachelor's degree	\$75 per month	TCOLE Advanced Certification	\$100 per month
Master's Degree	\$100 per month	TCOLE Masters Certification	\$155 per month

Effective October 1, 2024 (Year 2):

Certification pay will be added as detailed below at the highest single limit of education or TCOLE certification per month (October 1, 2023).

Associates Degree	\$50 per month	TCOLE Intermediate Certification	\$ 60 per month
Bachelor's degree	\$75 per month	TCOLE Advanced Certification	\$110 per month
Master's Degree	\$100 per month	TCOLE Masters Certification	\$160 per month

Effective October 1, 2025 (Year 3):

Certification pay will be added as detailed below at the highest single limit of education or TCOLE certification per month (October 1, 2023).

Associates Degree	\$50 per month	TCOLE Intermediate Certification	\$ 75 per month
Bachelor's degree	\$75 per month	TCOLE Advanced Certification	\$150 per month
Master's Degree	\$100 per month	TCOLE Masters Certification	\$200 per month

Section 5. Additional Compensation/Pay – Effective October 1, 2020.

A. Officers who have successfully completed their probationary period and hold the rank of police officer, corporal or sergeant may be assigned by the Chief to perform Special Duties. Special duties shall be on an as needed basis by the Chief in his or her sole discretion.

B. Categories and compensation:

1. **Assigned Duty and Compensation:** An official “duty assignment” as referred to in this section is a full-time assignment within the department normally tasked with supporting other divisions of the department.

- a. K-9 Duty \$160 monthly
- b. Crime Reduction Unit \$160 monthly
- c. Mental Health Officer Duty \$100 monthly

Eligible for one assigned duty/compensation from Section 5(B)(1) assigned duty and compensation.

2. **Field Training Officer Assignment:** An official “duty assignment” as referred to in this section which is for a limited duration. Compensated at \$30 per shift.

3. **Extra Duty Assignment:** The category of an “Extra Duty Assignment” is one where the officer can work in any area or division and agrees to take on extra work or duties that require additional training and dedication to various department missions. These “Extra” duties are secondary in nature to the officer’s primary assignment and voluntary in nature.

- a. SWAT \$150 monthly
- b. Drone Team \$75 monthly
- c. Collision Investigation Team \$75 monthly
- d. Negotiator (CNT) \$75 monthly

Eligible for up to two extra duty assignments/compensation from Section 5(B)(3) Extra Duty Assignment.

Section 6. On Call

Effective on the date of this Agreement Officers assigned to Narcotics or to Criminal Investigations who are assigned to be on rotating on call and will receive additional compensation in the amount of forty dollars (\$40.00) per month.

Effective 10/1/2023 compensation for on call in the paragraph above will stop and an officer on call compensation will be paid through the currently adopted On Call Policy in the City of San Marcos Employee Handbook.

Section 6. Bilingual Pay

Effective on the date of this Agreement Bilingual pay will be paid at the rate of \$80 per month for Officers certified under standards established by the Chief and assigned to the bilingual program. The bilingual program shall include and is limited to Spanish and sign language for the deaf. Officers will not be paid cumulatively if they are certified in both.

Section 7. Implementation/Administration

The City shall establish procedures for the administration of premium pay. Police Officers are responsible for submitting a request for premium pay. Requests for Education or Bilingual pay must include transcripts or documentation of eligibility to receive the pay. All certifications must be current to receive premium pay.

Officers are responsible for removing assignment pay when no longer eligible to receive the pay. Officers who do not stop add pays when no longer eligible are responsible for repayment of any unearned payments.

It is expressly agreed and understood that the City reserves the right to prorate any monthly pay in biweekly equivalents for twenty-four (24) pay periods.

Section 8. Premium Holidays

- A. The following Holidays will be recognized as "Premium Holidays": New Year's Day, 4th of July, Thanksgiving Day, and Christmas Day.
- B. Officers assigned to the Patrol Division whose assigned shift begins within the 24-hour period on which the actual holiday falls, will be paid 1 ½ time pay for that shift.
- C. Officers working an overtime shift are not entitled to additional compensation. In no case will an employee be paid at a rate more than 1 ½ times.
- D. This section is in addition to the holiday provision in the Employee Handbook.

Section 9. Acting Pay for Corporal's

In the absence of the Sergeant, a Corporal may be asked to act in their place. When this acting duty is anticipated to last a full shift or more, the Corporal will be compensated an additional \$40 per shift.

Section 10. Statutory Preemption

This Article preempts any conflicting state statutes (including Texas Local Government Code Chapters 141, 142, and Chapter 143, Sections 143.038, 143.041(b), 143.041, 143.042, 143.044, and 143.047), local ordinances, executive orders, civil service provisions, or rules adopted by the Chief of Police or City or by any division or agent of the City, including any City personnel board and the Firefighters and Police Officers Civil Service Commission, as provided by Texas Local Government Code Section 142.067.

ARTICLE 6

RESIDENCY INCENTIVE

Effective on the date of this Agreement and subject to the appropriation of funding for the program during each fiscal year, an Officer (excluding spouses and other household members who are also Officers) who moves into and agrees to maintain his principal residence and actually resides within the City limits of the City may be eligible for residency incentive. The terms, conditions, eligibility, and amount of such program shall be determined by the City. The parties agree that this Article supersedes any conflicting provisions of Section 150.021 and Section 143.041(b) Texas Local Government Code and any other provisions of Chapter 143

ARTICLE 7

OVERTIME

Section 1. Work Period

Officers assigned Patrol duties in the Patrol Division may, at the election of the City, be scheduled to work a schedule of eighty (80) hours over a fourteen (14) day work period. Officers will not be paid overtime until the Officer actually works more than eighty (80) hours in a fourteen (14) day work period. Scheduled holidays, authorized bereavement leave, vacation leave and jury duty, which hours occur during regularly scheduled duty hours, will be considered hours worked for purposes of calculating overtime as per City policy.

Section 2. Police Chief Appointments

Assistant Chief's will be exempt from overtime compensation consistent with the Fair Labor Standards Act.

Section 3. Statutory Preemption

This Article preempts any conflicting state statutes (including Texas Local Government Code Chapters 141, 142 and 143, Sections TLGC §142.0015(f)-(j) to the extent of any conflict as provided by TLGC §142.067. It is agreed by both Parties that this provision of the Agreement shall remain in full force and effect through September 30, 2020, or until superseded by a subsequent agreement.

ARTICLE 8

COMPENSATORY TIME

As permitted by the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207(o), the City may compensate eligible nonexempt Officers with compensatory time in lieu of overtime compensation required by the FLSA, 29 U.S.C. § 207 or Article 7. Such compensatory time will be at a rate of not less than one and one-half hour for each hour of employment for which overtime compensation is required by 29 U.S.C. § 207 or Article 7. Only officers on regular assignments as School Resource Officers (SRO's) are eligible to accrue compensatory time. SRO's may not accrue more than 160 hours of compensatory time and time must be used or paid out no later than one year after the start of the school year.

This Article supersedes any and all contrary agreements or understandings related to compensatory time arrived at between the City and any individual member of the bargaining unit during the term of this Agreement. If this Agreement expires, any lawful contracts or understandings that were made with individual Officers regarding compensatory time, including that contained in existing policy, will apply.

If there is a conflict between this agreement and the Department of Labor requirements, the Department of Labor requirement shall govern.

This Article preempts any conflicting state statutes (including Texas Local Government Code Chapters 141, 142, and 143), local ordinances, executive orders, civil service provisions, or rules adopted by the Chief of Police or City or by any division or agent of the City, including any City personnel board and the Firefighters and Police Officers Civil Service Commission, as provided by Texas Local Government Code Section 142.067.

ARTICLE 9

RESPONSE TIME

The City policy in Section 7.60 of the City Employee Handbook regarding a timely response applies to all Officers hired after January 1, 2010, as a condition of employment. The reasonable response time for such Officers regardless of assignment is established to be sixty (60) minutes from their permanent residence to the corporate City limit. The parties agree that this Article supersedes any conflicting provisions of Section 150.021 and Chapter 143 of the Texas Local Government Code.

ARTICLE 10

ASSOCIATION BUSINESS LEAVE

Section 1. Time Off for Association Business

An Association business leave time pool (the ABL Pool) shall be created for the purpose of conducting Association business. Association business is defined as time spent in Meet and Confer or similar negotiations, adjusting grievances, attending the annual State CLEAT conference, the Association's Executive Board meetings, and regular Association business meetings.

Section 2. Establishment of Association Leave Time Pool

The ABL Pool shall be funded during the first pay date of each calendar year by reduction of accrued vacation leave in the amount of three (3) hours for each member of the San Marcos Police Officers Association with the approval of this agreement by a majority vote of the Police Officers of the San Marcos Police Department. 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. Any bargaining unit member who does not wish to contribute their three (3) hours of vacation leave in any calendar year must provide notice in writing to the Director at least thirty (30) days prior to the beginning of that calendar year.

Any hours not used will remain in the Pool to be utilized the following year. Such pool hours shall never have any cash or surrender value. The city will track contributions to and deductions from the ABL Pool.

Section 3. Use of Association Business Leave Time Pool

All use of Association business leave will be requested in writing by the Association President and submitted in advance for approval by the Chief. The Chief may waive the requirement that the request and approval be in writing. Requests for use of Pool time shall be made as far in advance as is practicable but no less than 48 hours before the date 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 Police Chief, not more than 3 members may be on ABL leave at the same time and such leave may be cancelled by the Police Chief in the event of an emergency or shortage of manpower as determined by the Chief which action shall not be reviewable by any administrative or judicial body or subject to grievance.

Section 4. Indemnification

THE ASSOCIATION SHALL JOINTLY DEFEND THE PROVISIONS OF THIS ARTICLE ON BEHALF OF BOTH PARTIES, AND 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 PROVISIONS OF THIS ARTICLE. THE ASSOCIATION SHALL BE ENTITLED TO SELECT AND DIRECT COUNSEL FOR SUCH DEFENSE BUT SHALL REASONABLY COOPERATE WITH COUNSEL DESIGNATED BY THE CITY ATTORNEY TO PARTICIPATE.

ARTICLE 11

SICK LEAVE AND VACATIONS

Section 1. Sick Leave

Notwithstanding TLGC 143.045, Officers will accrue sick leave on the basis of hours, not working days. Officers will be entitled to accrue up to one hundred and twenty (120) hours per calendar year, use, and accumulate sick leave as per City policy. An Officer who leaves the classified service for any reason is entitled to payment for his/her accumulated sick leave but not more than seven hundred and twenty (720) hours of sick leave. This provision shall, to the extent of any conflict, supersede, any state statute, including TLGC §143.045, any City ordinance, City policy, Police Department rule or Local Civil Service rule.

Section 2. Vacation

Notwithstanding TLGC §143.046, Officers will accrue vacation leave on the basis of hours, not working days. Officers with less than ten (10) years of service will accrue up to of one hundred twenty (120) hours of vacation leave per calendar year, and Officers with ten (10) years of service or more shall accrue one hundred and sixty (160) hours per calendar year. Officers will use and accumulate vacation leave as per City policy. An officer shall be paid accumulated vacation per City policy at the time of separation.

If the City of San Marcos reduces the vacation payout for employees with 20 years or more of continuous service during the term of this agreement, all current officers will be grandfathered under the current policy provisions, limited to the term of this agreement.

This provision shall, to the extent of any conflict, supersedes any state statute, including TLGC §143.046, any City ordinance, City Policy, City of San Marcos Employee Handbook, Police Department rule or local Civil Service rule.

ARTICLE 12

PROMOTIONS

Section 1. Promotional Examinations:

Promotional examinations for all ranks shall consist of written examination, assessment center, and a performance review as follows:

A. Written Examination

The written examination shall consist of questions relating to the duties of the rank of the position to be filled. All notice of written examinations and publishing of study material shall be in accordance with TLGC, Chapter 143, and the rules established by the Commission. A score of 70% on the written examination shall be considered a passing score. If written examination scores are the same, the ranking of those scores shall be done based on rules established by the Commission. All test participants with passing grades, up to a maximum of the top eight (8), shall be allowed to continue to the next phase of the examination process, the Assessment Center. In the event there are more than 8 candidates passing the written test, the top-ranking candidates based on test score plus seniority points will continue to the Assessment Center. In the event only one candidate passes the written examination, that one person shall be allowed to continue to the Assessment Center.

If the initial list from a first assessment of 8 candidates is exhausted and vacancies are anticipated, a second assessment will be scheduled for the remaining candidates (not to exceed 8 additional).

B. Assessment Center

1. The City and the Association shall agree on the guidelines to be presented to the Assessment Center Board for use in their examination.
2. The Assessment Center Board shall consist of three members, which shall be persons from outside the San Marcos Police Department, who currently hold the equivalent or higher rank being tested for in a Police Department in a city of 50,000 or more in population. All the assessors shall have held that equivalent or higher position for a minimum of two (2) years.

The Assessment Center Board shall consider all assessment center scores. A score of 70% shall be considered a passing score for the Assessment Center portion of the promotional process. The result of the Assessment Center shall not be appealable to the Civil Service Commission, or to arbitration through any grievance procedure, or to any judicial or administrative body.

C. Performance Review:

The performance review includes evaluating the candidate's overall performance to include a measure of past performance in the promotional rating. This is accomplished through a point system outlined in the attached Promotional Examination Performance Matrix, Attachment B. The candidate will receive up to 100 points which will be 20% of the promotional examination score. Candidates begin with a balance of 50 points. Positive conduct will earn up to 50 points and up to 50 points will be deducted based on negative conduct. The total remaining points form the total performance review score.

The "lookback" period is two years for corporal, three years for sergeant and five years for commander. The performance review evaluation is as of the date of the assessment center.

D. The formula for arriving at a final score includes:

1. The final score will include (1) the written examination score, (2) the assessment center score, and (3) the performance review score as outlined below.

2. Final score formula by rank:

- a. Corporal and Sergeant Rank:

The formula for arriving at a final score for the written examination, assessment center and performance review is the following:

Scores:

(1) 40% Written Examination score plus, (2) 40% Assessment Center score plus, (3) 20% Performance Review = Final Score

Example:

Written examination score (.4) (88) + assessment center score (.4) (80) + performance review (.2) (85) = 35 + 32 + 17 = 84.2 (Final Score)

- b. Commander Rank:

The formula for arriving at a final score for the written examination, assessment center and performance review is the following:

Scores:

(1) 30% Written Examination score plus, (2) 50% Assessment Center score plus, (3) 20% Performance Review = Final Score

Example:

Written examination score (.3) (88) + assessment center score (.5) (80) + performance review (.2) (85) = 26.4 + 40 + 17 = 83.4 (Final Score)

Section 2. Eligibility for Promotion:

A. Police Corporal:

1. Eligibility:

- a. An Officer is not eligible for promotion to the rank of Police Corporal unless the Officer has served in the Department in the next lower rank for at least four (4) years immediately before the police corporal promotional examination date.
- b. Officers who have a TCOLE Intermediate Certificate may test if the officer has served in the Department in the next lower rank for at least two (2) years before the police corporal promotional examination date.
- c. If there are not at least two Police Officers meeting requirements outlined in items a & b above who have timely applied to take the examination to provide at least two persons to take the police corporal examination, the Director may open the examination to persons in that position with three (3) or more years of service.

- d. If there are not at least two Police Officers with three (3) or more years of service in that position to who have timely applied to take the examination to provide at least two persons to take the police corporal examination, the Director may open the examination to persons in that rank with two (2) or more years of service.

B. Police Sergeant

1. Eligibility:

- a. A Corporal is not eligible for promotion to the rank of Police Sergeant unless the Corporal has served in the Department in the next lower rank for at least two years immediately before the police sergeant promotional examination date.
- b. Corporals shall attend a mandatory supervisory or management training program approved by the Chief designed for that rank of no less than 24-hours to be eligible to take the sergeant promotional examination.
- c. The Chief shall reasonably schedule all eligible Corporals to attend the approved mandatory supervisory or management training program. The failure or refusal of a Corporal to participate in the training program for any reason shall not constitute a basis for any grievance or for any judicial or other administrative relief. Exceptions to the training requirement due to unusual circumstances may be granted by the Chief.
- d. Corporals hired after October 1, 2010, must also have an Associate Degree or at least 60 hours (with a passing grade) of college hour credits from an accredited college or university.
- e. If there are not at least two police corporals meeting the requirements outlined above with two years of service to take the examination, the Director shall open the examination to corporals/officers who meet the requirements outlined above as follows:
 1. *First, Corporals with more than one year of service meeting the aforementioned education requirements.*
 2. *Second, if there are insufficient Corporals in step "1" above, all Corporals not meeting the educational requirement.*
 3. *Third, if there are insufficient Corporals in step 2 above, officers who:*
 - a. *have served the department for at least six (6) years; or have TCOLE Intermediate Certificate and have served in the department for at least four (4) years before the promotional examination date; and.*
 - b. *If hired after October 1, 2010, must also have an Associate Degree or at least 60 hours (with a passing grade) of college hour credits from an accredited college or university.*
 4. *Fourth, if there are insufficient Officers in #3 above, officers who have served the department for at least six (6) years; or have TCOLE Intermediate Certificate and have served in the department for at least four (4) years before the promotional examination dates.*

C. Police Commander

1. Eligibility:

- a. Persons having held the rank of Police Sergeant for a period of at least two (2) continuous years immediately before the examination date shall be eligible to take the promotional examination to the rank of Police Commander.
- b. Sergeants hired on or after October 1, 2010, shall have a bachelor's degree to be eligible to take the Commander promotional examination and participate in the promotional process.
- c. In the event two or more candidates do not sign up for and take the examination or all eligible candidates fail the written portion of the promotion examination, all sergeants who meet the aforementioned education requirement regardless of time-in-rank may be eligible for the examination for promotion to Police Commander.
- d. In the event all eligible candidates fail the written portion of the promotion examination or two candidates fail to sign up to take the examination, all sergeants, regardless of education, who meet the time in grade requirements may be eligible for the examination for promotion to Police Commander.

Section 3. Written Promotional Exam – Seniority Points

Every candidate taking a Corporal or Sergeant promotional examination must score a passing score, a minimum of 70, on the written exam to be eligible for seniority points. For example, a candidate scoring 69, the final grade is 69 and is not considered a passing score. A candidate scoring 70 will have seniority points added to their score.

Section 4. Eligibility List

Within seventy-two (72) hours of the completion of the Assessment Center Process, excluding weekends and holidays, an eligibility list shall be prepared and posted with the respective ranking of all promotional candidates based on the candidate's final score based on the formula specified in Section 1. (3) of this Article.

Section 5. Life of the Eligibility List

Every promotional eligibility list shall be valid for a period of eighteen (18) months after the date of the Assessment Center, notwithstanding any pending disputes, appeals or litigation concerning an applicant's score or right to promotion, unless the list is exhausted.

Section 6. Rule of Three

- A. Effective October 1, 2016, when a vacancy occurs and a promotional eligibility list exists, the Chief shall make the promotion of the number one candidate on the eligibility list unless the candidate has received any one of the following in the two years immediately preceding the date of appointment:
 1. A temporary suspension of more than three (3) days; and/or
 2. A demotion in rank, whether voluntary or involuntary.

3. A combination of a minor suspension of less than three days and another substantiated policy violation(s)/violations resulting in at least a written reprimand.
- B. In such event, the Chief may pass over the number 1 candidate. Likewise, if the number 2 candidate on the eligibility list has received one or both of the aforementioned discipline and/or demotion, the Chief may pass over the number 2 candidate, etc.
 - C. Notice of Passover:

If the Chief intends to pass over a candidate, the Chief shall give notice to that candidate prior to notification of the candidate the Chief intends to promote. In the event of exigent circumstances, which result in the Chief being unable to notify the candidate(s) of his/her pass-over, the Chief shall notify the association president or designee.
 - D. If a candidate on the eligibility list is passed over for a reason(s) mentioned above, he/she shall have no right of appeal to the Commission, or to arbitration through any grievance procedure, or to any judicial or administrative body.

Section 7. Examination Posting and Promotional Appointments

If an eligibility list does not exist on the date a vacancy occurs, or a new position is created, the Director shall hold an examination to create a new eligibility list. Reading lists will be posted 90 days in advance of a test, as needed, and the notice of examination will be posted 30 days in advance of a promotional examination. The City shall endeavor to conduct promotional examinations so that promotional appointments can be made within 90 days of the date a vacancy occurs of a new position is created. Circumstances may extend that timeline. Corporals promoting to Sergeant will be made from the date of promotion with no backpay (reference out of class pay for corporals).

Section 8. Preemption:

This Article preempts any conflicting state statutes (including Texas Local Government Code Chapters 141, 142, and 143), local ordinances, executive orders, civil service provisions, or rules adopted by the Chief of Police or City or by any division or agent of the City, including any City personnel board and the Firefighters and Police Officers Civil Service Commission, as provided by Texas Local Government Code Section 142.067 and 143.036.

ARTICLE 13

MINOR SUSPENSIONS

Section 1. Use of Leave In Lieu of Minor Suspension without Pay

Within five (5) days of receipt of the statement of suspension without pay of one hundred and twenty (120) hours or less, the Officer may forfeit vacation or holiday time equal to the length of the suspension, to serve the suspension with no break in service for purposes of seniority or promotion. The forfeited vacation or holiday time will not constitute hours worked. In the event an Officer has received a disciplinary suspension within the preceding twenty-four (24) month period, the Officer may only forfeit vacation or holiday time with the Chief's permission. The Officer must agree that there is neither right to appeal the suspension nor right of review before any administrative body or judicial body if this method of suspension is chosen and the Officer must sign a waiver of appeal and agree to the suspension.

Section 2. Appeals of Suspensions of Twenty-Four (24) hours or less

Officers who receive a suspension without pay for twenty-four (24) hours or less may only appeal their suspension, unless waived in accordance with Section A above, to the Firefighters and Police Officers' Civil Service Commission and the provisions of TLGC section 143.057 shall not apply to such suspensions.

ARTICLE 14

CONTRACT INTERPRETATION DISPUTE RESOLUTION PROCEDURE

Section 1. Scope of Procedure

The City and Association recognize 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 exclusive method for resolving disagreements between the Parties regarding the application or interpretation of the provisions of this Agreement. 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 matters for which the right of appeal is afforded by Subchapter D of Chapter 143 of the Texas Local Government Code are excepted from the scope of this Article.

Section 2. Application of Procedure

If either the City or the Association has a dispute with the other Party regarding this Agreement that Party should reduce the dispute to writing and deliver it to the other's designated representative, who for the Association shall be its President and for the City shall be its Chief or designee. An 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 Grievance Committee and must also be signed by the Association President.

Each grievance shall be written and state: 1) a brief statement of the dispute and the factual basis for the dispute; 2) identify the applicable sections of this Agreement alleged to have been violated; 3) identify the specific remedy or adjustment sought; and 4) be signed by the aggrieved Officer, or if filed by the Association, the Association President or Grievance Committee Chairman. Any claim or dispute by an employee or group of employees 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 within thirty (30) calendar days of the date when the employee knew or reasonably should have known of the claim.

Disputes by the Association or an aggrieved Officer must proceed following these steps:

Step 1.

An aggrieved Officer must submit his grievance to the Association Grievance Committee within thirty (30) calendar days of the date upon which the Officer knew of, or should have known of, the facts giving rise to the dispute the basis of the grievance. A complete copy of the grievance shall be forwarded to the Chief within three (3) calendar days of the submission to the Committee. The Association Grievance Committee shall meet within fourteen (14) calendar days of receipt of the grievance and determine whether a meritorious grievance exists. If the Grievance Committee determines that no meritorious grievance exists, it shall notify the Chief within three (3) calendar days of such determination and that no further proceedings will be necessary. If the Grievance Committee determines that a meritorious grievance exists, it shall proceed to submit the grievance to the Chief within five (5) calendar days of the date of the Committee determination.

Step 2.

The Chief may require by policy for submission of contract disputes within the chain of command but shall determine the matter within thirty (30) calendar days of its receipt from the Association. The Chief shall make his or her determination in writing.

Step 3.

If the grievance is not resolved in Step 2, the Association Grievance Committee may advance the grievance by submitting the written grievance to the City Manager or his designee within thirty (30) calendar days of receipt of the Chief determination. The City Manager or his designee shall review the grievance and render a decision in writing to the Association Grievance Committee within ten (10) business days of receipt of the grievance.

Step 4.

Either Party shall have the right to seek mediation of the dispute by requesting same within thirty (30) calendar days from the date of delivery of the City Manager's or his designee's decision. The mediation shall proceed before a mutually agreed mediator or a mediator from the Federal Mediation and Conciliation Service. If the representatives have not been successful in resolving the issue within sixty (60) calendar days, the matter may proceed to arbitration if agreed in writing by both the City and the Association. If arbitration is not mutually agreed to in writing by both the city and the Association, the matter may proceed as provided for under section 142.064(c) of the Texas Local Government Code.

Section 3. Arbitration

If arbitration is mutually agreed to in writing by the City and the Association, the Parties agree that either, or both, can request a list of seven (7) arbitrators from the American Arbitration Association within seven (7) calendar days of mediation, and once received, the Parties shall strike names from the list until a single name remains. That person shall be appointed arbitrator for the dispute unless the arbitrator fails or is unable to hear the matter in which case a new list will be requested, and the process repeated. The arbitration should be held at the earliest available date but may be continued for good cause shown or upon mutual agreement. The conduct of the hearing shall be governed by the standard rules of the American Arbitration Association.

The hearing shall be held in available facilities of the City of San Marcos and shall be conducted informally, without strict evidentiary or procedural rules. The arbitrator shall consider and decide only the issue(s) timely submitted in the dispute statement or by written 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 evidence within thirty (30) calendar days after close of the hearing.

Section 4. Decision Final and Binding

If arbitration is selected, the Parties specifically agree that the arbitrator's authority shall be strictly limited to interpreting and applying the explicit provisions of this Agreement. If the City agrees to arbitration, any finding or ruling of the arbitrator on any legal issues which are determinative in the dispute are subject to judicial review. The arbitrator shall not have authority to add to, amend, modify, or subtract from the provisions of this Agreement in arriving at his decision on the issue or issues timely submitted in the grievance as originally submitted in Step 1 and shall confine his decision to the interpretation of this Agreement. The Parties agree that neither the City nor the Association shall have *ex parte* communications with the arbitrator concerning any matter involved in the grievance submitted to the arbitrator. Each Party

shall be responsible for its own expenses in preparing for and representing itself at arbitration, but the fees of the arbitrator shall be borne equally by the Parties. The written decision of the arbitrator shall be final and binding on both Parties and may not be appealed by either Party, except for any decision procured by fraud, collusion, or unlawful means, 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 waived or extended by written mutual agreement by the Parties. Failure to adhere to the time limit at Step 1 shall result in the matter being considered satisfied and no further action shall be taken. If the last day of a time period herein falls on a Saturday, Sunday, or City holiday, the time period will be extended to the next business day.

ARTICLE 15

CITY PROPERTY OFF-DUTY AND SPECIAL DUTY WORK

Section 1. Introduction

The existing policies for off-duty employment shall prevail, except that on matters involving jurisdiction or conflict of interest, the Chief shall have the right to amend the existing policies, which shall not be subject to grievance procedure outlined in Article 14 of this Agreement except by mutual written agreement.

Section 2. Use of Sworn Personnel at Certain City Facilities

- A. The City shall utilize only sworn officers on a voluntary basis for the purposes of providing security, crowd control, and other police-related activities at City Parks and the City facilities listed herein. This shall not include ticket takers, badge checkers, or individuals whose duty is to enforce house rules. The Association recognizes that the city has legitimate reasons to work with performers or entertainer's special security needs. The City shall include in every third-party contract executed after the date of this Agreement, for the use of these City facilities that any vendor or lessee using said facility shall use only sworn officers procured through the City of San Marcos Police Department, or City of San Marcos Park Rangers in City Parks, for security, crowd control and other police-related activities while using the facility, and that number of officers determined to be necessary by City policy shall be paid by the vendor or lessee.
- B. For the purposes of this article, City facilities shall include only the following:
 - 1. The San Marcos City Activity Center at 501 E. Hopkins Street,
 - 2. Dunbar Recreation Center, 801 Martin Luther King Drive,
 - 3. City Park San Marcos Recreation Center, 170 Charles Austin Drive,
 - 4. Fish Hatchery, 206 N. CM Allen Parkway.
- C. All Officers assigned to work at the above listed City facilities on an off-duty voluntary basis shall be compensated by the vendor/lessee as follows:
 - 1. Police Officers, regardless of seniority, rank, or other compensation of forty dollars (\$40.00) per hour shall be paid.
 - 2. Agreements executed October 1, 2019, and later, compensation of forty-five dollars (\$45.00) per hour shall be paid.
 - 3. Agreements executed October 1, 2022, and later, compensation of fifty dollars (\$50.00) per hour shall be paid.
 - 4. Agreements executed October 1, 2024 and later, compensation of fifty-five dollars (\$55.00) per hour.
 - 5. All payments will be made directly to the Officer by the vendor/lessee as per City policy. In no event shall the City be liable for the compensation due the Officer.

- D. The number of Officers needed at any one such property or facility shall be pursuant to City policy.

The Chief shall establish and maintain a Department Procedure for administering this Section. The special order shall include sign-up, notification on a rotating basis, and other policies necessary for the administration of this Section.

- E. Officers who "volunteer" their time, without remuneration of any type, may work events and neither the Officer nor the Association may assert any violation of this Article should another Officer volunteer to work the event at the facility. "Volunteers" are not exempt from the requirements for off-duty employment of City facilities, even where such volunteers under this paragraph are working on City facilities, and written permission for volunteers to work on City facilities must be approved by the Office of the Chief or his designee.
- F. Nothing in this Article precludes the city from utilizing personnel from private security companies to provide day-to-day security for any City facility including the facilities listed paragraph A above.
- G. The Police Department shall first be required to call or otherwise make available the opportunity for off-duty placement to SMPD personnel, and then to non-SMPD certified peace officer City employees. After having done so, the city may fill any remaining need for certified personnel with employees of other agencies outside the city organization.
- H. This article is conditioned on the Association obtaining and coordinating any paperwork necessary to comply with the Private Security Act of Texas or other applicable law.
- I. Section 7(p)(1) of the Fair Labor Standards Act (FLSA) makes special provisions for officers of public agencies that, at their own option, perform off-duty employment. This FLSA section and regulation provides that the City may facilitate the employment or affect the conditions of the Officer's off-duty employment. Additionally, the City may keep a roster and select from the roster, negotiate the Officer's pay, retain a fee for administrative expenses, require the individuals who are hiring the Officers to pay the costs directly to the City and establish procedures for the Officers to receive their pay, and require Officers to observe normal standards of conduct during their off-duty employment and enforce such requirements through disciplinary action.
- J. Nothing herein is intended or designed to impugn the separate and independent employer relationship of outside interests utilizing City facilities. The City and the Association have a continued relationship within the scope of the Agreement that allows the City to negotiate Officer pay rates and conditions of off-duty employment while maintaining a separate and independent status from the individuals contracting to utilize these City facilities and off-duty Police Officers.
- K. Officers participating in the off-duty employment opportunities provided through this Agreement are working off-duty for the lessees of City facilities and not for the city or the Department. In the event of any ruling or holding by a Court or any determination by the Department of Labor that non-payment by vendors makes the city liable for FLSA overtime as the employer of officers, the city may require that officers sign an agreement agreeing to look solely to the vendor for payment.
- L. In the event of any ruling or holding by a Court or any determination by the Department of Labor that results in altering or changing the benefits provided by this Agreement under this Article or challenges the ability of the City to determine compensation under this Article, or results in any liability to the City, the provisions of this Article shall immediately become null and void.

ARTICLE 16

PROTECTED RIGHTS OF OFFICERS

Section 1. Effect of Article

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

Section 2. Definitions

In this Article:

- A. "Complaint" means any affidavit, administrative referral, or other document setting forth allegations or facts that may form the basis of future allegations of misconduct against an Officer and which serves as the basis for initiating an investigation.
- B. "Complainant" means either a person claiming to be a witness to or a victim of misconduct by an Officer, or the Department designee in the case of an anonymous complaint or administrative referral.
- C. "Disciplinary Action" means suspension, indefinite suspension, demotion in rank, or any combination of those actions.
- D. "Investigation" means an inquiry into the alleged misconduct by an Officer that could result in disciplinary action.
- E. "Investigator" means any agent or employee of the municipality who is assigned to conduct an administrative investigation.
- F. "Statement" means any communication (oral or written) setting forth particulars or facts regarding the alleged misconduct under investigation.
- G. "Evidence" means statements, reports, records, recordings, documents, computer data, text, graphics, videotape, photographs, or other tangible forms of information, including a "complaint".

Section 3. Access to Records by Officers

- A. Not less than forty-eight (48) hours before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer shall be provided a copy of the complaint(s). The Department may omit the name and/or identity of the person making the complaint. In the event that the complaint(s) does not contain all allegations of misconduct under investigation, not less than forty-eight (48) hours before the investigator begins the initial oral or written interview of the Officer, the investigator must inform the Officer in writing of the additional allegations being investigated. This subsection does not apply to an administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct.
- B. Before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer and his representative(s) shall be provided an opportunity to review any videotape,

photograph, or other recording of the operative conduct or alleged injuries, if any, which is the subject of the allegations if such recording is within the possession or control of the CITY, unless the material is confidential by law, or evidence from a pending criminal investigation.

- C. An Officer who is the subject of an investigation is entitled to a copy of his or her statement to the Office of Professional Conduct at the time the statement is finalized and signed by the Officer. The statement remains confidential in the hands of the Officer pursuant to 143.089(g), Department policy, and orders of non-communication about internal investigations, except for consultations with counsel and/or ASSOCIATION representatives who are not involved in the investigation.
- D. Before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer and his representative(s) shall be allowed to review the portions of any document(s) in which it is alleged or believed that the Officer provided false, incomplete, inconsistent, or conflicting information, or in which it is alleged that the Officer omitted information in violation of any law or Department policy.
- E. Before the Officer who is the subject of an investigation provides a statement to an investigator, the Officer and his/her representative(s) shall be allowed to review any report, supplemental report or other statement recorded or written by the Officer, setting forth particulars or facts regarding the operative conduct which is the subject of the allegation(s).
- F. Not less than forty-eight (48) hours before any administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct, the Officer and his representative shall be allowed up to five (5) hours to review any and all evidence gathered or obtained during the investigation, and not previously reviewed by the Officer. The evidence available for review shall include the Administrative Investigation summary, if any. Evidence does not include attorney client communications. Neither the Officer nor his representative will be permitted to make copies of any of the evidence reviewed.
- G. Not less than forty-eight (48) hours before any administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct, the Department shall provide written notice of the alleged policy violations and the specific range of discipline being considered. In making the final decision as to discipline, if any, the Chief shall not be restricted to the alleged policy violations and/or the range of discipline provided pursuant to this subsection.

Section 4. Confidentiality of Records and Misuse of Information

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

- A. Information provided or made available for review remains confidential in the hands of the Officer and the Officer's representative pursuant to 143.089(g), Department policy, and orders of non-communication about internal investigations, except for consultations with counsel and/or ASSOCIATION representatives who are not involved in the investigation.
- B. Retaliation or the threat of retaliation by an Officer, or by an individual at the direction of the Officer, against a complainant or a witness is strictly prohibited. A sustained violation of this subsection shall result in either a temporary or indefinite suspension.
- C. If an Officer is suspended for an alleged violation of subsection B, the Officer shall have the right to appeal the suspension to the Civil Service Commission or to an Independent Third-Party Hearing Examiner pursuant to the provisions of this Agreement and Chapter 143 of the Texas Local Government Code. The Commission or the Hearing Examiner shall decide whether the specific charge related to this Section is true. If the charge is found to be true, the Commission or Hearing Examiner must affirm the disciplinary action and cannot amend, modify, or reduce the period of disciplinary suspension. Sections 143.053(e) & (f) of the Texas Local Government Code are hereby superseded to the extent of any conflict with this Section.

Section 5. Right to Representation

An Officer who is the subject of an investigation or administrative inquiry shall have the right to be represented by either an attorney or an ASSOCIATION representative of the Officer's choice during an interview, provided the attorney or representative complies with the Office of Professional Conduct interview protocol. An Officer shall have the right to be represented by either an attorney or an ASSOCIATION representative of the Officer's choice during an administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action for alleged misconduct.

Section 6. Violation of Officer's Rights

If the Department or any investigator violates any of the provisions of this Article while conducting an investigation, the violation may be considered by the Civil Service Commission or a Hearing Examiner in any disciplinary appeal hearing if the violation substantially impaired the Officer's ability to defend against the allegations of misconduct.

Section 7. Alternative Discipline by Agreement

In considering appropriate disciplinary action, the Police Chief may require that an officer be evaluated by a qualified professional designated by the Police Chief. If that professional recommends a program of counseling and/or rehabilitation for the officer, the Police Chief may offer the officer the opportunity to enter into an alternative disciplinary agreement under which the officer would agree to successfully complete the recommended program of counseling or rehabilitation. The program of counseling and/or rehabilitation will be completed on the officer's off duty time, unless the Police Chief approves the use of accrued vacation leave or sick leave. The officer shall be responsible for

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paying all costs of the program of counseling and/or rehabilitation, which are not covered by the officer's health insurance plan. If the officer's misconduct involved alcohol related behavior, the Police Chief may require that the officer submit to mandatory alcohol testing, when ordered by the Police Chief, for a specified period of time. If the officer accepts the opportunity for agreed alternative discipline, the officer may not appeal any terms of the Agreement. If the officer fails to successfully complete the program of counseling and/or rehabilitation recommended by the designated professional the officer may be face additional disciplinary action.

Furthermore, in considering the appropriate discipline the Police Chief may allow the officer may enter into an alternative disciplinary agreement under which the officer would agree to successfully complete educational classes, and/or community service, and/or other alternative discipline recommended by the Police Chief in lieu of a disciplinary suspension. If the officer fails to successfully complete the educational classes, and/or community service, and/or other alternative discipline recommended by the Chief, the officer may be face additional disciplinary action.

ARTICLE 17

BADGE AND GUN AT RETIREMENT

An officer who honorably retires after a minimum of twenty (20) consecutive years, immediately preceding his/her retirement from the City of San Marcos Police Department, shall be awarded a retirement badge and his/her duty handgun (Glock), under the following conditions:

- A. A formal transfer of ownership shall occur, so that the City disclaims all responsibility and liability for the retiree's use of the duty handgun. The retiree shall execute a waiver of liability.
- B. The retiree shall not hold himself/herself out to be an active San Marcos Police Officer.

For the purpose of this article, "Honorably Retire" means that an officer retired in good standing, as determined by the Chief of Police, and was not under investigation at the time of retirement, or the allegation was not sustained after retirement.

ARTICLE 18

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 19

COMPLETE AGREEMENT

Section 1. Complete Agreement

The Parties agree that each has had full and unrestricted right and opportunity to make, advance, and discuss all matters properly within the province of meet and confer negotiations. This Agreement constitutes the full and complete Agreement of the Parties and there are no others, oral or written, except as specified in this Agreement. It is understood and agreed that the contract may be amended by mutual consent of the parties to this Agreement.

Section 2. Preemption

Additionally, this Meet and Confer Agreement preempts, during the term of this Agreement and to the extent of any conflict, all contrary state statutes (including Texas Local Government Code Chapters 141, 142, and 143), local ordinances, executive orders, civil service provisions, or rules adopted by the Chief of Police or City or by any division or agent of the City, including any City personnel board and the Firefighters and Police Officers Civil Service Commission, as provided by Texas Local Government Code Section 142.067.

ARTICLE 20

DURATION OF AGREEMENT

Section 1. Term of Agreement

This Agreement shall become effective after ratification pursuant to Texas Local Government Code Section 142.064 by the recognized police officer's association conducting a secret ballot election at which the majority of the police officers who would be covered by the agreement favor ratifying the agreement and upon approval by majority vote of the City Council after compliance with any procedural or publication requirements imposed by Charter. It shall continue in effect until September 30, 2026, unless otherwise provided herein.

Section 2. Additional Option Year

This agreement may be extended by mutual agreement. An initial meeting will be held by November 15th of the third year of the contract to discuss possible extension of the agreement by one year. A decision shall be reached by January 1st of the third year to extend the agreement or negotiations for a new agreement will move forward.

Upon mutual agreement to extend this agreement, all provisions of this Agreement will remain in full force and effect, subject to the provision of this Article, during the additional year of this Agreement, which will end on September 30, 2027.

Section 3. Notice and Renegotiation

The City and the Association shall begin negotiations by February 1st of the final year of the agreement, unless otherwise mutually agreed by both parties.

Section 4. Funding Provision

The City presently intends to continue this Agreement each fiscal year through its term, to pay all amounts due, and to perform the obligations of the City under this Agreement fully and promptly. All obligations of the City shall be paid only out of current revenues or any other funds lawfully available for those obligations, including tax revenues, reasonably anticipated and appropriated for such purpose by the City Council in compliance with the Texas Constitution, Article 11, Sections 5 and 7. In making funding determinations in the second and subsequent fiscal years of this Agreement following ratification, the City Council may consider operational and administrative costs including its debt service obligations, the increases in other employee personnel costs, and the obligations arising under this Agreement. If at any time it is determined by the City that it would not be able to meet its financial obligations hereunder after considering the above listed factors, the Association and the City may mutually agree to renegotiate the financial provisions of this Agreement. If sixty (60) calendar days after these negotiations begin, no agreement has been reached; this Agreement shall terminate and be null and void in its entirety. In the event the City Council fails to appropriate funds in any fiscal year of this Agreement in an amount sufficient to meet City obligations hereunder this Agreement shall terminate and shall be null and void in its entirety on the first date that such funding is not met pursuant to this Agreement. If at any time during the term of this Agreement, or any extension thereof:

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- A. The electorate of the City subjects the Government of the City to a rollback election; and, because of such rollback election, the City suffers a reduction in revenues due to a reduction in the tax rate, the Association agrees to reopen the salary and other compensation provisions of this Agreement for the purpose of renegotiating the same; or the actual sales tax revenue is less than 3.5% of adopted budget, measured quarterly, the City and Association agree to reopen the salary and other compensation provisions of this agreement for the purpose of renegotiating the same.
- B. Under the City's financial policy, this action is similar to phase 3 actions the City will take throughout the City to mitigate budgeted sales tax shortfalls. Refer to The City of San Marcos Financial Policy, Section V (G):

The following is a summary of phase classifications and the corresponding actions to be taken. Revenue will be monitored on a quarterly basis, with action being taken in the month following the completed quarter that experiences the shortfall. Actions are cumulative, so each level will include all actions set forth in prior levels.

- 1. ALERT: The estimated annual sales tax revenue is 1.5% less than the adopted sales tax revenue budget.
 - a. Freeze newly created positions.
 - b. Implement a time delay for hiring vacant positions.
- 2. MINOR: The estimated annual sales tax revenue is 2.5% less than the sales tax revenue adopted budget.
 - a. Suspend funding of Capital Maintenance accounts.
 - b. Suspend capital outlay purchases.
 - c. Reduce the number of temporary workers.
- 3. **MODERATE: The estimated annual sales tax revenue is 3.5% less than the sales tax revenue adopted budget.**
 - a. **Implement a managed hiring program for vacant positions.**
 - b. **Reduce travel and training budgets.**
 - c. **Reduce office supply budgets.**
 - d. **Scrutinize professional services expenses.**
 - e. **Implement a salary freeze and suspend mid-year merit increases if possible.**
- 4. MAJOR: The estimated annual sales tax revenue is 4.5% less than the adopted sales tax revenue budget.
 - a. Scrutinize repairs and maintenance expense. Perform only critical maintenance and make only critical repairs.
 - b. Freeze all external printing and publication expenses, except for legally required notices.
 - c. Reduce overtime budgets.
 - d. Prepare a Reduction in Force Plan.
 - e. Defer payments to City-owned utilities for electricity, street lighting, water, and wastewater services.
- 5. CRISIS: The estimated annual sales tax revenue is 5% less than the adopted sales tax revenue budget.
 - a. Service level reductions, elimination of specific programs, reduction- in-force and other cost reduction strategies will be considered.
 - b. Reduce departmental budgets by a fixed percentage or dollaramount.
 - c. Departments will prioritize service levels and programs according to City Council goals and objectives.
 - d. Consider four-day work weeks to reduce personnel costs.
 - e. Reduce external program funding – social service agencies

If sixty (60) calendar days after these negotiations begin, no agreement has been reached; this Agreement shall terminate and be null and void in its entirety.

Section 5. No Petition to Increase Salaries

The Parties agree to the salary increase provided for in Article 5 and it is the Parties' intent to override section 141.034 of the Texas Local Government Code to preclude a petition to increase salaries during the term of this Agreement. The Association further agrees it will not support or seek any proposed Charter amendment or initiative election that would provide for any increase in wages, salary, or pay during the term of this Agreement.

Section 6. Coordinated Programs with Other Governmental Bodies

Upon the effective date of this Agreement, both Parties agree to protect and defend the provisions of this Agreement against any unauthorized challenges at local, state, and national legislative levels of government. Both Parties agree to not file or support any legislative effort that affects the terms and/or conditions of this Agreement, that have not been mutually agreed to by both Parties. In the event any Officer covered by this Agreement who is not representing the Association attempts to violate any of the provisions of this Article, he/she shall be prohibited from utilizing any of the provisions of this Agreement or any other similar statutory authorization that allows an Officer to petition a governmental body.

Section 7. Extension for Successor Agreement

If the parties are engaged in negotiations for a successor Agreement at the time this agreement, as amended, expires, the Association's and the City's negotiating teams shall have the authority to extend this Agreement in thirty (30) calendar day/monthly increments by mutual written agreement, during a period of good faith negotiations after such termination date, not to exceed a total of three (3) months.

ARTICLE 21

ADMINISTRATIVE SIMPLIFICATION

Section 1 - Procedure for Posting Notices:

- A. External Postings: will be placed on the City's website.
- B. Reading Lists: When an updated reading list is posted, all officers will be notified by email. The reading list will also be posted on the City's Intranet.
- C. Promotional Opportunities: When a promotional opportunity is posted, all officers will be notified by email. The notice of promotional examination and reading list will also be posted on the City's Intranet.

Section 2 – Entrance and Promotional Eligibility Lists

- A. Entrance Examination Eligibility Lists will be posted on the City's website.
- B. Promotional Examination Eligibility Lists will be posted on the City's Intranet.

Section 3 – DIRECTOR AUTHORIZED TO PERFORM MINISTERIAL PROCESSES

The Director of Civil Service is authorized to perform ministerial functions in the hiring and promotion process on behalf of the Civil Service Commission.

Section 4 – Statutory Preemption:

To the extent of any conflict, the provisions of this article preempt TLGC Chapter 143 including Section 143.024, 143.026, 143.033, 143.036, 143.107 and to the extent that any of these provisions are in conflict with the TLGC Chapter 141, 142 and 143, this provision shall prevail.

ARTICLE 22

AUTHORITY OF AN ARBITRATOR/THIRD PARTY HEARINGS EXAMINER

Section 1 – Authority of Arbitrator/Third Party Hearings Examiner:

The award of the arbitrator (third-party hearings examiner) shall state whether the Chief's disciplinary decision(s), which includes the original written statement and charges, is supported in whole, or in part, by a preponderance of the evidence considering the reliable and probative evidence in the records as a whole.

Unless there is evidence that the Chief's decision was:

1. The result of unlawful discrimination (discriminatory); or
2. based on sudden and unaccountable changes of mood or behavior (capricious); or
3. based on random choice or personal whim, rather than any reason or system (arbitrary);

the arbitrator may not substitute his/her judgment for the Chief's on the disciplinary penalty when the conduct has been found to constitute gross or sustained insubordination that has not been corrected by documented progressive discipline/coaching/counseling, untruthfulness, or allegations of criminal misconduct.

Section 2 – Definition of insubordination for this Article.

Insubordination will be defined in this article as defined in the SMPD General Orders, 2.1 RULES OF CONDUCT dated July 3, 2020. (This language will be included in this agreement to assure correct meaning as General Orders are periodically updated).

Section 3 – San Marcos Police Department General Orders:

VI PERFORMANCE PROHIBITIONS

A.(2). Insubordination may also consist of direct, tacit, or constructive refusal to do assigned work.

VII OBEDIENCE TO RULES OF CONDUCT, LAWS, AND ORDERS;

E. Insubordination. Employees shall promptly obey all lawful orders and directions given by supervisors. The failure or deliberate refusal of employees to obey such orders shall be deemed insubordination and is prohibited.

Flouting (disregarding) the authority of a supervisor by displaying obvious disrespect or by disputing his or her orders shall likewise be deemed insubordination.

Section 2 – Statutory Pre-emption:

To the extent of any conflict, the provisions of this article shall pre-empt TLGC Chapter 143 to the extent that any of these provisions conflict with the TLGC Chapter 143 (143.014, 143.036, 143.056, 143.057, 143.090) and any other provisions of TLGC 143 , this provision shall prevail.

ARTICLE 23

INVESTIGATIONS AND DISCIPLINARY SUSPENSIONS

Section 1. Time Limit

All formal discipline shall comply with the time limits outlined below:

- A. For alleged non-criminal violations, the Chief must file a written complaint within 180 days of the occurrence of the alleged act and temporarily or indefinitely suspend the officer no later than the 180th day after the date the complaint of the alleged violation is filed by the Chief.
- B. For alleged sexual harassment violations, the Chief must file a written complaint within 300 days of the occurrence of the alleged act (as defined in state or federal law) and temporarily or indefinitely suspend the officer no later than the 180th day after the date the complaint of the alleged violation is filed by the Chief.
- C. For alleged criminal violations, the Chief must file a written complaint within 180 days of the Chief's discovery of the alleged act and temporarily or indefinitely suspend the officer no later than the 180th day after the complaint of the alleged violation is filed by the Chief; provided, however, the 180-day period shall be extended for a period not to exceed 30 days after final disposition of any pending criminal proceedings regarding the alleged act.

Section 2. Pausing of Deadlines

All deadlines relating to investigation and discipline prescribed by Chapter 143 of the Texas Local Government Code and this Agreement, as well as any investigation and any resultant discipline, may be paused at the Chief's discretion during the subject employee's state or federal mandated leave including but not limited to family medical leave act (FMLA), active military assignment, and workers' compensation.

Section 3 – Statutory Preemption:

To the extent that any of these provisions differ from Chapter 143 of the Texas Local Government Code, the agreement supersedes and pre-empts those provisions as permitted by Chapter 142.067 of the Texas Local Government Code.

ATTACHMENT A
 LONGEVITY PAY

FY 2023 – 2025		
Years of Service	Rate	Annual Amount
1	\$4	\$48
2	\$4	\$96
3	\$4	\$144
4	\$4	\$192
5	\$4	\$240
6	\$4	\$288
7	\$5	\$420
8	\$5	\$480
9	\$5	\$540
10	\$6	\$720
11	\$8	\$1,056
12	\$8	\$1,152
13	\$8	\$1,248
14	\$8	\$1,344
15	\$10	\$1,800
16	\$10	\$1,920
17	\$12	\$2,448
18	\$12	\$2,592
19	\$12	\$2,736
20	\$17	\$4,080 CAP

ATTACHMENT B

PROMOTIONAL PERFORMANCE REVIEW

Promotional Examination Performance Review Matrix

Meet and Confer Agreement Effective 6/8/2023 Attachment B

Based on a maximum value of 100 points, positive conduct earns a maximum of 50 points and up to an additional 50 is deducted for negative conduct. The performance lookback is 2 years for corporal, 3 years for sergeant and 5 years for commander. The effective date of the performance review shall be the day of the Assessment Center.

	Point Value:	Count	Total
Positive Conduct:			
Commendations			
Police Medal of Honor	25	0	0
Police Purple Heart Medal	20	0	0
Police Commendation Medal	15	0	0
Life Saving Medal	15	0	0
Distinguished Service Award	10	0	0
Conduct - Behavior Positive			
Instances of Positive Behavior - 5 points each	5	0	0
Total Positive Conduct			0
Maximum Positive Conduct Section 50 points			0

Negative Conduct:			
Demotion:			
Discipline - Demotion	-20	0	0
Discipline - Suspension:			
Suspension 1-4 days	-10	0	0
Suspension 5-9 days	-15	0	0
Suspension 10-15 days	-25	0	0
Suspension 16-90 days	-50	0	0
Negative Conduct - Other			
Letter of Reprimand - 5 points each	-5	0	0
Total Negative Conduct			0
Maximum Negative Conduct Section -50 points			0

Total Rating/Score:			
Beginning points:		50	
Positive Conduct		0	
Negative Conduct		0	
Total Performance Matrix Rating:		50	
	20%	10	

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EXECUTED THIS _____ DAY OF _____, 2023.

FOR THE CITY OF SAN MARCOS, TEXAS:

STEPHANIE REYES
CITY MANAGER

Date: _____

ATTEST:

ELIZABETH TREVINO
CITY CLERK

APPROVED:

APPROVED AS TO FORM:

STAN STANDRIDGE
POLICE CHIEF

SAMUEL J. AGUIRRE
CITY ATTORNEY

FOR THE SAN MARCOS POLICE OFFICERS ASSOCIATION:

JESSE SAAVEDRA
PRESIDENT

Date: _____

JR MENDOZA
SECRETARY

Date: _____