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TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

Intervenor-Defendant Austin Firefighters Association, International Association of Fire Fighters, AFL-CIO, Local 975, (“AFA”), and Defendants City of Austin and Marc A. Ott, (“City”) (collectively, “Defendants”), by and through counsel, file this Joint Cross-Motion for Summary Judgment and Opposition to Plaintiffs Taxpayers’ and Intervenor Texas’s Joint Motion for Summary Judgment. Defendants respectfully request that this Court deny Plaintiffs Mark Pulliam and Jay Wiley’s and Intervenor-Plaintiff’s (collectively, “Plaintiffs”) Joint Motion for Summary Judgment and grant judgment in Defendants’ favor as to all claims.

I. Introduction

Plaintiffs’ claims have already been adjudicated meritless. Yet that has not dissuaded them from continuing to engage the City of Austin and its fire fighters in costly, now years-long litigation. Plaintiffs’ lawsuit — just like the lawsuits Plaintiffs’ counsel has had rejected by courts in Arizona and New Jersey¹ — is a specious challenge to bargained-for Association Business Leave, one of numerous types of compensation provided to Austin’s fire fighters by the City of Austin in the parties’ arms-length Collective Bargaining Agreement (“CBA”). The CBA was extensively negotiated by the City and the AFA on behalf of the bargaining unit it represents. According to Plaintiffs and Intervenor-Plaintiff Texas, this indisputably bargained-for provision of an indisputably valid agreement between the parties is somehow a gratuitous grant

¹ See *Cheatham v. DiCiccio*, 379 P.3d 211 (Ariz. 2016); *Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017).

of public funds in violation of the Texas Constitution's "gift clause." As this Court has already adjudicated in this case, this is false.

To be specific, on February 7, 2017, after considering uncontroverted testimony that the Association Business Leave is afforded as part of a bargained-for exchange of consideration in an arms-length agreement, this Court dismissed Plaintiffs' claims against AFA in their entirety, with prejudice, pursuant to the Texas Citizens Participation Act. Despite this dismissal on the merits, Plaintiffs have simply re-pleaded the identical claims, challenging the same provision, on the same basis, in the same lawsuit. Texas, despite the dismissal on the merits of its co-Plaintiffs' claims, has also persisted with its identical challenge to the same provision, on the same basis. Fundamental fairness, as well as principles of claim and issue preclusion, demand that Plaintiffs and Intervenor-Plaintiff's attempted second bite at the apple be rejected.

Even if the Plaintiffs' deliberate attempt at relitigating dead claims did not offend basic principles of justice and fair play, the same uncontroverted facts that led this court to dismiss Plaintiffs' claims on February 7, 2017, remain true today: Association Business Leave is not a gratuitous grant of public funds, and therefore it does not violate the Texas Constitution's gift clause. Additionally, and independently sufficient to warrant dismissal, there is no reasonable dispute over whether ABL serves a legitimate public purpose and affords a clear benefit in return. Because ABL is constitutional as a matter of law, Defendants respectfully request that this Court deny Plaintiffs' Joint Motion for Summary Judgment and grant judgment in Defendants' favor as to all claims.

II. Facts

A. Texas Public Policy: Robust Labor-Management Rights for Fire Fighters

The Firefighters and Police Officers' Civil Service Act, first adopted in 1947 and codified at Chapter 143 of the Local Government Code, created the basic framework for civil service for fire fighters in Texas cities. *See* Act of June 2, 1947, 50th Leg., R.S., ch. 325. It created baseline rules regarding hiring and promotion on the basis of competitive examinations, a procedure for disciplinary actions, and provisions regarding compensation and leaves of absences. *See generally* Tex. Local Gov't Code § 143.001 *et seq.*

The Fire and Police Employee Relation Act, first adopted by the Texas Legislature in 1973 and codified at Chapter 174 of the Local Government Code, authorizes collective bargaining with police and fire fighters (while prohibiting strikes and lockouts). *See* Act of May 11, 1973, 63rd Leg., R.S., Ch. 81. This Act declares it to be the policy of the State of Texas that “firefighters and police officers, like employees in the private sector, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment.” Tex. Local Gov't Code § 174.002(b). Additionally, the Act finds that “expeditious, effective, and binding” contractual arbitration and enforcement procedures serve the public interest by ensuring “high morale of fire fighters . . . and the efficient operation of the departments.” *Id.* § 174.002(b), (e). To those ends, the Act provides that a public employer shall bargain collectively, memorializing agreements regarding compensation, hours, or other conditions of employment, if fire fighters are represented by an association. *Id.* § 174.105(a)-(b). Among other functions, the Fire and Police Employee Relations Act allows cities to contract around the baseline rules contained at Chapter 143 through collective bargaining with fire fighters. *See id.* § 174.006(a).

B. The Shared Mission of the Austin Fire Department and the AFA

The Austin Fire Department's purpose is to "protect and enhance the safety and well-being of those in the community." Ex. 11: AFD Purpose, Mission, Vision, Goals; *see also* Ex. 3: Woolverton Tr. at 9:22-25. Its vision is to "creat[e] safer communities through prevention, preparedness, and effective emergency response." Ex. 11: AFD Purpose, Mission, Vision, Goals. Its goals include to "maintain a safe, healthy, well-trained, and highly-performing workforce" and to "attract and retain a qualified and diverse workforce." Ex. 11: AFD Purpose, Mission, Vision, Goals; Ex. 3: Woolverton Tr. at 114:5-115:6.

Consistent with those ends, and to protect the "health, safety, and welfare of the public" by ensuring the efficient operation of the department and the high morale of its employees, the City of Austin engages in collective bargaining with the exclusive bargaining representative of its fire fighters. Tex. Local. Gov. Code § 174.002; *see also* Ex. 3: Woolverton Tr. 15:10-13 ("[T]he purpose of . . . the contract is to negotiate various topics that – that benefit both the fire fighters and the City of Austin."); Ex. 2: Flores Tr. at 28:21-29:6.

The exclusive bargaining representative of Austin's fire fighters, the AFA, is an organization with the overlapping mission to "uphold and further professional standards for firefighters," to "promote firefighter and public safety through advocacy, education, policy and sometimes legislation," to "work towards more harmonious management labor relations through discussion on important issues," and to promote shared charitable interests. Ex. 6: Nicks Hr'g Tr. at 16:3-13; Ex. 5: Nicks Tr. at 12:18-12:20 ("We represent the bargaining unit for the City, under Chapter 174"). Battalion Chief Bob Nicks serves as the AFA's President and recently has been their lead contract negotiator. Ex. 8: Nicks Aff.; Ex. 5: Nicks Tr. at 7:17-18; 10:20-24; 25:6-7.

In its role as exclusive bargaining representative of Austin’s fire fighters, the AFA has “pledged to support the service and mission of the Austin Fire Department, [and] to constructively support the goals and objectives of the Austin Fire Department” in the parties’ CBA. Ex. 1: CBA, Art. I(2).

C. The CBA and Its Bargained-For Terms Serve a Public Purpose

The most recent collective bargaining agreement was ratified, after arms-length negotiations between the City’s and the AFA’s negotiation teams, on September 28, 2017, effective October 1, 2017, and it is binding on the City, the AFA, and the City’s fire fighters. Ex. 1: CBA; Ex. 9: Resolution; Ex. 8: Nicks Aff.; Ex. 6: Nicks Tr. at 27:3-6; Ex. 4: Paulsen Tr. At 35:19-36:3; Ex. 2: Flores Tr. at 11:18-19; 12:6-20.

The thirty-two article CBA represents a complex, irreducible whole, with bargained-for consideration exchanged between all parties. Ex. 1: CBA; Ex. 3: Woolverton Tr. at 15:10-22; 93:5-95:10; Ex. 4: Paulsen Tr. at 18:19-9 (“It’s a – a package”); 31:16-32:22; 33:15-34:3 (articles of the CBA are “taken in a totality before it’s finished”). As part of the bargain it struck in exchange for Article 10 and the other terms of the CBA, the City gained substantial concessions from the AFA, including changes to Texas Local Government Code Chapter 143 implementation, such as changes regarding initial hiring, promotions, disciplinary investigations, disciplinary appeals, allowing for differences in base wages based upon seniority, longevity pay, required certifications, required education, specialized assignments, the designation of personnel in certain positions with certain leave and pay levels, drug testing, and the ability to merge the Austin Fire Department with Travis County Emergency Services Districts. Ex. 1: CBA, Art. 12, Art. 16; Ex. 14: Def’s Resp. to Interrogatory No. 4; Ex. 2: Flores Tr. at 11:12-19 (“This agreement allows the City of Austin to address different items that are outside of Chapter 143 of

the local code”); 21:4-22:8; Ex. 4: Paulsen Tr. at 18:19-19:9; Ex. 3: Woolverton Tr. at 93:5-95:10 (benefits to City include terms of hiring, promotions, drug testing, appointing Division Chiefs, “assessment centers,” deviations from strict Civil Service testing and others).

Additionally, terms governing wages, wage increases, and benefits are negotiated and set as part of the CBA; Ex. 1: CBA; Ex. 4: Paulsen Tr. at 31:16-32:22; 36:10-13.

Article 10 of the current CBA provides for “Association Business Leave” (“ABL”), a shared leave bank for use by all Austin fire fighters, in service of the Department’s and the AFA’s overlapping missions, subject to certain contractual controls. Ex. 8: Nicks Aff.; Ex. 1: CBA, Art. 10; Ex. 3: Woolverton Tr. at 17:8-12 (“to be used for purposes that benefit the Department, the Association, or both”); 40:18-41:14 (noting use by ABL of fire fighters who were not AFA members).

The current language of Article 10 first appeared as a result of the 2009 contract negotiations, after arms-length bargaining sessions between the City and the AFA’s representatives. Ex. 8: Nicks Aff.. There was an explicit “give and take” in the bargaining process, in which the City agreed to the current ABL provision for a change in the treatment of sick leave from “productive leave” that counted towards employees’ hours worked for purposes of calculating overtime to “nonproductive leave” that did *not* count towards employees’ hours worked. *See* Ex. 6: Nicks Hr’g Tr. at 21-22. In exchange for providing its employees ABL, the City received approximately “5 to \$600,000” per year in overtime savings based on the change in policy with respect to sick leave. Ex. 6: Nicks Hr’g Tr. at 21-22.

D. ABL Serves a Predominantly Public Purpose and the City Retains the Right to Control its Use

ABL is for fire fighters to participate in collective bargaining, meet with other fire fighters to discuss issues related to the CBA and Department policy, participate in labor-management meetings, meet to discuss or represent fire fighters in disciplinary and grievance proceedings, participate in informal dispute resolution proceedings, and conduct other lawful activities that support the Department's and the AFA's overlapping missions. Ex. 1: CBA, Art. 10(1)(A), (1)(B)(2); Art. 2(4); Ex. 5: Nicks Tr. at 13:5-12; 19:18-20:7; 101:12-15; 102:21-103:18; 105:17-107:1; 155:21-156:24; Ex. 3: Woolverton Tr. at 17:8-12; 18:15-19:7; 32:14-37:2; 116:5-116:25; Ex. 2: Flores Tr. at 15:20-16:2; 21:19-22:12; Ex. 4: Paulsen Tr. 18:19-19:9 9; 20:1-11.

i. ABL Used by AFA President Bob Nicks

The ABL used by the AFA's president, Bob Nicks, is primarily devoted to contract negotiations, Department committee meetings, meetings with Department management on labor-management issues, meeting with AFA membership, attending trainings or conferences to better understand the issues facing AFA membership and the Department as a whole, and the day-to-day administrative work that supports these activities. Ex. 8: Nicks Aff.; Ex. 6: Nicks Hr'g Tr. at 18:3-19:16; Ex. 5: Nicks Tr. at 24:25-25:7 ("lead negotiator" on the most recent CBA); 44:9-45:1 (recently met with Chief Dodds for several hours to discuss overtime practices, because "different Chiefs were interpreting it in different ways," and Chief Dodds "wanted the Association's point of view"); 42:1-5 ("There are a lot of common, mutual projects we work on together, where we're coordinating our time and ideas, and resources to accomplish."); 45:3-17 (describing nearly six hours of personnel and management meetings in one day); 47:10-48:16

(describing meetings with management resulting in morale boost and 3-4 million dollars in savings to the City); 107:4-108:2 (attended conferences to understand the issues faced by “females in the fire service, and the culture, and how we can make it more inclusive”). Nicks spends more than forty hours on these activities each week. Ex. 5: Nicks Tr. at 155:16-20 (agreeing that he performs “more than forty hours a week, in [his] capacity as association President, on activities other than lobbying, Tweeting, political activities”).²

While on ABL, President Nicks remains subject to the fire department’s code of conduct and personnel policies, and he must physically report to the Fire Department when directed to do so by supervisors for an emergency or a special project. Ex. 1: CBA, Art. 10(2)(C); Ex. 6: Nicks

² Plaintiffs assert without support that President Nicks “engages extensively in political activities while on taxpayer-funded release time” and that “25-30 percent of his time—all of which is ABL—is on political activities.” Pl. Mot. at 5. However, these assertions are mischaracterizations of Nicks’ uncontroverted testimony. As President Nicks testified repeatedly, he **does not** spend all of his time on ABL; his political activities are conducted as part of his “volunteer” hours, beyond the forty hours of ABL he is allotted each week. Ex. 5: Nicks Tr. 150:18-151:17 (“the voluntary time I – I give, up and beyond my forty hours, is – is what I would say I use for any political activity that I do. And sometimes I even throw up another fire wall, . . . just to be abundantly clear, just so there was no discussion like this and someone asks me how I differentiate my time, I would take a vacation.”). To the extent this constitutes a disputed fact, Defendants submit that it is immaterial given the weight of undisputed testimony concerning the public purpose of Nicks’ activities.

Hr’g Tr. at 26, 40-42; Ex. 5: Nicks Tr. 33:13-17 (“Of course I am subject to the Code of Conduct” and the City’s “personnel policies”); 44:9-10 (reports to the Chief “whenever he asks me to”); 129:20-130:1 (“the Chief can direct me to do certain things”); Ex. 4: Paulsen Tr. at 11:17-12:4 (Nicks is bound by “the same rules and regulations that would govern other Austin fire fighters”); Ex. 3: Woolverton Tr. at 21:4-11 (City can assign Nicks to “special projects” under the CBA); 22:1-23:24 (Nicks has “regularly scheduled” interactions with Dodds, including monthly and quarterly meetings, such as the Labor Management Initiative meetings and chief officer work days, as well as any others “as-needed”).³ As required by the CBA, President Nicks must also account for the amount of ABL leave time taken, which he reports through payroll. Ex. 1: CBA, Art. 10(2)(C); Ex. 5: Nicks Tr. at 30:11-31:17.

ii. ABL Use by Other AFA Members

Pursuant to the CBA, other AFA members may use ABL to account for time spent bargaining collectively, adjusting grievances, attending union conferences and meetings, and any other AFA “business activities that directly support the mission of the Department or the

³ Plaintiffs assert that no one supervises President Nicks on a day-to-day basis and “every other City employee has some evaluation of their work performance.” Pl. Mot. at 4. These factual assertions are contradicted by the record. Ex. 3: Woolverton Tr. at 22:1-10 (Chief Dodds supervises Nicks “on a daily basis”); Ex. 5: Nicks Tr. at 155:12-15 (no fire department employees receiving performance evaluations); Ex. 3: Woolverton Tr. at 12:8-19 (same). However, these facts are immaterial given the remaining undisputed evidence that the City possesses sufficient control over President Nicks as a Department employee.

Association, but do not otherwise violate the specific terms of this Article.” Ex. 1: CBA, Art. 10(1)(B)(2). The CBA prohibits the use of ABL by those members for “legislative and/or political activities related to any election of public officials or City Charter amendments.” *Id.*

ABL use by these members is separated into categories by the City, based on the activities set out in Article 10 of the CBA, plus an extra category: “Other Association Business.” Ex. 1: CBA, Art. 10(B)(2); Ex. 5: Nicks Tr. at 61:7-62:7.

ABL designated as “time spent in Collective Bargaining negotiations” refers to “negotiating or otherwise participating on behalf of the AFA, during those negotiations,” which benefits the City’s interest in efficient and expedient contract negotiations. Ex. 5: Nicks Tr. at 101:12-15; Ex. 2: Flores Tr. at 15:20-16:2 (“We want to ensure that the members have enough time that they can utilize for contract bargaining.”); 21:19-22:12 (“Article 10 allows the Association to meet, and confer, and reach an agreement with the City”); 33:24-34:4 (having an exclusive bargaining representative “means that we will not have separate agreements with other Associations”).

ABL designated as “adjusting grievances” and “attending dispute resolution proceedings” involves reviewing, processing, attempting to informally resolve, and then representing the grievant in employee grievances. Ex. 5: Nicks Tr. 101:16-105:16. This use of ABL promotes the fair and efficient resolution of employee grievances, saving the City time and money. Ex. 3: Woolverton Tr. at 116:5-116:25 (“if [grievances] weren’t remedied at the lowest level, you could certainly have a lawsuit that could cost the City considerably more than a few hours of ABL”); Ex. 5: Nicks Tr. at 103:19-105:4 (informal resolution procedures involves trying to “solve this grievance before it comes forward formal- formally. And, quite frankly, a lot of times we’re able to do that”). Further, it is directly in the City’s interest to have the CBA’s terms interpreted fairly

and correctly, an interest protected by fostering employee grievances. Ex. 3: Woolverton Tr. at 116:5-116:25 (“it could be that we’re interpreting something incorrectly, and those grievances help to identify those issues, and — and remedy them at the lowest level possible”); 117:1-5 (“sometimes it is — it has clearly benefited both the AFA and the City”).

ABL designated as “cadet classes during cadet training” is used to orient and educate incoming employees to the terms of the CBA and the grievance procedures. Ex. 5: Nicks Tr. at 155:21-156:24 (“We explain the whole — what the Civil Service law is. They understand that they’re working under that, whether they’re a member or not. They understand what the contract is, and — and how it operates, and how you can — you know, we go through the grievance process . . .”).

ABL designated “attending union conferences and meetings” includes time spent attending internal AFA meetings where members are educated about the CBA and give feedback about their priorities, attending professional development conferences, or participating in joint committee meetings with management, which serves the public purpose of promoting harmonious and efficient administration of the CBA and Department policy. Ex. 5: Nicks Tr. at 13:5-12; 19:18-7; 105:17-107:1; Ex. 4: Paulsen Tr. at 18:19:9 (ABL use “contributes significantly to the decision-making process in the Department”); 20:1-11 (“[A]ttendance of those members on ABL at those oversight committees” benefits the City because “[t]heir perspective adds to the process. Sometimes they see things slightly different than the chain of command or the other representatives, who sit on those committees.”).

ABL designated “other association business,” is “mostly outreach to the members, going out and — and visiting with them.” Ex. 5: Nicks Tr. at 61:15-62:7 (“mostly that’s going to be the VP’s going to station visits. . . . “a good deal of our time is going out and — and educating our

members, and then soliciting feedback from our members on — on what they would like us to advocate for.”). Other uses of ABL in this category also serve additional public purposes of (1) promoting a fit, skilled, and high-performing workforce; (2) fostering good will towards the Department in the community; and (3) addressing cancer and other health issues faced by fire fighters in Austin and elsewhere. Ex. 3: Woolverton Tr. at 70:10-72:23; 74:21-75:4; 80:4-81:12; 112:21-113:2; 114:5-115:6; 115:13-23; Ex. 5: Nicks Tr. at 86:16-87:22; 92:2-93:1; 93:2-94:19.

A fire fighter who proposes using ABL must request permission to use ABL at least three days in advance; the request is reviewed by the AFA and then either approved or disapproved by the Fire Chief’s designee based on compliance with the terms of the CBA and operational needs. Ex. 10: General Order E111.2; Ex. 1: CBA, Art. 10(1)(C)–(D). In practice, a firefighter will fill out an electronic form through a system called Formsite which includes fields for the firefighter’s name, proposed date and amount of ABL usage, and a detailed description of the proposed use, and once that is submitted, it gets emailed out for approval. Ex. 12: ABL Requests; Ex. 3: Woolverton Tr. at 55:16–56:19. If the request is made more than three days in advance, it should not be denied for staffing reasons but may still be denied for failing to comply with the terms of the CBA. Ex. 3: Woolverton Tr. At 44:22–45:9.

It is relatively rare for the City to deny a request to use ABL because fire fighters and AFA President Bob Nicks are familiar with permitted uses, and thus are able to limit ABL requests to only those permitted uses, even before they are routed to the Fire Chief’s designee, currently Assistant Chief Aaron Woolverton, for approval. Ex. 3: Woolverton Tr. 106:12-107:12; 110:7–12. Nevertheless, the City *can deny* and *has denied* ABL requests before, such as when its use would have primarily served a political end or would otherwise be inconsistent with ABL’s

purposes under the CBA. Ex. 3: Woolverton Tr. at 111:18-22; Ex. 5: Nicks Tr. at 157:11-14 (ABL requests for Battle of the Badges event were denied).

E. This Court has Dismissed Plaintiffs' Claims on the Merits

On January 17, 2017, the Honorable Orlinda L. Naranjo heard oral argument from all parties and considered many of the foregoing facts, through sworn testimony, the operative CBA, and other evidence of ABL used by the City's fire fighters. Ex. 8: Nicks Aff.; Ex. 6: Nicks Hearing Tr. On February 7, 2017, this Court dismissed Plaintiffs' claim that ABL violated the Texas Constitution on the merits. Ex. 7: February 7, 2017 Order.

III. Legal Standard

To successfully obtain summary judgment, a moving party "must establish that there is no genuine issue of material facts so that the movant is entitled to judgment as a matter of law." *Prentice v. Frost Bank*, No. 03-15-00506-CV, 2017 Tex. App. LEXIS 5812, at *5 n.15 (Tex. App.—Austin June 23, 2017, pet. denied) (per curiam) (quoting *Katy Venture, Ltd. v. Cremona Bistro Corp.*, 469 S.W.3d 160, 163 (Tex. 2015)).

IV. Argument

A. Issue Preclusion Bars Relitigation of this Lawsuit, Which Has Already Been Dismissed on the Merits

Issue preclusion bars the relitigation of identical issues of fact or law that were actually litigated and essential to the final judgment in a prior suit. *Tex. Dept. of Public Safety v. Petta*, 44 S.W.3d 575, 579 (Tex. 2001). The District Court's February 7, 2017 order granting the AFA motion to dismiss constitutes a final determination on the merits that the ABL provisions of the City-AFA contract are not an unconstitutional "gift." See *Better Business Bureau of Metro. Houston, Inc. ("BBB of Metro. Houston") v. John Moore Svcs, Inc.*, 500 S.W.3d 26, 39-44 (Tex. App—Houston [1st Dist.] 2016, pet. denied) (a trial court's ruling on a Texas Citizens

Participation Act motion is res judicata in subsequent litigation concerning the same parties and same operative facts). Accordingly, Plaintiffs as well as Intervenor-Plaintiff Texas, who was heard at the TCPA hearing and was allowed to cross-examine a witness in open court on the merits of the gift clause claim, are barred from relitigating the gift clause claim.

A claim of collateral estoppel has three elements: (1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *Sysco Food Svcs., Inc. v. Trapnell*, 890 S.W.2d 796, 801 (Tex. 1994). “If a cause of action in the second lawsuit involves an element already decided in the first lawsuit, that cause of action is barred” if the identical issue was actually litigated and essential to the first lawsuit’s judgment. *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 621 (Tex. 1998). Whether collateral estoppel applies in a particular case is a question of law. *BP Automotive v. RML Waxahachie Dodge, LLC*, 517 S.W.3d 186, 200 (Tex. App.—Texarkana 2017, no pet.).

Here, the first action and the second action are in fact the same case, and the facts that were litigated earlier in this action are the same facts that the Plaintiffs seek to relitigate now. Plaintiffs and Intervenor-Plaintiff sought previously to invalidate the Association Business Leave provision in the 2015 Collective Bargaining Agreement between the City and the AFA. Pursuant to this Court’s February 7, 2017 order granting AFA’s TCPA Motion to Dismiss, Plaintiffs’ claims were dismissed on the merits, with prejudice. A necessary finding of that ruling was that Plaintiffs’ claims that the Association Business Leave provision of the parties’ agreement represents an unconstitutional “gift” is meritless. The Court’s order dismissing that claim was therefore a final determination for purposes of *res judicata* and collateral estoppel, which determined that the plaintiffs’ constitutional claims were without merit, as litigated between

parties in an adversarial litigation stance. Therefore, Plaintiffs are barred here from taking a second bite at the apple, and this suit should be dismissed in its entirety.

B. Even if Relitigated, Plaintiffs’ “Gift Clause” Claim Fails as a Matter of Law

Even if Plaintiffs’ previous dismissal on the merits did not bar this suit from being relitigated, the undisputed facts nevertheless make summary dismissal the only appropriate outcome. Unquestionably, Association Business Leave is provided as part of an arms-length agreement, in exchange for valid consideration. Therefore, it is constitutional. Furthermore, the undisputed facts overwhelmingly demonstrate that the CBA, as well as the ABL provision contained within it, serve a public purpose and afford a clear benefit in return.

i. The “Gift Clause” Prohibits only *Gratuitous* Expenditures Made Without Consideration

What Plaintiffs refer to in their pleadings as the “gift clause” of the Texas Constitution is an amalgamation of several sections — specifically, Article III, Sections 50, 51, 52(a), and Article XVI, Section 6(a). Common to each of these provisions is the commendable idea that gratuitous expenditures of public funds for private interests are prohibited. As the Texas Constitution’s text and the Texas Supreme Court’s interpretation make crystal clear, however, the “gift clause” is not violated unless the expenditure at issue is *actually gratuitous*.

Indeed, decades of Supreme Court cases have held that the primary purpose of the “gift clause” is to prohibit the *gratuitous* grant of public funds. *See Tex. Mun. League v. Tex. Workers’ Comp. Comm’n*, 74 S.W.3d 377, 389 (Tex. 2002) (stating that the purpose of Art. III, Sec. 52 is to prevent the “*gratuitous* appropriation of public money or property” (emphasis added)); *City of Corpus Christi v. PUC of Tex.*, 51 S.W.3d 231, 240 (Tex. 2001) (explaining that the primary purpose of Art. III, Sec. 51 and Art. XVI, Sec. 6 is “to prevent the *gratuitous* grant of [public]

funds to any individual or corporation whatsoever” (emphasis added)); *State v. Austin*, 160 Tex. 348, 355 (Tex. 1960) (same, addressing a challenge based on Art. III, Sec. 50-51, and Art. XVI, Sec. 6); *Byrd v. Dallas*, 6 S.W.2d 738, 740 (Tex. 1928) (same, concerning Art. III, Sec. 51-52, Art. XVI, Sec. 6, and others).

The first and most important step in the gift clause inquiry, therefore, is to ask whether the public expenditure is gratuitous or non-gratuitous. *See Tex. Mun. League v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002). If there is valid consideration, the expenditure is non-gratuitous, and it does not violate the gift clause. *Id.* As the Court in *Texas Municipal League* explained: “[the gift clause’s] prohibiting the Legislature from authorizing a political subdivision ‘to grant public money’ means that the Legislature cannot require *gratuitous* payments to individuals, associations, or corporations. A political subdivision's paying public money is not ‘gratuitous’ if the political subdivision receives return consideration.” *Id.* at 383-384 (emphasis in original) (citations omitted). In other words, if there is valid consideration, there is no gift clause violation.

Indeed, until this politicized lawsuit against Austin’s fire fighter union presented itself, this was explicitly the opinion of the Texas Attorney General as well. *See Tex. Att’y Gen. Op. No. GA-0664*, 2008 Tex. AG LEXIS 79 (Sep. 12, 2008) (“Article III, section 52(a) prohibits only gratuitous grants of public money by a political subdivision. *See [Tex. Mun. League 74 S.W.3d at 383]* (emphasizing that “to grant public money’ [in article III, section 52(a)] means

that the Legislature cannot require *gratuitous* payments’). A political subdivision's payment is not gratuitous if it receives return consideration.”) (emphasis in original).⁴

Only if a payment *is in fact gratuitous* does additional analysis under the gift clause become necessary. As the *Texas Municipal League* Court explained this second stage of the gift clause test: “Moreover, we have determined that section 52(a) does not prohibit payments to individuals, corporations, or associations so long as the statute requiring such payments: (1)

⁴ Plaintiffs mistakenly rely on a 1979 Texas Attorney General opinion, concerning release time arrangement in a public-school district, for the proposition that “when a public contract is involved,” the second prong of the gift clause analysis must be met. Pl. Mot. at 11 (citing Tex. Att’y Gen. Op. MW-89, 1979 WL 31300 at *1 (1979)). In fact, teachers and public-school employees do not possess the right to collectively bargain in Texas – there was no “public contract” at issue here at all. Indeed, the opinion refers only to a “policy” that was “adopted” by the school district, and it makes no mention of consideration whatsoever. This opinion is entirely inapposite.

Indeed, this non-binding opinion is also plainly distinguishable from the instant case on the question of public purpose. Without a contract to negotiate, to administer, and on which to educate its membership, the school’s labor organization lacked several of the central public purposes served by association business leave. *See Cheatham v. DiCiccio*, 379 P.3d 211, 218 (Ariz. 2016); *Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *17-18 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017).

serves a legitimate public purpose; and (2) affords a clear public benefit received in return.” *Tex. Mun. League*, 74 S.W.3d at 383-84. This second stage of the analysis provides a very important exception to the first stage of the inquiry: even some expenditures that are made without consideration may — if they serve a public purpose and obtain a public benefit — also be constitutional.

Yet, despite its importance to the broader scheme, this second stage of the inquiry is not a necessary step where government expenditures were made in exchange for bargained-for consideration. *Id.* (“Because the Risk Pool receives consideration for its unclaimed death benefits payments to the Fund, *that consideration renders the provisions constitutional because the payments are nongratuitous.*” (emphasis added)). Even though courts frequently undertake both steps of the analysis as part of a belt-and-suspenders approach, only the first step is strictly necessary where — as here — an expenditure is non-gratuitous. In short, “consideration renders the provisions constitutional.” *Id.*

ii. Plaintiffs’ Proposed Standard is Fundamentally Unworkable

Plaintiffs propose an unworkable, conjunctive framework that requires *both* stages of the gift clause inquiry to be satisfied for an expenditure to be constitutional. In other words, according to Plaintiffs’ misstatement of the applicable standard, an expenditure is unconstitutional unless it is (1) non-gratuitous *and* (2) serves a legitimate public purpose and affords a clear public benefit in return. Aside from being plainly contrary to the Supreme Court’s framing of the analysis, as discussed above, the Plaintiffs’ misstatement of the standard is obviously unworkable.

First, Plaintiffs’ altered gift clause inquiry would instantly invalidate every public assistance grant, every college tuition program, every small business grant program, and indeed

every public interest program in Texas. Public assistance, by its very nature, is “gratuitously” granted. University students do not provide return consideration for “TEXAS grants,” given pursuant to Tex. Educ. Code § 56.001, *et seq.*, yet those grants are perfectly constitutional. Under the Plaintiffs’ wrongheaded test, this program and all others like it would be strictly unconstitutional, no matter the clear public purpose they serve.

That sort of expenditure made *without* consideration is precisely the purpose of the second prong of the gift clause inquiry — to still permit grants of public funds, even *without* a binding contract, where they serve primarily a public purpose, are subject to sufficient controls, and provide clear public benefit in return. Where an expenditure is *non-gratuitous*, on the other hand, that second stage of the analysis is unnecessary, because “consideration renders the provisions constitutional.” *Tex. Mun. League*, 74 S.W.3d at 383-84.

Second, Plaintiffs’ reading of the standard would open the floodgates to a devastatingly disruptive wave of politicized litigation. If showing that an expenditure was made in exchange for valid consideration is not enough to stave off a “taxpayer” lawsuit like this one, every government contract in Texas will be subject to costly and disruptive gift clause litigation. If a taxpayer is unsatisfied that the City has chosen to contract for weekly waste removal, it could adjudicate the “public purpose” of bargained-for trash pickup in court under the gift clause. If a taxpayer dislikes the fact that the City has contracted to build a new police station, it could tie the project up in court while it obtains discovery on the public purpose of the building, takes depositions on the extent to which the City will control its construction workers, and subject the City and its contractor to costly legal fees along the way. The purpose of the gift clause is not to permit litigation of the predominant purpose of every government act; it is only to prevent *gratuitous* government expenditures. Litigating public purpose only becomes necessary — and

indeed such an intrusion into the legislative domain only becomes appropriate — where there is no proof of valid consideration.

This Court should reject Plaintiffs’ warped version of the gift clause inquiry.

iii. Association Business Leave Is Non-Gratuitous and Therefore Satisfies the Gift Clause as a Matter of Law

Under the correctly-stated gift clause inquiry, there can be no doubt that this suit must be dismissed in its entirety. Association Business Leave is part of a bargained-for exchange, it is therefore non-gratuitous, and it is therefore constitutional.

Precedent on the issue of gratuity is clear: “[a] political subdivision’s paying public money is not ‘gratuitous’ if the political subdivision receives return consideration.” *Tex. Mun. League*, 74 S.W.3d at 383. The Texas Constitution “requires only sufficient -- not equal -- return consideration to render a political subdivision's paying public funds constitutional.” *Id.* at 384. There is no requirement that the consideration on both sides be equal or even proportionate. *Tex. Mun. League*, 74 S.W.3d at 384. “As a rule, parties have the right to contract as they see fit as long as their agreement does not violate the law or public policy. Parties are bound by the terms of their agreement as written, and this court cannot rewrite the agreement to change its terms.” *Morales v. Hidalgo Cnty. Irrigation Dist. No. 6*, No. 13-14-00205-CV, 2015 Tex. App. LEXIS 9919, *7 (Tex. App.—Corpus Christi Sept. 24, 2015, pet. denied) (quotation marks and citations omitted) (finding a payment amounting to 5 years of wages for less than 2 years of work to be sufficient consideration).

Indeed, when challenges to public employee benefits have been made in the past, Texas courts have consistently held performance of employment duties to be sufficient consideration for benefits and other compensation. *See id.* (upholding a disproportionately large severance

package); *City of Corpus Christi v. Herschbach*, 536 S.W.2d 653, 657 (Tex. Civ. App.—Corpus Christi 1976, writ ref’d n.r.e.), *superseded by statute on unrelated grounds as recognized in City of Houston v. Soriano*, No. 14-05-00161-CV, 2006 Tex. App. LEXIS 7666, *14 n.5 (Tex. App.—Houston [14th Dist.] Aug. 29, 2006, pet. denied); *City of Galveston v. Landrum*, 533 S.W.2d 394 (Tex. Civ. App.—Houston [1st Dist.] 1976, writ ref’d n.r.e.); *Devon v. City of San Antonio*, 443 S.W.2d 598 (Tex. Civ. App.—Waco 1969, writ ref’d); *City of Orange v. Chance*, 325 S.W.2d 838, 841 (Tex. Civ. App.—Beaumont 1959, no writ).

Most instructive, in *Byrd v. City of Dallas*, 118 Tex. 28, 6 S.W.2d 738 (Tex. 1928), the Texas Supreme Court rejected a challenge to the constitutionality of a public employee pension fund. The plaintiff sought an injunction barring Dallas fire fighters and police officers from collecting pensions upon retirement, contending that the pension was an unconstitutionally gratuitous grant of public funds. *Id.* at 738-39. The Court explained that if the pension fund was “a part of the compensation of [public employees] for services rendered to the city, or if it be for a public purpose, then clearly it is a valid exercise of the legislative power. ***There is no reason why a city may not engage its servants and employees upon any terms of payment acceptable to both parties.***” *Id.* at 740 (emphasis added). Thus, there is no need to weigh the sufficiency of the consideration — it is enough that the City agreed to engage its fire fighters on the terms of the CBA.

Here, in fact, the City receives quite substantial consideration in return for the terms of the fire fighters’ CBA. Most obviously, the taxpayers of the City of Austin receive fire protection services, and they receive those services from employees who are subject to the negotiated terms and conditions of employment that are collectively bargained for and that make those fire protection services more effective. Indeed, just as the vacation and sick leave provided in that

same CBA are not granted for “nothing in return,” ABL is granted in exchange for indisputably valuable consideration — efficiently run fire protection services for the City of Austin.⁵

Additionally, the CBA involves bargained-for consideration obtained by the City in the form of concessions by the AFA and its members to changes to Texas Local Government Code Chapter 143 implementation, including City-favoring changes regarding initial hiring, promotions, disciplinary investigations, disciplinary appeals, allowing for differences in base wages based upon seniority, longevity pay, required certifications, required education, specialized assignments, the designation of personnel in certain positions with certain leave and pay levels, drug testing, and the ability to merge the Austin Fire Department with Travis County Emergency Services Districts. Ex. 1: CBA, Art. 12, Art. 16; Ex. 14: Def’s Resp. to Interrogatory No. 4; Ex. 2: Flores Tr. at 11:12-19; 21:4-22:8; Ex. 4: Paulsen Tr. at 18:19-19:9; 31:16-32:22; 36:10-13; Ex. 3: Woolverton Tr. at 93:5-95:10.

⁵ Plaintiffs argue mistakenly that ABL cannot be bargained for as part of a CBA including wages paid for work performed, due to Texas labor law’s prohibition on “the retention of part of an employee’s compensation to pay dues or assessments on the employee’s part” and the First Amendment’s prohibition on “an agency fee nor any other payment” deducted from an employee’s paycheck without written consent for union dues. Pl. Mot. at 27-28. Of course, ABL is not being withheld from any employee’s pay. Instead, it is a leave bank provided for use by *all* bargaining unit members, whether members of the AFA or not, and in fact has been used by non-members. Ex. 3: Woolverton Tr. 40:18-41:14. As such, these principles are entirely inapplicable here.

Furthermore, the unambiguous terms of the CBA directly bind the AFA itself to multiple, specific obligations.⁶ For example, Article 7 requires the AFA to perform specific tasks related to dues withholding, such as providing notice, furnishing a list of AFA members to the City, and reimburse the City \$.10 for every dues deduction made. Ex. 1: CBA, Art. 7. In Article 8, the AFA explicitly agrees not to have *ex parte* communications with members of the Civil Service Commission. *Id.* at Art. 8. In Article 11, the AFA agrees not to use “personal attacks or inflammatory statements” regarding the Department and promises to “permit the Fire Chief space for a column in the ‘Smoke Signal’ (or other successor publication) in which to address rumors.” *Id.* at Art. 11. In Article 17, the AFA agrees to “provide a class before the academy

⁶ The Plaintiffs’ assertion that “every single witness for the City and Mr. Nicks all testified that there is nothing in the CBA, or anywhere else, that obligates or requires Nicks and other Authorized Association Representatives using ABL to perform specific activities for the City,” Pl. Mot. at 22, should be disregarded. First, it is largely based on testimony in the context of whether specific obligations are required “while using ABL,” or whether Article 10 itself required specific actions, not whether such obligations exist without qualification. *See id.* Second, this testimony constitutes “‘the parties’ statements of what they intended the contract to mean,’ which is prohibited when construing unambiguous contracts.” *GTE Sw., Inc. v. PUC of Tex.*, 102 S.W.3d 282, 296 (Tex. App.—Austin 2003, pet. withdrawn) (emphasis added). As set out above, the unambiguous terms of the CBA constitute explicit promises by the AFA to the City and its bargaining unit members to perform specific duties, forebear from specific actions, and waive certain rights.

begins to the academy staff and team leaders on contract compliance as it relates to training standards.” *Id.* at Art. 17, Part B, Sec. 6(A). Furthermore, Article 20 requires the AFA to process, attempt to informally resolve, and submit written grievances on behalf of the bargaining unit members who submit a “valid” grievance under the contract. *Id.* at Art. 20; *see also* Ex. 5: Nicks Tr. at 12:15-25 (noting that the AFA is obligated, in agreeing to a CBA as the exclusive bargaining representative for the City’s fire fighters, to perform duties “administering grievances, you know, meeting with management to try to work out different issues harmoniously”); Tex. Local Gov. Code § 174.109 (“An agreement under this chapter is binding an enforceable against a public employer, ***an association***, and a fire fighter or police officer covered by the agreement.” (emphasis added)).

Plaintiffs ask this Court to analyze the CBA in an inappropriately narrow fashion, isolating the provision that provides for ABL as if it were distinct from the global agreement. It is not. The Court must “examine the entire agreement when interpreting a contract and give effect to all the contract’s provisions so that none are rendered meaningless.” *Stine v. Stewart*, 80 S.W.3d 586, 589 (Tex. 2002). Here, the Preamble to the CBA plainly states that “it is the intent and purpose of the parties to set forth herein their entire Agreement.” Ex. 1: CBA, Art. 1(2). Indeed, the Plaintiffs’ attorneys are well aware that courts analyzing collective bargaining agreements for adequacy of consideration have held that “we cannot consider particular provisions in isolation.” *Cheatham v. DiCiccio*, 379 P.3d 211, 219 (Ariz. 2016) (citations omitted) (rejecting a virtually identical gift clause challenge to a business leave provision of a CBA brought by Arizona “taxpayers” represented by the Goldwater Institute, counsel for Plaintiffs in this case); *see also Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *22-21 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017) (finding adequate consideration in

another virtually identical gift clause challenge to a business leave provision of a collective negotiation agreement brought by “taxpayers” represented by the Goldwater Institute).

As the Arizona Supreme Court explained, “[f]or example, if such an agreement provided for paid vacation or personal leave time for public employees, the adequacy of the consideration received by the employer would not be evaluated by asking if the employees must use their time in a way that benefits the employer.” *Cheatham*, 379 P.3d at 219. Rather, courts must assess the entire transaction, including the work the public employees “generally agree to provide under the agreement.” *Id.* When considering the CBA in this fashion, as this Court should, it is beyond any doubt that there is valid and adequate consideration on all sides. The ABL provision, like the vacation and sick leave provisions, is unquestionably constitutional.

Even if it were permissible to analyze each clause of the CBA separately and apart from the global contract, the ABL provision would still be non-gratuitous beyond any shadow of dispute. As Bob Nicks’ uncontroverted testimony established, there was an explicit “give and take” in the bargaining process in 2009, in which the City exchanged the current ABL bank for a change in the treatment of sick leave from “productive leave” that counted towards employees’ hours worked for purposes of calculating overtime to “nonproductive leave” that did *not* count towards employees’ hours worked. *See* Ex. 6: Nicks Hr’g Tr. at 21-22. In exchange for providing its employees ABL, the City received approximately “5 to \$600,000” per year in overtime savings based on the change in policy with respect to sick leave, per the uncontroverted testimony of Bob Nicks at the January 17, 2017 hearing. *Id.* Thus, even taking an impermissibly narrow view, the ABL provision was bargained for in exchange for valid and adequate consideration.

The CBA is an exchange of valid, bargained-for consideration, and therefore it is constitutional; there are simply no facts to suggest that the CBA is an unconstitutionally gratuitous grant of public funds. Indeed, even when evaluated in isolation, the ABL provision was explicitly bargained for in exchange for valuable consideration, according to the undisputed evidence. Therefore, because ABL is not gratuitously granted, it complies with the Texas Constitution's gift clause, and Plaintiffs' lawsuit must be dismissed.

C. Even Without Return Consideration, ABL Would Still Be Constitutional

Even if this Court were to reach the second stage of the gift clause analysis, which it need not, Plaintiffs' claims still fail as a matter of law. As the undisputed facts clearly demonstrate, in addition to being non-gratuitous, the collective bargaining agreement that provides ABL to Austin's fire fighters serves a public purpose and affords a clear public benefit to the City of Austin and its citizens in return.

Public payments made without consideration are constitutional where the statute or ordinance authorizing the payments: "(1) serves a legitimate public purpose; and (2) affords a clear public benefit received in return." *Tex. Mun. League*, 74 S.W.3d at 383-84 (citations omitted). In turn, a payment "serves a legitimate public purpose" if (1) "the statute [rendering the payment]'s predominant purpose is to accomplish a public purpose, not to benefit private parties;" (2) the municipality "retain[s] public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment;" and (3) "the political subdivision receives a return benefit." *Id.* (citations omitted).

As a matter of law, the CBA that provides ABL to the City's fire fighters, as well as ABL itself, predominantly serves a public purpose and affords a clear public benefit in return.

Additionally, there is no dispute that the City retains sufficient control over performance under the CBA as a whole, as well as administration of ABL under Article 10 of the CBA.

i. The CBA Predominantly Serves a Public Purpose and the City of Austin Receives a Clear Return Benefit

As the uncontroverted facts readily establish, the parties' CBA predominantly serves a public purpose and the City of Austin receives a clear return benefit. In the context of a gift clause challenge, "[d]etermining a public purpose is primarily a function of the legislature, and it should be upheld unless it is *manifestly arbitrary and incorrect*." *Young v. Houston*, 756 S.W.2d 813, 814 (Tex. App.—Houston [1st Dist.] 1988, writ denied) (emphasis added) (rejecting appellants argument under the gift clause because they failed to demonstrate that the act "served no public purpose"). The Austin City Council, therefore, is owed deference for its determination that the CBA that it ratified, including the ABL provision in Article 10, serves a public purpose — deference that Plaintiffs fail as a matter of law to overcome.

On the question of public purpose, the Texas State Legislature and the Austin City Council agree: promoting fire fighters' right to organize, to collectively bargain, and to resolve disputes using a reasonable grievance and arbitration system serves a vital public purpose. As the Texas State Legislature, in the Fire and Police Employee Relations Act, has declared by law:

The policy of this state is that fire fighters and police officers, like employees in the private sector, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment. Denying fire fighters and police officers the right to organize and bargain collectively *would lead to strife and unrest, consequently injuring the health, safety and welfare of the public.*

...

With the right to strike prohibited, to maintain the high morale of fire fighters and police officers and the efficient operation of the departments in which they

serve, alternative [arbitration or judicial enforcement] ***procedures must be expeditious, effective, and binding.***

Tex. Local Gov't Code § 174.002(b), (e) (emphasis added). Likewise, the Austin City Council, in adopting the CBA, found that “it is the intent and purpose of this Agreement ***to achieve and maintain harmonious relations between the parties***, and to establish benefits, rates of pay, hours of work, and other terms and conditions of employment for all members of the bargaining unit and to ***provide for the equitable and orderly adjustment of grievances that may arise during the term of this Agreement.***” Ex. 1: CBA , Art. 1; Ex. 9: Resolution.

To conduct its public purpose analysis, it is critical that this Court take a “panoptic view” of the transaction being challenged — a thirty-two-article CBA that secures safe and efficient emergency services for the City of Austin and its citizens — rather than artificially narrow its analysis to a single contract term. “Such an approach is particularly appropriate with respect to a collective bargaining agreement, which is not merely an exchange of discrete promises, but instead is a ‘long-term relational contract’ governing the whole employment relationship.” *Cheatham v. DiCiccio*, 379 P.3d 211, 219 (Ariz. 2016) ((citing *Int'l Union of Operating Eng'rs, Local 139, ALF-CIO v. J.H. Findorff & Son, Inc.*, 393 F.3d 742, 746 (7th Cir. 2004); *Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 312 (1989)). Joining courts in Arizona and New Jersey who considered nearly identical challenges brought by “taxpayer” Plaintiffs’ counsel in this case, this Court should consider the primary purpose served by the CBA *as a whole*, not the primary purpose of a single, constituent part of that whole. *See Cheatham*, 379 P.3d at 218-19 (rejecting plaintiffs’ proposed analysis because it inappropriately “views the release time benefits in isolation rather than as part of the MOU as a whole, which provides police services to the public.”); *Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *17

n.5 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017) (“[T]he release time provisions cannot be viewed in isolation from the public purpose behind the [collective negotiations agreement]”).

Taking the appropriate panoptic view, this Court’s analysis is simple. The CBA’s predominant purpose is to secure safe and efficient fire safety and emergency services for the City of Austin and its citizens. Tex. Local Gov’t Code § 174.002; Ex. 1: CBA, Art. 1(2); Ex. 9: Resolution. It does so by maintaining a harmonious labor-management relationship, fostering good morale among the City’s fire fighters, setting fair and attractive wages, benefits, and other conditions of employment agreeable to both employer and employee, and allowing for fair and orderly adjustment of grievances under the CBA. *See* Ex. 1: CBA, Art. 8 (“Civil Service Commission”), Art. 9 (“Wages & Benefits”), Art. 12 (“Leave Provisions”), Art. 14 (“Hours of Work”), Art. 15 (“Overtime”), Art. 17 (“Hiring & Cadet Training”), Art. 20 (“Contract Grievance Procedure”), Art. 22 (“Health Related Benefits”), Art. 24 (“Drug Testing”); *see also* Ex. 2: Flores Tr. at 10:12-11:17; Ex. 3: Woolverton Tr. at 9:22-25, 15:10-22; Ex. 4: Paulsen Tr. at 18:19-19:9.

Completely setting aside the impermissibly narrow question of whether ABL itself serves a public purpose, the balance of the CBA overwhelmingly benefits a public purpose: it promotes labor peace for the City’s public safety employees and ensures effective and uninterrupted emergency services to the citizens of Austin. *See Cheatham*, 379 P.3d at 217 (“The MOU, including its release time provision, serves a public purpose. ***It procures police services for the City.*** (emphasis added)).

ii. ABL Itself Serves a Predominantly Public Purpose and Affords a Clear Return Benefit

Even considered alone, the ABL provision of Article 10 itself still serves a predominantly public purpose and affords a clear return benefit. As the undisputed record demonstrates, the primary use of ABL is to allow AFA members to participate in collective bargaining, labor-management meetings, membership meetings, disciplinary and grievance proceedings, or other activities that support the mission of the Department. *See supra*, sec. II(D). Despite Plaintiffs' partisan political rhetoric to the contrary, these uses of ABL predominantly serve the public purpose of reducing "strife and unrest" in the interest of the "health, safety and welfare of the public," among other public purposes, and provide substantial benefit to the City of Austin. *See* Tex. Local Gov't Code § 174.002; Ex. 1: CBA, Art. 1(1); Ex. 9: Resolution. On this point, Plaintiffs have failed as a matter of law to establish that the legislative judgment of public purpose is "manifestly arbitrary and incorrect." *Young*, 756 S.W.2d at 814.

As an initial matter, this Court should disregard the specious argument permeating Plaintiffs' brief that the so-called "private" purposes of the AFA cannot coincide with the "public" purposes of the City of Austin. In fact, the AFA's mission, according to the uncontroverted testimony of AFA President Bob Nicks, is to "uphold and further professional standards for firefighters," to "promote firefighter and public safety through advocacy, education, policy and sometimes legislation," to "work towards more harmonious management labor relations through discussion on important issues," and to promote shared charitable interests. Ex. 6: Nicks Hr'g Tr. at 16:3-13. What's more, the AFA has explicitly "pledged to support the service and mission of the Austin Fire Department, [and] to constructively support the goals and objectives of the Austin Fire Department" in the parties' CBA. Ex. 1: CBA, Art.

I(2). The AFA's objectives, which Plaintiffs malign as "promot[ing] private interests," plainly overlap with the City of Austin's Fire Department own objectives — improving the standard of public safety and public safety employment in the City of Austin.

Indeed, as courts have long recognized, the purposes of a labor association and an employer frequently align in favor of the public good. *See Int'l Ass'n of Machinists & Aero. Workers, Local Lodge 964 v. BF Goodrich Aero. Aerostructures Grp.*, 387 F.3d 1046, 1058 (9th Cir. 2004) ("Services rendered by union stewards benefit union and corporation alike."); *see also United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (U.S. 1960) (recognizing the importance of a properly functioning grievance arbitration system "in achieving industrial peace"). In rejecting an argument identical to the one raised by Plaintiffs here, the Arizona Supreme Court recently explained that "a public purpose may be served by [the labor organization's] representational activities to the extent they promote improved labor relations and employment conditions for public safety officers." *Cheatham*, 379 P.3d at 218.

That is precisely the case here: ABL overwhelmingly serves a public purpose and provides substantial benefit to the City in the form of harmonious labor relations and improved employment conditions for Austin's fire fighters.

On the undisputed record, the ABL used by President Nicks is primarily devoted to contract negotiations, Department committee meetings, meetings with Department management on labor-management issues, meeting with AFA membership, and attending trainings or conferences to better understand the issues facing AFA membership and the Department as a whole, and the day-to-day administrative work that supports these activities. *See supra*, sec. II(D)(i); Ex. 8: Nicks Aff.; Ex. 6: Nicks Hr'g Tr. at 18:3-19:16; Ex. 5: Nicks Tr. at 24:25-25:7; 44:9-45:1; 107:4-108:2.

Although Plaintiffs attempt to mischaracterize President Nicks' testimony relating to performing political activities while on ABL, Nicks testified repeatedly that he although he believes he **could** perform political activities while on ABL, he does **not** conduct political activities while utilizing his weekly forty-hour allotment of ABL. Ex. 5: Nicks Tr. at 124:6-19; 146:8-147:4; 155:16-20 (agreeing that he performs "more than forty hours a week, in [his] capacity as association President, on activities other than lobbying, Tweeting, political activities").

Regardless of whether "political" acts of advocating for interests like improving safety and health standards on behalf of the City's public safety employees in fact serve a public purpose — and indeed they arguably do — that issue is not material to whether Nicks' overall use of ABL predominantly serves a public purpose. As the undisputed testimony about his work while on ABL readily demonstrates, it overwhelmingly benefits the City's public interests. For example, as President Nicks explained:

What we do is we work on a lot of common things together that are - that are mutually beneficial to the Department. And I'll give you an example. We had an overtime crisis, you could say, because of our shortage of personnel and our need to fill seats on units, and I went through a process of trying to find out the most desirable ways, according to the membership, in order to overcome that crisis, and I did a study under - that the Mayor kind of commissioned, with the Budget office, to determine the exact impact of the crisis, because I thought it was a little bit - I thought there were some offsetting costs that were going to be taking place. And while I was doing that, I was working hand-in-glove with the Fire Chief and civilian budget analysts to try to come up with a myriad of solutions, and - and we did. And I think the fact that we engaged the membership and stakeholders in doing that, ***we saved three to four million dollars, and morale issues were – negative morale issues were minimized.***

Ex. 5: Nicks Tr. 47:10-48:16 (emphasis added); *see also* Ex. 5: Nicks Tr. at 42:1-5 ("There are a lot of common, mutual projects we work on together, where we're coordinating our time and ideas, and resources to accomplish."); 45:3-17 ("I met with [the Chief] twice that day. One was

for an over three-hour meeting with the female fire fighters in the afternoon, and the other one was a – a meeting earlier in the day, at about two hours, on overtime – which ended up being two and a half hours on overtime practices, and went in to some other issues”). There is no reasonable dispute that President Nicks’ use of ABL serves a predominantly public purpose.

Likewise, the primary uses of ABL by the AFA’s members — to participate in collective bargaining, meet with other fire fighters to discuss issues related to the CBA and Department policy, participate in labor-management meetings, meet to discuss or represent fire fighters in disciplinary and grievance proceedings, participate in informal dispute resolution proceedings, and conduct other lawful activities that support the Department’s and the AFA’s overlapping missions — collectively and individually serve a predominantly public purpose. See *supra*, sec. II(D), (D)(ii); Ex. 1: CBA, Art. 10(1)(A), (1)(B)(2); Art. 2(4); Ex. 5: Nicks Tr. at 13:5-12; 19:18-20:7; 101:12-15; 102:21-103:18; 105:17-107:1; 155:21-156:24; Ex. 3: Woolverton Tr. at 17:8-12; 18:15-19:7; 32:14-37:2; 116:5-116:25; Ex. 2: Flores Tr. at 15:20-16:2; 21:19-22:12; Ex. 4: Paulsen Tr. at 18:19-19:9 9; 20:1-11.

First, time spent “negotiating or otherwise participating on behalf of the AFA, during those negotiations,” serves a clear public purpose. Ex. 5: Nicks Tr. at 101:12-15. Per the Texas State Legislature, collective bargaining is a “fair and practical method for determining compensation and other conditions of employment” and prevents “injuring the health, safety, and welfare of the public” through “strife and unrest” among the public safety employees. Tex. Local Gov’t Code § 174.002(b). Ignoring this direct legislative finding of public purpose, Plaintiffs contend that the “adversarial relationship to its public employer” renders this use of ABL contrary to public purpose. Pl. Mot. at 16-17. Plaintiffs’ overly formalistic view of the “adversarial” bargaining relationship, however, ignores a critically important benefit to the City:

facilitating efficient negotiations. *See Cheatham*, 379 P.3d at 217 (“the City benefits from more efficient negotiations because it collectively negotiates with PLEA, rather than with individual employees”); *see also Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *17 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017) (use of business leave “in negotiating contracts for the JCEA serves the public by facilitating a collectively negotiated agreement”). As the undisputed record demonstrates, having AFA representatives available for lengthy and time-consuming collective bargaining negotiations when needed, serves the City’s interest in efficient and expedient contract negotiations. *See Ex. 2: Flores Tr.* at 15:20-16:2 (“We want to ensure that the members have enough time that they can utilize for contract bargaining.”); 21:19-22:12 (“Article 10 allows the Association to meet, and confer, and reach an agreement with the City”); 33:24-34:4 (having an exclusive bargaining representative “means that we will not have separate agreements with other Associations”). Thus, permitting members to negotiate on ABL serves a predominantly public purpose.

Second, reviewing, processing, attempting to informally resolve, and then representing the grievant in employee grievances, serves a critical public purpose of promoting the expeditious and effective processing of grievances, as stated in the Local Government Code. *Ex. 5: Nicks Tr.* 101:16-105:16; *Tex. Local Gov’t Code* § 174.002(e). Indeed, as the United States Supreme Court has recognized, the presence of an established arbitration and grievance procedure, ensures industry stability. *See United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (U.S. 1960) (“A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.”).

Here, Plaintiffs once again focus on the formalistic “adversarial” nature of the grievance and dispute resolution proceedings, failing to recognize the undisputed benefits to the City in promoting the fair and efficient resolution of employee grievances — in other words, saving the City time and money. *See* Ex. 3: Woolverton Tr. at 116:5-116:25 (“if [grievances] weren’t remedied at the lowest level, you could certainly have a lawsuit that could cost the City considerably more than a few hours of ABL”); Ex. 5: Nicks Tr. at 103:19-105:4 (informal resolution procedures involves trying to “solve this grievance before it comes forward formally. And, quite frankly, a lot of times we’re able to do that”). Further, it is directly in the City’s interest to have the CBA’s terms interpreted fairly and correctly, an interest protected by fostering employee grievances. Ex. 3: Woolverton Tr. at 116:5-116:25 (“it could be that we’re interpreting something incorrectly, and those grievances help to identify those issues, and — and remedy them at the lowest level possible”); 117:1-5 (“sometimes it is — it has clearly benefited both the AFA and the City”). As the *Rozenblit* court explained, “the full-time availability of the releasee employees for their attendance to labor and management conflicts benefits the District financially by resolving matters that might otherwise evolve into costly and time consuming arbitration.” *Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *17 n.5 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017). Again, here, this use of ABL predominantly serves a public purpose.

Third, attending “cadet classes during cadet training” serves a public purpose as well: orienting and educating incoming employees to the terms of the CBA and the grievance procedures. Ex. 5: Nicks Tr. at 155:21-156:24. Although the Plaintiffs present this as a “recruiting” benefit solely to the AFA, there is no dispute that these critical issues are covered at

the meeting, saving the City time and money by ensuring that its incoming employees have a better grasp of the workplace rules and procedures.

Fourth, attending union conferences and meetings, attending professional development conferences, and participating in joint committee meetings with management serve a critically important function to the City. Ex. 5: Nicks Tr. at 105:17-107:1; Ex. 4: Paulsen Tr.] at 18:19:9 (ABL use “contributes significantly to the decision-making process in the Department”); 20:1-11 (“Their perspective adds to the process. Sometimes they see things slightly different than the chain of command or the other representatives, who sit on those committees.”). Even internal AFA meetings serve an important purpose to the City: educating and receiving feedback from members about the negotiation and administration of the CBA. Ex. 5: Nicks Tr. 13:5-12; 19:18-7. Internal meetings such as these enable the AFA to fulfil its role as exclusive bargaining representative for the City’s fire fighters.

Finally, time spent designated as “other association business,” is “mostly outreach to the members, going out and — and visiting with them.” Ex. 5: Nicks Tr. at 61:15-62:7 (“mostly that’s going to be the VP’s going to station visits. . . . “a good deal of our time is going out and — and educating our members, and then soliciting feedback from our members on — on what they would like us to advocate for.”).⁷ As Plaintiffs point out, this category represents the largest

⁷ Perhaps because of their eye-catching names, Plaintiffs make much of the AFA’s charitable activities, such as the “Firefighter Combat Challenge,” “Battle of the Badges Boxing Charity Event,” and the “Austin Firefighters Relief and Outreach Fishing Fundraiser,” which are catalogued under this heading. Not only do these events represent infrequent uses of ABL, the

use of ABL by the AFA's membership — "67 percent" per the Plaintiffs' accounting. *See* Pl. Mot. at 19. This should come as no surprise, as educating and coordinating with the City's employees about the CBA is the most important function the AFA serves as their exclusive bargaining representative. These efforts by the AFA directly and substantially benefit the City in promoting inexpensive and efficient collective bargaining with its employees. *See Cheatham*, 379 P.3d at 217-18. Indeed, the AFA members' "function as a peace-keeping force in the labor-management relationship in the [City] serves the purpose of ensuring that its employees and administration can cooperate in order to serve the [City] in implementing" its mission: to provide stable and efficient fire safety and emergency services to the City of Austin. *Rozenblit v. Lyles*, No. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *22-21 (N.J. Super. Ct. Ch. Div. Oct. 31, 2017).

As the foregoing undisputed facts demonstrate, ABL directly serves the public purpose of promoting labor peace and efficient contract negotiations between the City of Austin and its public safety employees. Plaintiffs have failed as a matter of law to carry their burden to show that the City's and Texas' judgment was "manifestly arbitrary and incorrect." *Young v. Houston*, 756 S.W.2d 813, 814 (Tex. App.—Houston [1st Dist.] 1988, writ denied). Further, Plaintiffs'

uncontroverted testimony establishes that they each serve the public purposes of (1) promoting a fit, skilled, and high-performing workforce; (2) fostering good will towards the Department in the community; and (3) addressing cancer and other health issues faced by fire fighters in Austin and elsewhere. Ex. 3: Woolverton Tr. at 70:10-72:23; 74:21-75:4; 80:4-81:12; 112:21-113:2; 114:5-115:6; 115:13-23; Ex. 5: Nicks Tr. at 86:16-87:22; 92:2-93:1; 93:2-94:19.

laundry-list of out-of-context statements about various, infrequent uses of ABL fails to create any material factual dispute as to the provision's overwhelmingly public purpose and benefit. Whether viewed in the context of the entire CBA or in isolation, ABL serves a predominantly public purpose and affords a clear public benefit in return.

iii. The City Possesses Adequate Control

The City possesses adequate control under the CBA to ensure a public purpose for those rights given to the AFA and the fire fighters it represents, as shown by the CBA itself. *Cf. Key v. Commissioners Court of Marion Cnty*, 727 S.W.2d 667 (Tex. App.—Texarkana 1987, no writ) (rights and obligations under contract probative on the issue of control). Given that the public purposes of the CBA include providing for fire protection for the citizens and buildings of Austin, on its face, the CBA fulfills that purpose and returns a clear public benefit. Despite the plaintiffs' characterization, the compensation and benefits afforded under the CBA were not given away without getting anything in return. Rather, the AFA and fire fighters obligated themselves to terms and conditions of employment, including, for example, mandatory drug testing, in exchange for benefits such as sick leave, vacation leave, emergency leave, and ABL. Ex. 1: CBA, Arts. 10, 12, 24. There is no unconstitutional gift where there is mutuality of obligation. *See, e.g., Dodson v. Marshall*, 118 S.W.2d 621, 624 (Tex. Civ. App.—Waco 1938, writ dismissed) (no unconstitutional gift where county granted privilege of operating cigar and cold drink stand in courthouse in exchange for monthly rent and other terms); *Sullivan v. Andrews County*, 517 S.W.2d 410, 413 (Tex. Civ. App.—El Paso 1974, writ refused n.r.e.) (upholding county purchase of medical clinic and leaseback to former owners where county received substantial value for transaction). A binding contract itself constitute sufficient public control.

ABL is also clearly constitutional and non-gratuitous because the CBA specifies that the City retained a whole host of rights. Under the CBA, the City retained the right to “change those benefits, privileges, and working conditions which it determines, in accordance with this subsection, to interfere with the operations of the Department.” Ex. 1: CBA, Art. 27(2). More importantly, the CBA specifies that the City also retained a full complement of management rights, including:

[D]irection of the work force, including but not but not limited to, the right to hire; the right to discipline or discharge in accordance with Chapter 143 and this Agreement; the right to decide job qualifications for hiring; the right to layoff or abolish positions; the right to make rules and regulations governing conduct and safety; the right to determine schedules of work together with the right to determine methods, processes, and manner of performing work; the right to evaluate, supervise, and manage performance of employees; the right to determine the size of the work force, and the assignment of work to Fire Fighters within the Department, including the right to transfer Fire Fighters; the right to determine policy affecting the selection of new Fire Fighters; the right to establish the services and programs provided by the Department, including the nature and level of such services and programs, as well as the type and quantity of resources allocated; the right to establish work performance measurements and standards; and the right to implement programs to increase the cost effectiveness of departmental operations.

Ex. 1: CBA, Art. 4. These terms show that the City retains more than adequate controls through the CBA as a whole. *See Chisholm Trail SUD Stakeholders Grp. v. Chisholm Trail Special Util. Dist.*, No. 03-16-00214-CV, 2017 WL 2062258, at *7 (Tex. App.—Austin May 11, 2017, pet. denied) (mem. op., not designated for publication) (express terms of agreement conclusively established public purpose and return consideration for utility’s agreement to transfer assets and utility system to city where agreement provided for limited continued supervision by utility district pending approval of transfer, the city obligated itself to operate and maintain the system, and district retained the right to terminate the agreement for noncompliance). Following the Third Court of Appeals’ reasoning in *Chisholm Trail SUD*, the Court cannot find that the City

lacks sufficient control where the CBA specifies the numerous rights the City retains under its terms.

Even just considering ABL — which cannot be viewed in isolation, *see, e.g., Cheatham*, 379 P.3d at 215 — the City retains more than adequate control over ABL usage in particular. Specifically, the City has the contractual right to specify through departmental policy the “[a]dministrative procedures and details regarding the implementation” of the ABL provision contained at Article 10 of the CBA. *See* Ex. 1: CBA, Art. 10(2)(D). Further, the City reviews all ABL requests for compliance with the terms of the CBA and retains the right to deny them for noncompliance with the CBA or because of AFD’s operational needs. Ex. 10: General Order E111.2; Ex. 1: CBA, Art. 10(1)(C)–(D); Ex. 3: Woolverton Tr. at 55:16–56:19. Moreover, although what is material is the *right* to control, not how that control is in fact exercised, the undisputed evidence demonstrates that the City *does in fact* exercise its right to deny ABL requests whenever necessary. Ex. 3: Woolverton Tr. at 111:18-22; Ex. 5: Nicks Tr. at 157:11-14. This right of control over ABL use is more than sufficient to show that the legitimate public purposes behind the provision of ABL — that is, to provide for stable, efficient, and effective fire safety and emergency services in Austin — are being furthered.

Plaintiffs and Texas seem to theorize that the City must monitor every aspect of ABL use in order to exercise sufficient control to avoid an unconstitutional gift problem. But the City is simply not required to do more than what it currently does by way of monitoring and controlling ABL use, any more than it is constitutionally required to have employees clock in and out to ensure they are working the requisite hours or conduct surprise home visits of employees who call in sick to make sure that they are in bed with a hot water bottle. It is telling that Plaintiffs are unable or unwilling to identify what *would* be sufficient public control over ABL to avoid a

constitutional problem. *See* Ex. 13: Pls’ Resp. to Interrogatory No. 1 (declining to answer what would, in Plaintiffs’ estimation, be sufficient public control over ABL). In truth, it is not really control over ABL use that Plaintiffs have a problem with; it is that it exists at all.⁸

Even AFA President Nicks, who is not required to submit daily requests for ABL like general membership, still fills out a timesheet to account for his weekly ABL hours, remains subject to the fire department’s code of conduct and personnel policies, and he must physically report to the Fire Department when directed to do so by supervisors for an emergency or a special project. Ex. 6: Nicks Hr’g Tr. at 26, 40-42; Ex. 5: Nicks Tr. at 33:13-17 (“Of course I am subject to the Code of Conduct” and the City’s “personnel policies”); 44:9-10 (reports to the Chief “whenever he asks me to”); 129:20-130:1 (“the Chief can direct me to do certain things”);

⁸ Plaintiffs allege that “the AFA does not provide an accounting of *how* it uses ABL to the City[.]” Pl. Mot. at 25. This allegation is misleading – AFA does not need to provide an accounting, as the AFA does not use ABL, individual fire fighters do. Although the plaintiffs allege that “employees using ABL don’t either,” this is again misleading. As stated, each employee can only request ABL within a designated category for ABL usage. Ex. 12: ABL Requests; Ex. 3: Woolverton Tr. at 55:16–56:19. Each request must include a description of the purpose of the leave request. Each request must be approved through a chain of command – and many requests are not approved. It is true that, after the fact, the City does not interrogate workers regarding their ABL usage, in the same way it does not ask each employee to provide a doctor’s note each time he or she uses a day of sick leave, but that is not what the law requires.

Ex. 4: Paulsen Tr. at 11:17-12:4 (Nicks is bound by “the same rules and regulations that would govern other Austin fire fighters”) Ex. 3: Woolverton Tr. at 21:4-11 (City can assign Nicks to “special projects” under the CBA); 22:1-23:24 (Chief Dodds supervises Nicks “on a daily basis”); (Nicks has “regularly scheduled” interactions with Dodds, including monthly and quarterly meetings, as well as any others “as-needed”).

President Nicks can be — and indeed has been — subjected to Department discipline for time on ABL. Ex. 8: Nicks Aff.; Ex. 5: Nicks Tr. at 47:20-48:15 (“They could certainly discipline me They could punish me for policy violations”); Ex. 3: Woolverton Tr. at 84:8-85:1 (City can and has disciplined Nicks because “he’s subject to the same rules as every other fire fighter”). In a backwards attempt to show the City’s lack of control over President Nicks while using ABL, Plaintiffs highlight the fact that President Nicks once allegedly violated “the City’s social media policy by posting slanderous posts about a Fire Department official.” Pl. Mot. at 5.⁹ In fact, this incident proves just the opposite: the City *can* exert disciplinary control over Nicks whenever it believes necessary, and in this case, it actually has.

In spite of these uncontroverted facts, Plaintiffs contend that President Nicks is beyond all control by the Department because the Department lacks the authority to unilaterally remove him from his position as AFA President. However, the Department *does* possess the power to terminate his ability to use ABL — or any other form of leave or benefit — by discharging him from employment. Plaintiffs’ argument here is a red herring.

⁹ Suffice it to say, President Nicks objects to the characterization of any of his words as “slanderous,” but the issue is immaterial to the instant case.

Thus, the continuing use of ABL is subject to the tracking and discretion of the City in ways easily sufficient to protect the City of Austin's investment.

Accordingly, even if ABL were afforded gratuitously, without any return consideration, there would be no dispute that it serves a legitimate public purpose and provides a public benefit in return. On these additional grounds as well, Plaintiffs' lawsuit must be dismissed.

V. Conclusion

As this Court has already adjudicated on the merits, Plaintiffs and Intervenor-Plaintiff's lawsuit is meritless, and principles of *res judicata* and collateral estoppel demand its dismissal. Moreover, as the undisputed facts demonstrate once again, Association Business Leave is only one piece in a larger agreement, which was made based on valid consideration on all sides. Even considered in isolation, ABL was bargained for in exchange for a specific piece of consideration, valued at over half a million dollars per year, and it is therefore non-gratuitous. Plaintiffs' claims, therefore, fail as a matter of law. Even if there were no valid consideration, there is no dispute that ABL serves a legitimate public purpose and affords a clear public benefit in return for Austin's investment – harmonious labor relations with the City's public safety employees who provide emergency response to the City of Austin's citizens. Accordingly, AFA, the City of Austin, and Marc A. Ott, respectfully request that this Court deny Plaintiffs' motion and grant the instant motion.

Date: January 25, 2019

Respectfully Submitted,

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CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; AND JAY WILEY, §
§
Plaintiffs, §
§
AND §
§
TEXAS, §
§
Intervenor-Plaintiff, § IN THE DISTRICT COURT
v. §
§
CITY OF AUSTIN, TEXAS; MARC A. § OF TRAVIS COUNTY, TEXAS
OTT, IN HIS OFFICIAL CAPACITY §
AS CITY MANAGER OF THE CITY §
OF AUSTIN; § 419th JUDICIAL DISTRICT
§
Defendant, §
§
AND §
§
AUSTIN FIREFIGHTERS §
ASSOCIATION, §
LOCAL 975, §
§
Intervenor-Defendant. §

APPENDIX OF EXHIBITS OFFERED IN SUPPORT OF JOINT
CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO JOINT
MOTION FOR SUMMARY JUDGMENT

EXHIBIT	DESCRIPTION
Exhibit 1	Collective Bargaining Agreement between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017 (“ <u>CBA</u> ”)
Exhibit 2	Excerpts from the Deposition Transcript of Sylvia Flores (“ <u>Flores Tr.</u> ”).
Exhibit 3	Excerpts from the Deposition Transcript of Aaron Woolverton (“ <u>Woolverton Tr.</u> ”).
Exhibit 4	Excerpts from the Deposition Transcript of Ronnelle Paulsen (“ <u>Paulsen Tr.</u> ”).
Exhibit 5	Excerpts from the Deposition Transcript of Bob Nicks (“ <u>Nicks Tr.</u> ”).

EXHIBIT	DESCRIPTION
Exhibit 6	Transcript of Testimony of Bob Nicks at the January 17, 2017 TCPA Hearing (“ <u>Nicks Hr.’g Tr.</u> ”).
Exhibit 7	February 7, 2017 Order Granting TCPA Motion to Dismiss (“ <u>February 7, 2017 Order</u> ”)
Exhibit 8	Affidavit of Bob Nicks (January 25, 2019) (“ <u>Nicks Aff.</u> ”)
Exhibit 9	Resolution No. 20170929-018 ratifying CBA (“ <u>Resolution</u> ”)
Exhibit 10	Austin Fire Department General Order E111.2 (“ <u>General Order E111.2</u> ”)
Exhibit 11	Austin Fire Department Purpose, Mission, Vision, Goals (“ <u>AFD Purpose, Mission, Vision, Goals</u> ”)
Exhibit 12	ABL Requests from Formsite (“ <u>ABL Requests</u> ”)
Exhibit 13	Plaintiff’s Joint Objections and Responses to City of Austin’s First Set of Interrogatories, Interrogatory No. 1 (Sept. 24, 2018) (“ <u>Pl’s Resp. to Interrogatory No. 1</u> ”)
Exhibit 14	City of Austin’s Objections and Responses to Intervenor-Plaintiff’s First Interrogatories, Interrogatory No. 4 (“ <u>Def’s Resp. to Interrogatory No. 4</u> ”)
Exhibit 15	Business Records Declaration of Carlyn K. Cheney (“ <u>Cheney Decl.</u> ”)
Exhibit 16	Declaration of Sameer S. Birring (“ <u>Birring Decl.</u> ”)

EXHIBIT 1

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

CITY OF AUSTIN

AND

AUSTIN FIREFIGHTERS ASSOCIATION

LOCAL 975

EFFECTIVE OCTOBER 1, 2017

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ARTICLE 1

PREAMBLE

Section 1. Intent of Agreement

This Agreement is made between the City of Austin, Texas, hereinafter referred to as the "City," and the Austin Firefighters' Association, Local 975 of the International Association of Fire Fighters, AFL-CIO-CLC, hereinafter referred to as the "Association."

Section 2. Purpose of Agreement

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

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

WHEREAS, it is the intent and purpose of this Agreement to achieve and maintain harmonious relations between the parties, and to establish benefits, rates of pay, hours of work, and other terms and conditions of employment for all members of the bargaining unit and to provide for the equitable and orderly adjustment of grievances that may arise during the term of this Agreement; and

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

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

ARTICLE 2 DEFINITIONS

The following definitions apply to terms used in this Agreement, unless a different definition is required by the context in which the term is used.

1. "Agreement" refers to this Collective Bargaining Agreement.
2. "Alternate Cadet Training Class" means an expedited training class of no less than 14 full weeks duration that is available to candidates on the ranked entry level eligibility list who possess TCFP and NREMT certification.
3. "Association" means the Austin Firefighters' Association, Local No. 975 of the International Association of Fire Fighters, AFL-CIO-CLC, and its officers and agents authorized to act on its behalf.
4. "Authorized Association Representative" means a representative of the Association authorized by the Association's Executive Board to conduct business on behalf of the Association.
5. "City" means the City of Austin, Texas, the Austin Fire Department and its officers, agents, managers, and others authorized to act on its behalf.
6. "City of Austin Personnel Policies" means, unless otherwise provided herein, those provisions of the City of Austin Personnel Policies, as adopted by the City Council, that apply to Chapter 143 Public Safety Civil Service employees.
7. "Civilian employee(s)," "civilian(s)," or non-civil service employee(s)" means any employee of the Austin Fire Department who is not a fire fighter as defined in Local Government Code §143.003(4).
8. For purposes of Article 22 - Health Related Benefits, "employee" or "City employee" does not include members of the city council and their direct staff; persons who are appointed or elected by the city council pursuant to the City Charter; the city manager and assistant city managers; department directors; and assistant department directors.
9. "Consensus" means a form of group decision-making in which everyone discusses the issues to be decided so that the group may benefit from the knowledge and experience of all its members. In order for consensus to occur, every member of the group must be able to support the decision.
10. "Department" means the Austin Fire Department, acting through its management staff.
11. "Expiration date of this Agreement" means September 30, 2022, unless otherwise specified.

12. "Fire Chief" means the Fire Chief of the Austin Fire Department and is synonymous with the term "department head" as used in Local Government Code Chapter 143.

13. "Fire Fighter" means any employee who is a "fire fighter" as defined in Local Government Code §§143.003(4) and 174.003(2), employed by the Austin Fire Department. It excludes the Fire Chief, non-Civil Service employees, retirees, and any other employees specifically exempted by the terms of this Agreement.

14. "Hiring cycle" means the time period between the announcements for accepting applications through the final approval of an eligibility list, including any subsequent corrections.

15. "Hiring process" or "hiring selection process" means the components used to screen and test applicants to become eligible for selection as a fire cadet under the terms of the Consent Decree.

16. "Immediate family" means the following members of a Fire Fighter's family:
- a. Parents (biological parents, adoptive parents, or persons *in loco parentis* to the Fire Fighter when the Fire Fighter was a child);
 - b. Spouse (husband, wife, or domestic partner);
 - c. Child (biological, adopted, foster, stepchild, legal ward, or a child for whom the Fire Fighter is a person standing *in loco parentis*);
 - d. Sisters or brothers;
 - e. Grandparents;
 - f. Grandchildren;
 - g. Parents and grandparents of a Fire Fighter's spouse; and
 - h. Any relative living in the same household with a Fire Fighter.

17. "Local Government Code Chapter 143" and/or "Chapter 143" refers to those portions of the Fire Fighter and Police Officer Civil Service Act, Texas Local Government Code Chapter 143 which are applicable to the City.

18. "Local Government Code Chapter 174" and/or "Chapter 174" refers to the Fire and Police Employee Relations Act, Texas Local Government Code Chapter 174.

19. "Lawsuit" means the lawsuit known as *United States v. City of Austin*, Case No. 1:14-cv-00533, filed in the United States District Court for the Western District of Texas.

20. "Consent Decree" means the Consent Decree (Document No. 64) approved by the U.S. District Court and entered in the *United States v. City of Austin*, Case No. 1:14-cv-00533, in the United States District Court for the Western District of Texas concerning hiring at the Austin Fire Department, together with all changes or modifications resulting from a subsequent Court order or an agreement between the parties pursuant to the dispute resolution procedures in the Consent Decree.

21. "United States" means the United States of America, through the Department of Justice ("DOJ").

ARTICLE 3
RECOGNITION OF ASSOCIATION

The City recognizes the Association as the sole and exclusive bargaining agent for all Fire Fighters pursuant to Local Government Code Section 174.101. Recognition of the Association as the exclusive bargaining agent is not understood to make it a necessary party to disciplinary agreements between a Fire Fighter and the Fire Chief.

ARTICLE 4 MANAGEMENT RIGHTS

The City retains all inherent rights to manage the Fire Department and its work force which it enjoys under applicable law, subject to applicable federal and state statutes and local ordinances, resolutions, and rules, except as specifically provided in this Agreement. These rights include, but are not limited to: direction of the work force, including but not limited to, the right to hire; the right to discipline or discharge in accordance with Chapter 143 and this Agreement; the right to decide job qualifications for hiring; the right to lay-off or abolish positions; the right to make rules and regulations governing conduct and safety; the right to determine schedules of work together with the right to determine the methods, processes and manner of performing work; the right to evaluate, supervise, and manage performance of the employees; the right to determine the size of the work force, and the assignment of work to Fire Fighters within the Department, including the right to transfer Fire Fighters; the right to determine policy affecting the selection of new Fire Fighters; the right to establish the services and programs provided by the Department, including the nature and level of such services and programs, as well as the type and quantity of resources allocated; the right to establish work performance measurements and standards; and the right to implement programs to increase the cost effectiveness of departmental operations.

ARTICLE 5 NON-DISCRIMINATION

Section 1. Association Membership or Activity

Neither the City nor the Association shall interfere with the right of Fire Fighters covered by this Agreement to become or not become members of the Association, and there shall be no discrimination against such Fire Fighters because of lawful Association membership or non-membership activity or status. Nothing in this Agreement will be construed to prevent the Association from requiring Fire Fighters desiring to obtain or retain Association membership to meet its lawful membership requirements. Nothing in this Agreement will be construed to impose on the Association any obligations to non-members of the Association greater than those imposed by the law.

ARTICLE 6
WORK FURLONGHS

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

ARTICLE 7

ASSOCIATION DUES & PAYROLL DEDUCTIONS

Section 1. Dues Check Off

Upon receipt of a proper and signed authorization from an Association member and written approval by the Association, the City will deduct from the Association member's pay, regular Association dues in the amount set by the Association. The authorization shall be made on a form supplied by the City. The Association shall notify the City of any change in the amount of the regular dues.

Section 2. Other Payroll Deductions

A. The City will continue to deduct from the Association member's pay, upon receipt of an authorization from an Association member and written approval by the Association, deductions in the amount specified by the Association member, for up to ten (10) specific organizations or benefits. The initial organizations or benefits are the following:

Austin Fire Fighters Political Action Committee (PAC)
AFD Historical Museum
Austin Firefighters Relief and Outreach Fund
Austin Firefighters Benevolent Fund
Emergency Services Pipes and Drums Association (ESPADA)

For the Benevolent Fund and Membership Assessment, the Association may change the amount of deduction for those employees who have authorized payroll deductions by providing notification to the City, at least three pay periods in advance of the change.

B. The Association may add or change the specific organizations or benefits up to the ten (10) permitted, subject to approval by the City. In approving the request, the City may consider the type of use and whether the City's involvement in the funding of such organizations or benefits is appropriate. Upon request, the Association will provide appropriate documentation and/or information from which the City may determine and verify that adequate accounting safeguards and controls exist to protect employee funds. The City will not unreasonably delay or withhold approval for the use of deductions. Requests will be submitted to the persons designated in accordance with Article 29, *Notices*.

Section 3. Prior Authorizations

Prior to the effective date of this Agreement, the Association will furnish to the City a list of all Association members. Listed members who authorized dues or payroll deductions prior to the effective date of this Agreement will not be required to submit a new payroll deduction form. Members who are not included in the list must submit proper authorization requesting dues or payroll deductions.

Section 4. Remittance of Deductions

The amounts withheld by the City for dues and payroll deductions will be promptly remitted to the Association's Treasurer.

Section 5. Association Payment of Deduction Costs

The Association agrees to reimburse the City for the cost of making such deductions in an amount not to exceed ten cents (\$.10) per deduction. The City will not charge this fee for the following organizations: Austin Firefighters Relief and Outreach Fund, AFD Historical Fund, and Emergency Services Pipes and Drums Association (ESPADA).

Section 6. Correction of Errors

The Association will refund to the City any amount paid to the Association in error under this Article. The City will reimburse an Association member for any amount erroneously deducted from the Association member's pay under this Article.

Section 7. Effect of Contract Expiration

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

ARTICLE 8

CIVIL SERVICE COMMISSION

Section 1. *Ex Parte* Communications with Commission

The parties agree that neither the City nor the Association shall have *ex parte* communications with any member of the Civil Service Commission concerning any Commission proceedings such as disciplinary appeals, promotional bypasses, or examination appeals. This section does not prohibit the Civil Service Director, the Director's staff, the City Attorney, or the City Attorney's staff from communicating with Commissioners to the extent necessary to perform their duties in connection with the Commission, provided that such communications are in accordance with applicable law and ethics requirements.

Section 2. Agreed Scheduling of Disciplinary Hearings

In any appeal of a suspension, including an indefinite suspension, the suspended Fire Fighter (or the Fire Fighter's designated representative) and the Fire Chief by written agreement may schedule or re-schedule the hearing on a date more than 30 days after the date the Commission receives the Fire Fighter's notice of appeal. Upon receipt of such written agreement, the Civil Service Director shall schedule the hearing on the agreed date unless a quorum of the Commissioners is unavailable. If a quorum of Commissioners is not available on the agreed date, the Director shall confer with the Fire Fighter (or the Fire Fighter's designated representative) and the Fire Chief to select a new date for the appeal hearing when the parties and a quorum of the Commissioners are available.

ARTICLE 9 WAGES & BENEFITS

Section 1. BASE WAGES.

A. Policy.

The parties' shared goal in this Agreement is to strive to increase Fire Fighters' base wages sufficiently to approximate increases in the local cost of living during that same time period for which the base wage increases are provided.

B. Base Wage Increases.

1. For Fiscal Year 2017-2018

Effective with the first full pay period after ratification of this Agreement, the pay scale attached hereto as Appendix A-1 shall apply to all Fire Fighters covered by this Agreement. Appendix A-1 reflects a 0.25% increase to current base wages.

2. For Fiscal Year 2018-2019

Effective with the first full pay period of Fiscal Year 2018-2019, the pay scale attached hereto as Appendix A-2 shall apply to all Fire Fighters covered by this Agreement. Appendix A-2 reflects a 0.5% increase to base wages over the pay scale attached as Appendix A-1.

3. For Fiscal Year 2019-2020.

Effective with the first full pay period of Fiscal Year 2019-2020, the pay scale attached hereto as Appendix A-3 shall apply to all Fire Fighters covered by this Agreement. Appendix A-3 reflects a 1.0% increase to base wages over the pay scale attached as Appendix A-2.

4. For Fiscal Year 2020-2021.

Effective with the first full pay period of Fiscal Year 2020-2021, the pay scale attached hereto as Appendix A-4 shall apply to all Fire Fighters covered by this Agreement. Appendix A-4 reflects a 2.0% increase to base wages over the pay scale attached as Appendix A-3.

5. For Fiscal Year 2021-2022.

Effective with the first full pay period of Fiscal Year 2021-2022, the pay scale attached hereto as Appendix A-5 shall apply to all Fire Fighters covered by this Agreement. Appendix A-5 reflects a 2.5% increase to base wages over the pay scale attached as Appendix A-4.

Section 2. ADDITIONAL PAY ITEMS

A. Assignment and Specialized Functions Pay

Commencing on the effective date of this Agreement, the following Assignment and Specialized Functions Pay items shall continue to be available in accordance with criteria and procedures adopted by the Fire Chief:

Airport Fire and Rescue Pay	\$150 per month
Bilingual Translation Pay*	\$175 per month
Staff Schedule Pay For each consecutive month in a Staff Position, for up to 24 months	\$450 per month
For each consecutive month in a Staff Position, immediately following 24 months with no break in the Staff assignment	\$600 per month
Special Operations Teams Pay	\$150 per month

*Bilingual Translation Pay applies, at a minimum, to the following languages: Spanish, American Sign Language, and Asian (Vietnamese, Cantonese, Mandarin, Thai, Korean, Japanese, and Malaysian). A Fire Fighter may receive Bilingual Translation Pay for only one (1) language.

B. Longevity Pay

1. On the effective date of this Agreement, the City will continue to pay Fire Fighters longevity pay in the amount of One Hundred Dollars (\$100.00) per year for each year of service up to a maximum of twenty-five (25) years of service.

2. Beginning with the effective date of this Agreement, longevity pay shall be paid on an annual basis in a lump sum in the first regularly scheduled pay period after the Fire Fighter's anniversary date. This change in payment of longevity does not affect the treatment of longevity for retirement and overtime purposes, and the City and the Fire Fighters shall continue making retirement contributions for longevity payments.

C. Education Incentive Pay and Firefighter Certification Pay

During the term of this Agreement, the City shall pay eligible Fire Fighters either Educational Incentive Pay or Firefighter Certification Pay at the rates specified in City of Austin Ordinance No. 20140306-010. To be eligible for such additional pay, the Fire Fighter must meet the criteria and comply with the requirements established by Part 2 of such Ordinance. A Fire Fighter shall not be entitled to receive both Education Incentive Pay and Firefighter Certification Pay.

D. Reimbursements

During the term of this Agreement, the following reimbursements will be paid in accordance with City policy:

1. Mileage paid for travel between stations;

2. Reimbursement of auto insurance deductible.

E. Preemption

Fire Fighters shall be entitled to the Wage and Benefit provisions in this Article, in current state statutes except as amended by this Article, and Department policy as of the effective date of this Agreement. No change to or adoption of any state statute, Executive Order, local ordinance, resolution, rule or policy after the effective date of this Agreement shall alter or add to the terms of this Agreement in respect to Wages and Benefits.

Section 3. Assistant Chiefs

A. The Fire Chief has the right to set wages and benefits for the Assistant Chiefs, subject to the approval of the City Council as a part of the budget. The base salary of each Assistant Chief shall be at least 12.8% higher than the base salary for the rank of Division Chief. The Fire Chief may designate one Assistant Chief as the Executive Assistant Chief or Chief of Staff, whose pay and benefits may be different than the other Assistant Chiefs.

B. Assistant Chiefs shall be compensated on a salary basis and are exempt employees for purposes of overtime compensation under applicable federal law.

C. Assistant Chiefs shall be entitled to wages and benefits as provided in this Article, and as to Assistant Chiefs, this Article shall totally preempt any provision for wages and benefits under state statute, including but not limited to Chapter 141, 142 and 143 of the Local Government Code, Executive Order, local ordinance, resolution or rule.

Section 4. EMT Certification

During the term of this Agreement, the Department shall have a policy requiring all Fire Fighters through the rank of Battalion Chief to maintain EMT certification at the EMT-B skill level. If a state of emergency exists in the City of Austin, the Chief may require any Fire Fighter to perform duties requiring EMT-I or EMT-P skill levels without additional compensation. If, however, the Chief requires Fire Fighters to perform duties requiring EMT-I or EMT-P skill levels when such a state of emergency does not exist, those Fire Fighters will be compensated on the basis of a market-based study.

Section 5. Monthly Paid Compensation

It is expressly understood and agreed that the City reserves the right to pro-rate and pay all monthly payments in bi-weekly equivalents.

Section 6. Pay Averaging

During the term of this Agreement, the City may discontinue the current practice commonly known as “pay averaging” if the City determines in good faith that such practice

violates the requirements of the Fair Labor Standards Act, 29 U.S.C. §§201 *et seq.*, and its implementing regulations. The City will provide ninety (90) calendar days advance notice of the date the practice will be discontinued. Such notice will be provided to the Association President and will be posted on Fire Net.

Section 7. Retirement Contributions

During the term of this Agreement, the City's contribution rate to the Austin Fire Fighters Relief and Retirement Fund will continue to be no less than 22.05%.

ARTICLE 10

ASSOCIATION BUSINESS LEAVE

Section 1. Association Business Leave

A. Creation of Association Business Leave

Authorized Association Representatives shall be permitted to have paid time off, designated as Association Business Leave (ABL), to conduct Association business under the conditions specified in this Article.

B. Permitted Uses of ABL

1. The Association President may use ABL for any lawful Association business activities consistent with the Association's purposes.

2. For other Authorized Association Representatives, ABL may be used for Association business activities that directly support the mission of the Department or the Association, but do not otherwise violate the specific terms of this Article. Association business is defined as time spent in Collective Bargaining negotiations; adjusting grievances, attending dispute resolution proceedings, addressing cadet classes during cadet training (with prior approval of the time and content by the Fire Chief, or his/her designee), and attending union conferences and meetings. It is specifically understood and agreed that ABL shall not be utilized for legislative and/or political activities at the State or National level, unless those activities relate to the wages, rates of pay, hours of employment, or conditions of work affecting the members of the bargaining unit. At the local level, the use of ABL for legislative and/or political activities shall be limited to raising concerns regarding firefighter safety. Association Business Leave shall not be utilized for legislative and/or political activities related to any election of public officials or City Charter amendments. Association Business Leave shall not be utilized for legislative and/or political activities that are sponsored or supported by the Association's Political Action Committee(s). Association Business Leave shall not be utilized for legislative and/or political activities at the local, state, or national levels that are contrary to the City's adopted legislative program. No Association Business Leave shall be utilized for activities prohibited by Section 143.086 of Chapter 143 or by the Texas Ethics Commission. Nothing contained in this Subsection is intended to limit the use of the individual firefighter's vacation time for legislative and/or political activities.

C. Written Request Required

All requests for ABL must be in writing and submitted at least 3 business days in advance to HQ support staff. To be considered timely, the request must be received in person, by fax, or by e-mail by noon of the day notice is due.

D. Approval of ABL Requests

The Fire Chief or the Fire Chiefs designee shall approve timely ABL requests, subject only to the operational needs of the Department.

Section 2. Funding and Administration of the Association Business Leave Pool

A. Manner of Funding

For the timeframe between the effective date of this Agreement and through December 31, 2017, the City will fund a pro rata number of hours of Association Business Leave

to a pool of leave time to be used in accordance with this Article. Beginning January 1, 2018, and each subsequent year during the term of this Agreement, during the first ten (10) days of the calendar year, the City will contribute 5,600 hours of Association Business Leave to a pool of leave time which may be used in accordance with this Article. The City will track deductions from the pool as Association Business Leave is used.

B. Administration of Pool

Up to one thousand (1,000) hours remaining at the end of a calendar year will remain in the pool for use in the following year. However, at no time may the pool exceed sixty six hundred (6,600) hours. Up to one thousand (1000) hours in the pool at the end of the Agreement will be available for use in the following year for Association Business Leave activities. The City and the Association shall track utilization of ABL.

C. Use of Association Business Leave by Association President

Beginning January 1, 2018, the Association President shall be permitted up to 2080 hours of Association Business Leave from the pool balance per year, less accrued leave time, which must be used under AFD policies, and shall be assigned to a 40 hour work week. The Association President shall account for all leave time taken under such status through the Fire Chiefs office and such time shall be subtracted from the Association leave pool. The Association President will not be entitled to overtime pay from the City for any hours using ABL leave. The Association President may at any time be required to return to duty if an emergency situation exists. The Association President may also be assigned to any special projects at the discretion of the Fire Chief. The pool balance will not be reduced by any hours that the President actually works at the direction of the Fire Chief. At the end of his/her term, the Association President will be allowed to return to the assignment s/he occupied before commencing ABL to perform duties as Association President.

D. Administrative Procedures

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

ARTICLE 11

SHARED COMMUNICATIONS BETWEEN CITY & ASSOCIATION

Section 1. Need for Shared Communications

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

Section 2. Principles and Goals of Shared Communications

A. Avoidance of Personal Attacks

Whenever Fire Department management or the Association finds it desirable to communicate with members of the Department or the public, it is specifically agreed that each will avoid personal attacks or inflammatory statements.

B. Co-sponsored events

It is also a goal of shared communications that Fire Department management and the Association will identify and participate in co-sponsored events.

C. Association Representation on Department Committees

Finally, it is a goal that the Association locates and assigns Association representatives to Fire Department committees established by the Fire Chief to advise on policies or working conditions.

Section 3. Shared Communications Systems

A. Association Bulletin Boards

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

- (1) There shall be no personal attacks or inflammatory statements;
- (2) All materials shall be directed toward dissemination of general Association information and advising members of events, meeting, and functions;
- (3) Department property (bulletin boards on AFD premises, the Pony, and email) is for public business only, and is not dedicated or made available for expressing or debating views or issues, or for any type of political campaign or election information or endorsements (this limitation does not apply to elections for Association officers, provided that only brief notices naming the individual rank, years of service and Association office sought shall be permitted);
- (4) Any concerns about the content of posted material shall be brought to the attention of the Association President or designee for review and adjustment as soon as the concerns are noticed. The objectionable material shall be removed from the bulletin board until final determination. An Association notice may include a simple reference to another source for further information such "See AFA Web Page or the Smoke Signal"; and

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

B. Association Use of the Pony and Station Computers and Printers

The Association may also request approval to distribute specific Association materials to the stations through the Department's inter-office mail system (the "Pony"). The Fire Chief, or her/his designee, shall not unreasonably deny such permission. With approval of the Fire Chief, or designee, the Association may be granted approval to use station printers and computers for rapid dissemination of information. After initial approval of a particular type of routine communication, subsequent approval of these types of communications is not required. Use of the Pony or the Department's computers to disseminate information without prior approval shall be limited to members of the Executive Board and the Association President, on the following categories:

- (1) Items approved by the Executive Board of Local 975 and certified by the Board as in compliance with the provisions of this Article;
- (2) Dissemination of Local 975 meeting agendas;
- (3) Special notices of Association events, activities, member opportunities, public service announcements such as "Fill the Boot" or reminders to vote;
- (4) Notices of committee meetings; and
- (5) Notices of family member deaths.

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

C. Other Association Distributions

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

Section 4. Joint Communications

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

ARTICLE 12 LEAVE PROVISIONS

SICK LEAVE

Section 1. Sick Leave Accrual Rates

Sick leave shall be accrued at the following rates.

53-hour week employees	7.50 hours per pay period
40-hour week employees	5.00 hours per pay period

Section 2. Sick Leave Use

A. The use of sick leave will be allowed in case of health care appointments, personal illness, or physical incapacity of an employee. It will also be allowed when a Fire Fighter is required to care for a member of his/her immediate family who is ill or incapacitated due to a medical condition.

B. Sick leave may be taken in intervals of one-quarter hour for all time that the employee is absent during a regular work day.

Section 3. Payment of Sick Leave upon Separation

Upon separation, maximum payout of sick leave shall be as follows:

53-hour week employees	1080 hours
40-hour week employees	720 hours

VACATION LEAVE

Section 4. Vacation Accrual Rates

Vacation leave shall be accrued at the rates in effect for Fire Fighters as of October 1, 2014.

Section 5. Leave Accruals for Certain Fire Fighters on Forty Hour Workweek

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

Section 6. Vacation Use

All vacation leave shall be scheduled and used in accordance with Department procedures approved by the Fire Chief, which shall include a vacation selection process based on seniority. The procedures may permit approval of vacation for up to two Fire Fighters per unit assigned to the same station regardless of the unit to which they are assigned.

Section 7. Vacation Slots

The number of vacation slots that each Battalion will receive per shift will depend on the

number of Fire Fighter positions (excluding Battalion Chiefs) assigned to that Battalion based on the ratio of one vacation slot for every seven (7) Fire Fighter positions (excluding Battalion Chiefs) or fraction thereof.

Section 8. Extra Vacation Slots on Certain Holidays

The parties recognize that having one extra vacation slot available per Battalion per shift on Thanksgiving and Christmas is desirable. Therefore, the City agrees to permit one additional Fire Fighter per Battalion and per shift to schedule vacation time for the shift of, the shift before and the shift after Thanksgiving and Christmas. These slots will be in addition to those permitted under Section 7 above.

Section 9. Vacation: Maximum Leave Accruals

Maximum accrual of vacation shall be as follows:

53-hour week employees	600 hours
40-hour week employees	400 hours

The Fire Fighter will not receive financial compensation for any hours in excess of the cap.

Section 10. Vacation/sick Leave Buyback

During the first year of this Agreement, the City will budget up to \$500,000.00 for vacation/sick leave buyback, available on a first come, first served basis. If the employee elections as allowed under this Section exceed this dollar amount, the sick and/or vacation leave bought back by the City shall be reduced pro-rata for all persons who elected to participate. No employee shall lose any leave balance which is not purchased.

Vacation/sick leave buyback is available at the end of each six-month period covered by this Agreement (commencing April 1, 2018) for each year in which the program continues to:

- (1) Operations Fire Fighters who have used 24 hours or less of sick leave during the immediately preceding six-month period, and
- (2) Non-Operations Fire Fighters who have used 16 hours or less of sick leave during the immediately preceding six-month period.

The City Manager, at his/her sole option, may continue the vacation/sick leave buyback program in subsequent years of the Agreement. The Manager's decision to continue the option in any subsequent year will not bind the Manager to continue it in other years.

Employees will be permitted to sell back accrued leave, to the extent and under the limitations set forth in this Section.

- (a) Members must have a minimum sick leave balance of 240 hours in order to be eligible for the Buy Back program; and

- (b) The Buy Back program will be capped at a maximum 24 hrs per individual per each six month period, 48 hours total for the fiscal year; and
- (c) For 40 hour week staff members the Buy Back program will be capped at a maximum 8 hrs per individual each six month period, 16 hrs total for the fiscal year

Employees must elect to sell back in writing, on or before October 1, and April 1, respectively for each immediately preceding six (6) months of each sell back year, using a form provided by the Chief or his designee. Payments shall be made in the months of November and May, respectively, of the applicable year should the program be continued in any year after the first year of the Agreement.

Catastrophic Sick Leave donations shall not be counted as Sick Leave Used.

Section 11. Payment of Vacation Leave Upon Separation

Upon separation, maximum payout of vacation leave shall be as follows:

53-hour week employees	360 hours
40-hour week employees	240 hours

Section 12. Accruals

Sick leave and vacation leave shall accrue only in pay periods for which benefits accrue.

Section 13. Family and Medical Leave

The provisions of the City of Austin Personnel Policies shall apply to the use of leave pursuant to the Family and Medical Leave Act (FMLA).

EMERGENCY LEAVE

Section 14. Availability and Amount of Emergency Leave

Emergency Leave is available to be used only for a death in the Fire Fighter's immediate family. A Fire Fighter on a 53-hour week is allowed four (4) days [forty-eight (48) hours] of Emergency Leave. A Fire Fighter on a 40-hour week is allowed five (5) days [forty (40) hours] of Emergency Leave. Emergency leave may be used on no more than four (4) occasions per calendar year, unless the Fire Chief grants a hardship exception to this limit.

Section 15. Emergency Leave Not Subtracted from Other Leave

A Fire Fighter's leave balances will not be reduced by usage of Emergency Leave.

CATASTROPHIC LEAVE

Section 16. Catastrophic Leave

The Department shall establish a procedure whereby sick leave may be donated and used. The Department will establish criteria for the donation and use of hours for the identified need, and the

appropriate amount of donated hours. Included in the criteria will be a one-hour minimum donation and a specified beginning and ending date for the donation period. This procedure shall be subject to final approval by the Fire Chief before it is implemented. All requests for use of donated sick leave will be subject to approval of the Fire Chief.

MILITARY LEAVE OF ABSENCE

Section 17. Military Leaves of Absence

Military leave for annual duty in the military reserves or national guard will be granted in accordance with Local Government Code Section 143.072, plus an additional 48 hours for a Fire Fighter assigned to a 53 hour work week. A leave of absence for initial military training or a recall to active military duty will be granted in accordance with Local Government Code Section 143.072. Notwithstanding any provision of Section 143.072 of the Local Government Code, neither military leave nor military leave of absence requires approval of the Civil Service Commission.

HOLIDAYS

Section 18. Holidays

The following official holidays for City employees will be observed for Fire Fighters during the term of this Agreement. If a holiday falls on Saturday, it will be observed on the preceding Friday; if a holiday falls on Sunday, it will be observed on the following Monday.

New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Washington's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	Friday after Thanksgiving
Christmas Eve*	December 24
Christmas Day*	December 25
Two Personal Holidays**	Open

*Department policy and procedure will specify how these adjacent holidays are observed when either or both of them fall on a Saturday or Sunday.

**Personal holidays will be used in accordance with Department policy and procedure. One of the two personal holidays will count as the Fire Fighter's September 11 holiday. Both parties agree this section is in compliance with the state statute regarding the September 11 holiday for Fire Fighters.

EXCEPTION VACATION

Section 19. Exception Vacation

Exception vacation hours are hours banked in a separate leave account as each holiday occurs. Use of exception vacation hours is subject to the same Department policies and procedures that apply to use of regular vacation hours.

Section 20. Maximum Accruals.

Maximum accrual of exception vacation shall be as follows:

53-hour week employees	264 hours

40-hour week employees	176 hours

The Fire Fighter will not receive financial compensation for any hours in excess of the cap.

Section 21. Payment of Exception Vacation Upon Separation

Upon separation, maximum payout of exception vacation shall be as follows:

53-hour week employees	264 hours

40-hour week employees	176 hours

ADMINISTRATIVE LEAVE

Section 22. Administrative Leave

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

Section 23. Preemption

Fire Fighters shall be entitled to the Leave provisions in this Article and Department policy as of the effective date of this Agreement. Such entitlements shall not be changed during the term of this Agreement, and shall preempt any inconsistent Leave provisions under Chapters 141, 142, and 143 of the Texas Local Government Code. No change to or adoption of any state statute after the effective date of this Agreement shall alter or add to the terms of this Agreement in respect to Leave. Additionally, such entitlements shall totally preempt Council Resolution No. 20130822-018 in its entirety, and that portion of Council Resolution No. 20130620-015 amending City of Austin Personnel Policies Chapter A, Section III.B.1.c.(2) Parental Leave Benefit. The remainder of Council Resolution No. 20130620-015 is not preempted by this Article.

ARTICLE 13 PERSONNEL DEPLOYMENT

Section 1. Trading Assignments

Two Fire Fighters of the same rank may trade or "swap" assignments in accordance with this procedure. An agreed swap must have the approval of the appropriate Battalion Chief and the next level supervisor. The swap must be made voluntarily by each Fire Fighter. No Fire Fighter may enter into a swap if he/she is high enough on a promotional eligibility list to make his/her promotion from that list likely. There shall be no swaps involving more than two Fire Fighters. If the swap is between Combat Operations and a Staff Section, it must be with the most senior member of that Staff Section who desires to return to Combat Operations. A member who swaps into a Staff assignment is required to remain in that assignment as described in Section 2.D. Any manipulation of the swap procedure by any Fire Fighter or supervisor shall be grounds to disallow the proposed swap.

Section 2. Policy on Transfers to Open Assignments

A. "Open Assignment" Defined

For purposes of this Agreement only, an "open assignment" is a Civil Service position of any rank from Fire Fighter through Battalion Chief which has been vacated for any reason, including but not limited to retirement, resignation, termination, promotion, or transfer. New positions authorized by the City Council are also "open assignments."

B. Policy

The Fire Chief will issue a General Order that will include provisions establishing posting parameters including: posting of open assignments within ten (10) days after they occur; a minimum of ten (10) days posting period; providing for an application and selection process; and providing written feedback to all applicants who request same. Once an assignment has been posted, it will remain posted on the Fire Department intranet until filled.

C. No selection for open assignment

If no selection is made for an open assignment advertised by a Battalion Chief, the Fire Chief may, at his/her discretion:

1. Leave the assignment open;
2. Fill the assignment with a staff person, if possible;
3. Fill the assignment by promotion;
4. Fill the assignment with a recent academy graduate (if the opening is an assignment in the Fire Fighter rank); or

5. Fill the assignment by transfer.

D. Two-Year Stay In Staff

1. Fire Fighters who promote or transfer to a staff assignment (40 hours per week) or any other assignment for which assignment pay is received (except bilingual pay) shall ordinarily stay in the assignment for a minimum of two years.

2. A Fire Fighter who is nearing completion of a staff assignment may apply for an open assignment in Operations. If accepted for such assignment, the Fire Fighter will be placed in that open assignment as soon as operational needs of the Department allow, but no sooner than the pay period in which the Fire Fighter's two year staff assignment anniversary date occurs. The assignment will be reserved for the accepted Fire Fighter until such time that he or she is released from the staff assignment. If the Fire Fighter is not selected for the requested position, the Fire Fighter will, as soon as he/she has served 24 months in the staff assignment and as soon as operational needs allow, be placed in another vacant Operations position.

E. Transfer Procedures

The procedures to be followed in transferring Fire Fighters to "open assignments" are contained in the General Orders. If a Fire Fighter can document that they have applied for at least three open positions and has failed to be awarded any of them, the Fire Fighter may request that his/her transfer request be elevated to the Division Chief level. The Division Chief will investigate the situation and will assist the Fire Fighter in placement to an open position as soon as operational needs of the Department allow.

F. Awarded Positions

Once a position has been awarded to a Fire Fighter, the Fire Fighter may not be removed from that position without a documented business need. A position occupied for six months will become an awarded position.

Section 3. Shift Trading Privileges

- A. During the term of this Agreement, the Department shall have a policy providing for the trading of shifts/time, and Kelly shifts, among Fire Fighters. The policy shall provide flexibility for Fire Fighters to make such trades, provided that the trades do not compromise the integrity of the firefighting company or the business needs of the Department.

- B. The City has agreed to facilitate the Fire Fighters' shift exchanges where the Fire Fighters do so at their sole option and for their convenience. The City offers Fire Fighters no incentive, encouragement, benefit, or promise of reward or advantage to Fire Fighters in connection with providing this option. The City retains the right to make any changes in policies or practices which the City Attorney deems necessary to comply with State and Federal overtime laws and regulations, including but not limited to 29 C.F.R. §§ 553.31 and 553.227, governing the

City's involvement, regulation, or approval of firefighter participation in this voluntary option.

Section 4. Maternity Alternative Duty Status

For safety purposes, Fire Fighters who learn that they are pregnant may report their condition as soon as practical to their immediate supervisor and report for Alternative Duty. Alternative Duty may be worked during the term of the pregnancy. The Fire Chief, on a case-by-case basis, may authorize post-delivery Alternative Duty status.

Section 5. Discretion of Fire Chief

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

ARTICLE 14 HOURS OF WORK

Section 1. Employees Working 53-Hour Weeks

Employees who work a 53-hour week shall work one twenty-four (24) hour work shift and forty-eight (48) hours off duty. This shift schedule results in an average of fifty-three (53) hours per week. This shall be accomplished by scheduling eighteen (18) twenty-four (24) hour regular shifts and one (1) twenty-four (24) hour Kelly shift.

Section 2. Employees Working 40-Hour Weeks

The basic work week shall be forty (40) hours per week for all Fire Fighters who are not assigned to work a 53-hour week.

Section 3. Changes by Mutual Agreement

By mutual agreement, the Fire Chief and the Association's Executive Board may agree to change the hours of work set out in this Article.

ARTICLE 15 OVERTIME

Section 1. Overtime Rates

A. Except as may otherwise be specified in this Agreement, all Fire Fighters shall be compensated at the overtime rate of one and one-half (1.5) times the Fire Fighter's regular rate for all hours worked over the applicable overtime threshold prescribed by the FLSA. For purposes of computing overtime, all approved paid leave time, except sick leave and regular vacation leave, shall be calculated as hours worked.

B. "Regular rate" or "regular rate of pay" for the calculation of overtime shall have the meaning prescribed by the FLSA (in accordance with 29 CFR Sections 778.107 through 778.109 and 778.113).

C. Overtime worked at the beginning or end of a Fire Fighter's shift shall be to the nearest quarter hour for the actual time worked. Overtime that occurs as the result of being called back for duty, and is not a continuation of the Fire Fighter's shift, will be paid to the nearest quarter hour for the actual time worked with a minimum of two (2) hours provided.

Section 2. Overtime Rules

A. During the term of this Agreement, the Department shall have a policy regarding overtime work in the Operations Division. The policy shall provide for constant staffing of the Operations Division. The City agrees to a consistent and predictable application of its policy regarding overtime, provided that the application of the policy does not compromise the integrity of the firefighting company or the business needs of the Department. Overtime will be paid, when necessary, to maintain staffing levels established by the Fire Department's staffing policies.

B. Overtime shall be paid consistent with Section 1 of this Article to an individual for hours worked during his/her regularly assigned Kelly Shift. Fire Fighters will not be considered for overtime while working a Kelly trade.

C. Fire Fighters on their Kelly shift who have placed their name on the overtime Signup list will be offered overtime first and generally be released last. Within this group, Fire Fighters with the lowest total "personnel shortage" overtime hours year to date, regardless of rank, will be offered overtime first. If, after utilizing this process, overtime is still necessary, additional members will be selected by a process that does not compromise the integrity of the firefighting company.

Section 3. On Call Status

The Fire Chief shall continue a program of providing additional pay for Fire Fighters who are required to be on call while off duty, which will be consistent with the Department's On Call Policy as it currently exists, or as amended in the future.

Section 4. FLSA Exemption

It is understood and agreed that the City is entitled to the partial exemption under 7(k) of the FLSA (29 U.S.C. §207(k)) and that the Fire Fighters assigned to the Operations Division meet

the test for the 7(k) (also referred to as the 207k) partial exemption.

ARTICLE 16
PROMOTIONS, DEMOTIONS, & REINSTATEMENTS

PROMOTIONS

Section 1. Purpose and Objective

The Association hereby agrees to the deviations from Chapter 143 promotion procedures specifically authorized by this Article. Except as allowed by this Article, the City will comply with the promotion procedures specified in Chapter 143, and retains all prerogatives granted to it by the statutory procedures.

Section 2. Challenges to the Promotional Process

In the event of a lawsuit or administrative claim asserted against the Association based on an allegation that a deviation by the City from Chapter 143 promotion procedures authorized by this Article violates a state or federal law, the City will reimburse the Association for sums paid as damages in such lawsuit or settlement, and for sums paid as attorney's fees and court costs in defending such lawsuit or claim, subject to each of the following required conditions:

1. The Association will fully and vigorously defend the claim on the merits.
2. The City has the right to approve the amount of any settlement of any such claim against the Association.
3. The Association will not assert a claim against the City based on an action by the City that was required by the terms of this Article.
4. Reimbursement for amounts paid as damages or settlement will be made after resolution of the lawsuit by either final judgment in court (including appeals), or settlement approved by the City.
5. Reimbursement for attorney's fees and costs will be ongoing as such fees and costs are paid by the Association. The City will reimburse the Association for attorney's fees at the actual hourly rate normally paid by the Association to the attorney, and in any event no greater than the average hourly rate paid by the City for outside counsel during the preceding fiscal year.
6. The City's total liability for damages and/or fees and costs under this Section will not exceed one hundred fifty thousand (\$150,000.00) dollars for the term of this Agreement, regardless of the number or size of claims asserted against the Association.

Section 3. Promotional Examinations – General Provisions

A. Scheduled Examination Dates & Rescheduling Exams

Prior to the effective date of this Agreement, the Chief will establish an examination schedule for all tested ranks, and publish the schedule as Appendix B to this Agreement. No promotional list shall extend longer than six (6) months after the expiration of the Agreement. Scheduled promotional examinations shall be held as provided in Appendix B of this Agreement unless the prior eligibility list is earlier exhausted, in which case the provisions of subsection F

apply. The Department may require members to sign up to take the examination according to the terms specified in the notice of the exam. The actual date of the exam may be rescheduled for up to sixty (60) days in the event of circumstances beyond the City's control, including but not limited to extraordinary weather events or other emergencies. In the event of a rescheduling, no further notice of the examination is required other than the new time, place, and date of the rescheduled examination, notwithstanding section 143.029. Only members eligible as of the original posted date of the examination shall be eligible to sign up for and take the examination.

B. Effective Date of Promotions, Back Pay Liability

With the exception of the initial scheduled examination dates for each rank, meeting the scheduled examination dates provided for in Appendix B or the re-scheduled date of an exam as allowed in Subsection A, precludes any liability for back pay for that position, provided that the promotion occurs within sixty (60) days after the scheduled examination date or within sixty (60) days after the date of an un-scheduled examination under Subsection F. A promotional delay beyond the sixty (60) days, caused by an Assessment Center appeal filed by any promotional candidate pursuant to Section 14.A.2, precludes any liability for back pay for that position. The right to back pay shall not be affected as to the initial examinations given under the schedule in Appendix B. The right to a retroactive promotion date and seniority shall not be affected as to any examination given during the life of this Agreement.

C. Eligibility

Subject to Subsection A. above and Section 4 below, all candidates for promotion must meet the requirements of Local Government Code §§143.028 and 143.030.

D. Pass Not Promote Points

If a Fire Fighter takes a promotional exam for the rank of fire specialist after December 20, 2009, and passes but does not promote from the resulting eligibility list, the Fire Fighter will receive one (1) point on his/her written exam raw score (after the application of the criteria for breaking ties) in future promotional examinations for the same rank. A maximum of two (2) PNP points may be awarded.

E. Seniority Points

Except as modified by this subsection, nothing in this Agreement preempts Local Government Code Chapter 143.033. If the candidate receives a passing written examination score, seniority points shall be added to the candidate's composite score on the testing battery.

F. Unscheduled Tests Necessitated by Exhausted Eligibility Lists

If a promotional eligibility list for a rank is exhausted more than 90 days prior to the next scheduled promotional exam for that rank, the City may conduct an un-scheduled promotional exam for that rank as follows:

1. The date of the unscheduled written examination and the list of source materials for the examination shall be posted in accordance with the provisions of Local Government Code Chapter 143.

2. The unscheduled exam, including any Assessment Center, will be conducted in accordance with the requirements of this Article.

3. The resulting Eligibility List will be created in accordance with the requirements of this Article, and will last for twelve (12) to twenty-four (24) months from the date of the written examination. The duration of the list shall be specified in the posting for the written promotional examination.

4. The date of the next scheduled exam will be during the month which is 12-24 months after the date of the unscheduled exam, if the new exam date would occur before the expiration of this Agreement.

5. If the new date for the scheduled exam is less than one year prior to the expiration of this Agreement, the Eligibility List created as a result of the exam will expire six (6) months after the Agreement's termination date.

Section 4. Promotional Process for Captains & Battalion Chiefs

A. Structure of Process

1. Vacant positions in the ranks of Captain and Battalion Chief shall be filled from an eligibility list created by a promotional process consisting of a Written Examination and an Assessment Center conducted in accordance with this Article.

2. The Fire Chief, with the assistance of the Promotional Process Consultant (third party vendor), will develop and implement the promotional process which will include a written test and an Assessment Center, covering subject matters as determined by the Chief.

3. The written examination score will be at least fifty percent (50%) of the composite score, unless the City's Promotional Process Consultant identifies a psychometric reason for weighting the written examination score at less than fifty percent (50%) of the composite score. If the Consultant identifies such a psychometric reason, the change to the weighting of the written examination score shall not be subject to challenge by the Association, either through a contract grievance or in court, unless there is evidence that the reason was obtained by intentional misconduct or clerical error.

4. The City's Promotional Process Consultant will certify that that the promotional process is valid in accordance with accepted professional standards, such as the Society for Industrial and Organizational Psychology's *Principles for the Validation and Use of Personnel Selection Procedures* (SIOPS). This certification, a copy of which will be provided to the Association, shall serve as conclusive evidence of promotional process validity, and such validity shall not be subject to challenge by the Association, either through a contract grievance or in court, unless there is evidence that the certification was obtained by intentional misconduct or clerical error.

5. The Association retains the ability to file a grievance contesting whether the City has complied with the provisions of this Article, but will not otherwise bring or support any legal action challenging the City's implementation of this Article. This does not preclude the Association from bringing suit or seeking to intervene in litigation for the sole purpose of defending a promotional process implemented in accordance with this Article, neither does it

preclude the City from contesting such suit or intervention.

B. Written Examinations

1. The date of the Written Examination and the list of source materials for the examination shall be posted in accordance with the provisions of Local Government Code Chapter 143.

2. The Promotional Process Consultant will determine whether or not to have a passing cut off score as a condition of proceeding to the Assessment Center portion of the examination.

C. Assessment Centers

1. Parties Devising & Conducting Assessment Centers

(a) The Assessment Center process shall be administered by a Promotional Process Consultant (third party vendor) designated in accordance with this Article. The third party vendor shall be a professional vendor who is not a current or former employee of the City of Austin.

(b) The assessments themselves, which will be video recorded, shall be performed by an Assessment Center Panel consisting of three (3) members designated in accordance with this Article. An individual candidate's assessment will not be conducted in the presence of other promotional candidates, and may be given at different times from other candidates.

2. Oversight Committee

(a) An Oversight Committee ("OC") shall be appointed in accordance with this Article and shall have the responsibilities set forth below. The purpose of the OC is to identify the criteria (scope of work) to be used to select the third party vendor, and to assist the purchasing department in the development of the Request for Proposal (RFP). The OC will endeavor to reach consensus on a recommendation on the scope of work, the development of the RFP, and the selection of the vendor. The failure to reach consensus shall not be a grievable matter and shall not delay the selection process. The OC shall evaluate proposals (which may include interviewing applicants and checking references), and score proposals pursuant to purchasing department procedures which include a recommendation for its choice of vendors to the Fire Chief. The Association may appoint two voting members to the OC. The remaining three voting members of the OC will be appointed by the Fire Chief and the Director of Civil Service. The Director of Civil Service may also add two additional non-voting members from persons in departments that regularly are a part of the RFP process. The Director of Civil Service, in consultation with the Fire Chief, will draft the Request for Proposal and participate with the

OC in all phases of the process. No employee who is then a candidate for promotion to Lieutenant, Captain or Battalion Chief shall serve on the Oversight Committee.

- (b) The third party vendor (once awarded), upon request of two or more members of the OC, will meet with them and discuss the methods used in developing the testing processes.

3. Assessment Process Panel

The Assessment Process Panel (the "Panel") shall consist of three (3) members. The Promotional Process Consultant shall be responsible for the recruiting, training, and selection of the Panel members. None of the Panel members may be current, former, or retired employees of the City of Austin. None of the Panel members may have any relationship with any candidate participating in the Assessment Center. All members of the Panel shall have at least one (1) year of experience, within the last five (5) years immediately preceding the Assessment Center, as a fire service professional in the same or higher rank being assessed in a fire department having a minimum staffed strength of four hundred (400) fully paid career fire fighters. The same Panel of three (3) members will assess the entire candidate pool for any given scenario or discrete portion of the assessment center. This provision shall not apply to any candidate taking a promotional examination by virtue of rights granted under USERRA.

4. Posting and Orientation

The date(s) of the Assessment Center shall be posted at least ninety (90) days prior to the date(s) specified for the Assessment Center. If the date(s) of the Assessment Center are postponed, the new date(s) shall be posted at least ten (10) days prior to the new date(s). A brief description of the criteria and subject areas for the Assessment Center will be posted at least ninety (90) days prior to the date of the Assessment Center. All candidates will be invited to attend a classroom orientation concerning the Assessment Center process. The invitation will be posted on FireNet at least ten (10) days prior to the date of the orientation.

5. Debriefing Opportunity for Candidates

After the Assessment Center process has been completed, for each candidate who files a request there will be a process for a voluntary, individual debriefing, at which time the candidate will receive information concerning his or her scores and the weight of the components of the testing process. Notwithstanding Section 4.C.6 below, upon request a Fire Fighter may review the video of his/her own assessment center as a part of the debriefing process.

6. Confidentiality of Assessment Centers

The City and the Association agree that promotional Assessment Centers conducted in accordance with this Article, including any video recording of the assessments, are a scored component part of a Promotional Examination, used in like manner as the scored written examination, and are therefore confidential pursuant to LGC Section 143.032(h).

D. Composite Scores from Written Examination and Assessment Center

A candidate's total score resulting from the promotional procedure shall be based on a composite of scores combining the final Written Examination and the Assessment Center

scores, as determined by the Promotional Process Consultant. The total credit for all combined exam components will be 100% of the candidate's total score, and will be allocated as part of the test design, subject to the requirements of Section 4.A.3. The maximum number of points available for any single examination component will be determined through the test design, with the promotional consultant, which may include the job analysis process with Subject Matter Expert (SME) input. The allocation between the two procedures will be published as soon as practicable prior to the date of the written examination.

E. Creation of Eligibility List

1. Candidates who successfully complete all of the Assessment Center testing processes will be placed on an eligibility list in rank composite score order. A final composite score list will be issued by the Promotional Process Consultant for each Assessment Center completed. The Director of Civil Service shall produce the eligibility list from which vacant positions shall be filled in rank order. The eligibility list shall rank all candidates based on the candidate's composite scores from the Written Examination and the Assessment Center, together with any seniority points.

2. If, after the expiration of the deadline to file an appeal, no appeals have been filed, the Civil Service Office shall post the eligibility list and the list shall become effective on the date of the written exam. If, during the time to file an appeal, an appeal has been filed, the Civil Service Office shall then submit the list for certification to the Civil Service Commission.

3. If, for any reason, an effective eligibility list needs to be corrected, the Civil Service Office shall correct the list and submit the corrected list for certification to the Civil Service Commission. If the Commission chooses to certify a corrected list, the effective date of the list shall remain the same as the original effective date. In the event of a clerical or electronic error in computing the test score, the expiration date of any promotional examination eligibility list may be amended by written agreement between the President of the Association and the City Manager.

Section 5. Life of Eligibility Lists Created Under This Agreement

Notwithstanding the provisions of Local Government Code §143.036, the life of each promotional eligibility list created during the life of this Agreement will be determined by the Chief, but in no event shall be less than twelve (12) months or more than twenty-four (24) months from the date of the written examination, notwithstanding any pending disputes, appeals or litigation concerning an applicant's score or right to promotion. The duration of the list shall be specified in the posting for the written promotional examination.

Section 6. Existing Promotional Eligibility Lists

Promotional eligibility lists that exist on the effective date of this Agreement will be used to fill promotional vacancies in the ranks for which they were created until they expire. Division Chiefs promoted from Civil Service promotional lists may not be demoted involuntarily except in accordance with Local Government Code §143.054 or §143.085.

Section 7. Eligibility to Promote to Fire Specialist

Fire Fighters wishing to take the civil service promotional examination for the rank of Fire Specialist must be approved Relief Drivers. All Fire Fighters will be provided an opportunity to

take the Relief Driver course at some point prior to the date they become eligible to take the Fire Specialist promotional examination.

Section 8. Unlawful Impact

The City agrees that it will not change the promotional process for any rank, once adopted for a promotional cycle, unless a court determines that the promotional process is unlawful. If the Department of Justice or the EEOC/TWC determines that reasonable cause exists to believe that the process is unlawful, the City and the Association will engage in informal discussions with the DOJ or the EEOC/TWC to determine whether to implement any changes or adjustments acceptable to the DOJ or the EEOC/TWC which otherwise comply with applicable law. Prior to any changes to the process being implemented, the Association must agree to such changes, unless the changes are ordered by a court.

Section 9. Promotions to Division Chief and Assistant Chief

A. Promotions by Appointment Allowed; Appointment Procedure

1. Except as herein specified, promotions to the rank of Division Chief and Assistant Chief will be made by use of the appointment procedure specified in Local Government Code §§143.014(b) & (e)-(h), except that appointees must hold the rank of Captain or above. Fire Fighters appointed to such positions must have all the qualifications specified, and will have all rights and remedies afforded them under §143.014, including but not limited to the appeal rights provided in §§143.014(h).

2. During the term of this Agreement, the total number of Division Chiefs and Assistant Chiefs may not exceed fifteen (15). The total number of appointed Division Chiefs and Assistant Chiefs may not exceed ten (10).

3. The Fire Chief may not make an appointment to the rank of Division Chief pursuant to this Section, until the Civil Service Promotional Eligibility List for the rank of Division Chief in existence on the effective date of this Agreement either expires or is exhausted prior to the date of its expiration.

B. Promotions by Appointment; When Allowed

1. If a vacancy occurs at the rank of Division Chief or Assistant Chief, the Fire Chief shall have a window of forty-five (45) days, from the date of the vacancy, to fill the vacancy by appointment pursuant to Section 9.A(1) of this Article. No Fire Fighter shall acquire an equitable property right in that vacant position or a primary right to a promotion unless the vacancy remains after the expiration of the forty-five (45) day window. For purposes of this Subsection, a vacancy occurs when an existing Division Chief or Assistant Chief position is vacated pursuant to LGC Chapter 143.036(a), or when a newly created Division Chief or Assistant Chief position is established by ordinance. This subsection shall not affect the status of individuals on existing promotional eligibility lists, other than the ranks of Assistant Chief and Division Chief, on the date a vacancy occurs as provided in Chapter 143.

2. The Fire Chief may not fill the vacancy by appointment unless:
- (a) The Chief makes the appointment effective within the forty-five (45) day window, and

- (b) On the date of the appointment, the total number of appointed Fire Fighters (excluding the Fire Fighter to be newly appointed) in the combined ranks of Division Chief and Assistant Chief is fewer than ten (10).
- (c) If the Chief does not fill the vacancy by appointment within the 45 days, Sections 143.036(a) and 143.036(e) shall apply for purposes of determining when the vacancy occurred and the timelines for filling that vacancy.

3. If a vacancy is not filled by appointment, the vacancy shall be filled in accordance with the promotional process for Captains & Battalion Chiefs set forth in this Article.

4. The forty-five (45) day window provided for by this Subsection shall be excluded in determining whether a promotional candidate is entitled to back pay based on the date of his/her promotion.

C. Qualifying Criteria

1. The Fire Chief shall establish, in writing, required qualifying criteria for appointed positions, which are in addition to the qualifications listed in Local Government Code §143.014, and may include management experience, education, training, and special experience.

2. The Fire Chief may not make an appointment until the required qualifying criteria are established as prescribed by this Subsection.

3. The Fire Chief may remove without cause a person appointed under this Section, subject to the person's rights under Local Government Code §143.014(g).

Section 10. Shift Commander Assignment

The Fire Department will maintain a minimum of three (3) Shift Commander assignments which will be filled by a Division Chief with a minimum of two (2) years of experience in Operations in the rank of Battalion Chief, or who attained the rank of Division Chief through competitive examination. The requirement to fill the Shift Commander assignment in this manner will extend beyond the expiration date of this Agreement for six (6) months, or until every promotional list created under this Agreement has expired, whichever is later. This provision may also be extended as a result of any extension of this Agreement under Article 30.

WRITTEN PROMOTIONAL EXAMINATION APPEAL PROCESS

Section 11. Application of this Process

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

Section 12. Appeals Criteria

A. In appeals from written promotion examinations, criteria will be applied to judge the merits of an appeal. The criteria are established in this Section, but may be modified by the Appeals Criteria Committee (“ACC”) as provided in this Article. In judging the merits of an appeal the Employee Review Committee (“ERC”) described in this Article shall apply only the criteria listed in this section. If, however, the ACC has modified the criteria, the modified criteria will be used by the ERC. The Civil Service Commission must apply the criteria as well, but may add any other criteria it deems relevant to judge the merits of an appeal. All appeals must be on the form prescribed by the Director of Civil Service and must meet the following criteria for the appeal to be submitted to the Civil Service Commission:

1. The form must be completed in the Fire Fighter’s own handwriting, must be legible and must contain the following:

- (a) Fire Fighter’s name and TXFIR number;
- (b) Name of the exam;
- (c) Question # being appealed;
- (d) The reason(s) why the question or exam is being appealed; and
- (e) The date.

2. The form must be completed so that it challenges a specific question.

3. The form must state or list clearly the specific reason(s) for the appeal and must refer only to the approved source material list used to formulate the questions.

4. All support materials cited in or attached to the appeal form must come only from the approved source material list.

5. Unless the criteria for appeals are altered or modified by the Appeals Criteria Committee, appeals must be based on at least one of the following reasons:

- (a) There is more than one correct answer.
- (b) There are no correct answers.
- (c) The question is not clearly stated or there is an error so that the correct answer could not be determined.
- (d) The question is not from the listed source material.
- (e) The correct answer scored is not the correct answer.
- (f) The context of the source material was not used properly in the question or answer.

6. The following contains examples of appeals that will not be submitted to the Civil Service Commission for its review:

- (a) Punctuation marks are missing or incorrect.
- (b) The exact wording in the source materials was not used.
- (c) The question is not job relevant. (All materials included on the approved source materials list are deemed job relevant.)

Section 13. Appeals Criteria Committee

A. Role of Appeals Criteria Committee

An Appeals Criteria Committee (ACC) shall be appointed to review and modify, as necessary, the criteria for what may be appealed to the Civil Service Commission following all written promotional examinations. The ACC shall review the appeal criteria contained in this Agreement following the first written examination appeal conducted under this Agreement to determine whether the criteria should be modified. Thereafter, the ACC shall meet to review the criteria prior to each examination appeal process.

B. Appointment of Members

The ACC, composed of seven (7) individuals, shall be appointed as follows:

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

C. Approval of Criteria

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

Section 14. Appeal Process after Examination

A. Appeal

1. Written Exam. Any Fire Fighter who has taken a written promotional examination may, within five (5) City of Austin business days of posting of the written promotional examination results, review his/her examination results. In a process established by the Director of Civil Service, each candidate who has taken a written promotional examination may have a time period to review his/her examination, write, and submit an appeal. A candidate may submit his/her written appeal at any time before the close of business on the fifth (5th) City of Austin business day after the posting of the written promotional examination results. Any appeal must be based on the appeal criteria as provided in this Agreement or as altered or modified by the Appeals Criteria Committee. Each candidate will receive a copy of the Civil Service Director's process at the conclusion of his/her examination.

2. Assessment Center. A Fire Fighter who claims that a scoring error occurred in his/her Assessment may appeal to the vendor only, using a second review process as established and overseen by the vendor. The decision of the vendor regarding appeals using the second review process shall be final and binding. This Agreement does not a) require the vendor to accept assessment center appeals; or b) require the City to obligate the vendor to accept assessment center appeals. However, whether the vendor accepts such appeals will be one factor, not in itself determinative, considered in selecting the vendor. If a vendor agrees to accept Assessment Center appeals, the Director of Civil Service shall establish by policy the time lines for such appeals.

There shall be no other appeal from the results of an Assessment Center process unless an individual Fire Fighter alleges that the results of the process were tainted by fraud, substantive integral compromise or material manipulation on the part of the City, the Promotional Process Consultant or the Assessment Center Evaluation Board. If such allegation is made, the Fire Fighter may appeal only to the Civil Service Commission. The Commission's decision on such appeal may be overturned only if it was procured by fraud, collusion or other unlawful means, or it is not supported by substantial evidence as judged from the administrative record made before the Commission.

B. Review of Examination

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

Section 15. Review by Employee Review Committee

A. Role of ERC

An Employee Review Committee (ERC) will be appointed to screen written examination appeals for the ranks of Fire Fighter through Battalion Chief to the Civil Service Commission, applying the criteria described in this Article to determine if any appeals should not be advanced to the Civil Service Commission because they do not meet the criteria.

B. Appointment of ERC Members

The ERC shall be comprised of five (5) members, as follows:

1. For promotional examinations for Specialist rank:
 - (a) Four (4) Specialists or higher rank, two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.
2. For promotional examinations for Lieutenant rank:
 - (a) Four (4) Lieutenants or higher rank, two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.
3. For promotional examinations for Captain rank:
 - (a) Four (4) Captains or higher rank, two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources

Department.

4. For promotional examinations for Battalion Chief rank:
 - (a) Four (4) Battalion Chiefs or higher rank two (2) each appointed by the Association and the Fire Chief; and
 - (b) One (1) non-voting member appointed by the Human Resources Department.

C. Conflicts of Interest

To prevent conflicts of interest, a member of the ERC must not have a personal relationship or conflict of interest with any candidate whose appeal will come before them. The Fire Chief and the Association President shall appoint alternates to the ERC for each rank, who shall substitute for a member of the ERC who cannot review the appeal of a candidate because of a personal relationship or conflict of interest. The Fire Chief shall determine whether such a personal relationship or conflict exists. In a process established by the Director of Civil Service, each candidate who has taken a written promotional examination may appear before the ERC and present information on each question appealed. Only source material may be used to support the candidate's appeal.

D. Decision on Appeals

Appeals may be denied advancement from the ERC to the Civil Service Commission by a vote of a simple majority of the voting members on the ERC. The ERC will make one of the following decisions:

1. The appeal meets the applicable criteria and should be passed on to the Civil Service Commission. Any such decision will be written and include the ERC's view regarding the merits of the appeal.
2. The appeal does not meet the applicable criteria and should not be passed on to the Civil Service Commission.

E. Appeal of Commission Decisions

There will be no State District Court appeal of the ERC's examination appeal determinations or from the Civil Service Commission's written examination appeal decisions, except an appeal alleging the City's failure to validate the written examination, fraud, collusion, or unlawful means.

F. Nothing in this Article is to be construed as limiting a Fire Fighter's right to speak and present argument in support of or against an appeal that has been advanced to the Civil Service Commission.

DEMOTION AND REINSTATEMENT

Section 16. Demotions due to Return from Military Leave of Absence

In accordance with the provisions of Local Government Code §143.072, when a Fire Fighter returns from a military leave of absence, is reinstated to active duty in the department and

is restored to his/her former position, thus creating a surplus in his/her rank, the last person promoted to that rank will be demoted and placed on the reinstatement list for that rank.

Section 17. Reinstatement List

A. Placement on List

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

B. Promotional Eligibility after Reinstatement

Once reinstated, a Fire Fighter's eligibility for promotion shall be determined from cumulative time in rank, rather than continuous time in rank.

C. Total Preemption

This Section alone shall control any right to reinstatement from a reinstatement list, and shall totally preempt all provisions of Chapter 143, whether or not expressly inconsistent with this provision.

OTHER PROVISIONS

Section 18. Vacancy Created by Extended Absence

A. Notwithstanding any provision in this Article or any provision in Local Government Code Chapter 143, a continuous absence from duty for more than six (6) months because of illness, injury or other authorized leave shall create a vacancy in the affected Fire Fighter's rank, but shall not expand the size of the classified service.

B. Authorized leave that it is anticipated to last for more than six (6) continuous months at the time the leave is approved by the Chief, creates a vacancy in the affected Fire Fighter's rank as of the effective date of the authorized leave.

C. When the Fire Fighter whose absence created the vacancy pursuant to Subsection A or B returns to active duty, thus creating a surplus in his/her rank, the last person promoted to that rank will be demoted to the next lower rank and placed on a reinstatement list, with such rights as are prescribed in this Article. The same result applies to all other promotions in lower ranks that resulted from the first promotion and subsequent demotion. Any prior continuous absence as defined herein shall resume as of the effective date of this Agreement.

ARTICLE 17 HIRING & CADET TRAINING

PART A. HIRING

Section 1. Initial Hiring Process

A. Submission of Proper Application

1. In order to be considered for the position of cadet, each applicant must first submit a proper application as reasonably defined by the Department. A proper application shall include, but not be limited to, information on personal history, criminal history, driving record, and age. The information submitted shall be used by the Department to determine whether the applicant meets the minimum qualifications to proceed to the testing phases of the process.

2. The Fire Chief shall establish the eligibility and posting requirements for applicants for the position of fire cadet which: (a) shall not be less than the requirements listed in Local Government Code Sections 143.022 through 143.024; and (b) will include a criminal background check conducted by or coordinated through the AFD Professional Standards Office.

3. Any testing procedure ultimately used to create an eligibility list for beginning positions must be open to each person who makes a proper application and meets the requirements prescribed in this Section, unless otherwise specified in this Article.

B. Hiring Process Oversight Committee

1. The Department shall implement a Hiring Process Oversight Committee (HPOC) to assist in the selection of a third party hiring process vendor, and in the development of the hiring selection process to be submitted to the United States in compliance with the Consent Decree. The Association may appoint two voting members and one non-voting member to the HPOC. The remaining three voting members of the HPOC will be appointed by the Fire Chief. The Director of Civil Service may also add two non-voting members.

2. Vendor Selection. The HPOC will identify the criteria (scope of work) to be used to select the third party vendor, and to assist the purchasing department in the development of the RFP. The HPOC will endeavor to reach consensus on a recommendation on the scope of work, the development of the RFP, and the selection of its recommended vendor. The failure to reach consensus shall not be a grievable matter and shall not delay the selection process. The HPOC shall evaluate proposals (which may include interviewing applicants and checking references), and score proposals pursuant to purchasing department procedures which includes a recommendation for its choice of vendors to the Fire Chief. The third party vendor shall be a professional vendor who is not a current or former employee of the City of Austin. The final recommendation of a test vendor to the City Council shall not be a grievable matter and shall not delay the hiring selection process.

3. In identifying the rating criteria to be used in the selection of the third party vendor, and in making its recommendation of a vendor(s) to the Fire Chief, the HPOC should consider, among others, the following factors:

(a) Can the vendor demonstrate that its proposed hiring process has produced diverse pools of successful firefighters in other major or comparable metropolitan cities?

(b) Can the vendor provide criterion-related validity evidence to support or justify the use of the specified assessments? Claims of criterion-related validity should be supported by the provision of a validity coefficient and the requisite information and data (e.g., sample size, sample type [applicant vs. incumbent], criteria and source, corrections if any, and of what type, etc.) that went into the generation of the specified coefficients.

(c) Can the vendor provide empirically based evidence to support statements pertaining to subgroup differences and adverse impact reduction or elimination? Thus, for subgroup differences, it is expected that information pertaining to the standardized mean differences (d) will be provided. It is expected that similar information will be provided for adverse impact as well. This would include the appropriate prototypical adverse impact statistics such as the 80% rule (adverse impact ratio), z-test, chi-square test, Fisher Exact test, and Zir, and the cut-points on which these analyses are based. The magnitude of these differences should also be interpreted in the context of what is commonly reported in the extant literature for the focal and/or similar constructs.

(d) Has the vendor designed and implemented hiring processes for fire departments of 300 firefighters or more? The vendor will be required to list the larger metro fire departments and the dates for which the work was performed.

(e) Has the vendor designed and conducted assessments with a candidate pool approaching 1500?

(f) Can the vendor provide suggested recruiting techniques that can assist the Department in identifying individuals from under-represented groups that possess the skill sets needed to be a successful candidate within the hiring process?

4. The third party vendor (once awarded), upon request of two or more members of the HPOC, will meet with the HPOC as a group and discuss the methods used in developing the testing processes.

C. Development and Implementation of Hiring Selection Process

1. The City, acting through the Fire Chief as its duly appointed representative, with the assistance of the third party vendor and the HPOC, shall design a hiring selection process, for submission to the United States pursuant to the Consent Decree, to determine whether an applicant will be offered a position as a Fire Cadet in an AFD Fire Academy class. The proposed hiring selection process submitted to the United States for approval under Part III(C)(6) of the Consent Decree shall include the items outlined in subsections (a) through (d) below. If the proposed hiring selection process submitted to the United States complies with the items outlined in subsections (a) through (d) below, the proposed selection process shall not be a grievable matter and shall not delay the hiring selection process. The proposed hiring selection process, including each Selection Device, described in this Article is subject to the requirements of the Consent Decree. As such, the City and the Association understand that the ultimate hiring selection process

actually used to hire applicants may deviate from subsections (a) through (d) under the terms of the Consent Decree.

(a) The hiring selection process will include, at a minimum, a cognitive test, an oral assessment process, a physical ability test, a medical test, a psychological test and a background investigation; and will include points for military service as determined by the Fire Chief in consultation with the vendor. The hiring selection process may include non-written Selection Devices.

(b) The cognitive test shall be constructed by the vendor, with the assistance of the HPOC and the Fire Chief, and shall test for multiple cognitive components as determined by the vendor. The cognitive test will be at least 20% of the total composite grade. The cognitive test will have a demonstrable criterion-related validity, using a Pearson correlation coefficient, of at least .28 (corrected using only predictor range restriction and criterion unreliability) with overall job performance as the criterion used to validate the test. One accepted validation approach is a local criterion-related validation study. The vendor will decide which and how many cognitive components to include. In doing so, the vendor must:

(i) Use cognitive components that have been deemed to be important for successful performance as an Austin fire fighter (non-exclusive examples: Verbal Comprehension, Verbal Expression, Problem Sensitivity, Deductive Reasoning, Inductive Reasoning, Information Ordering, Numeric Facility, Mathematical Reasoning, Mechanical Aptitude, and Spatial Orientation); and

(ii) Make reasonable efforts to explore the availability of, and if available, use cognitive components which have been shown to reduce or eliminate disparate impact upon African-Americans, Hispanics and Women without diminution of job-relatedness as set out in this subsection.

(c) The oral assessment process shall be videotaped. Evaluators will be provided at least 8 hours of training. This evaluator training will include frame-of-reference training designed to reduce evaluator panel variance.

(d) Applicants who successfully complete all of the screening and testing procedures will be placed on an eligibility list in the rank order determined from their composite scores on all scored selection devices used in that hiring cycle. The scored selection devices will include at a minimum the cognitive exam and oral assessment process. Scored selection devices may also include non-cognitive exams as determined by the test vendor. Pass/fail type exams may be used to establish candidate pools that are at least minimally qualified to continue in the hiring process. Applicants on the eligibility list may be offered a position as fire cadets in any upcoming AFD Cadet Training Academy class in rank order during the life of the eligibility list.

(e) The Chief may, at his/her discretion, place candidates from the ranked eligibility list who possess TCFP and NREMT certification in an Alternate Cadet Training Class. In no case may the Chief select candidates for the Alternate Cadet Training Class who are

not otherwise within reach on the eligibility list. The Alternate Cadet Training Class can be expedited, but must provide a minimum of 14 full weeks training designed to ensure that candidates attending the Alternate Academy can successfully meet or exceed all the requirements established for the regular Academy.

D. ASSOCIATION PARTICIPATION AND CONFIDENTIALITY

1. Subject to the terms of the Consent Decree, the HPOC may consult with the third party vendor in the development of the hiring selection process, and provide input to the Fire Chief regarding the vendor's recommendations. The HPOC will endeavor to reach consensus in performing its role. The City, acting through the Fire Chief as its duly appointed representative, retains the final authority as to the design and implementation of a hiring selection process. The third party vendor shall certify that the hiring process submitted to the United States in compliance with the Consent Decree is consistent with the "Principles for the Validation and Use of Employees Selection Procedures" (SIOP). This certification shall serve as conclusive evidence of validity and compliance with these principles, in the absence of fraud, substantive integral compromise, or material manipulation.

2. During the development of the hiring selection process and prior to its initial submission to the United States for review in compliance with the Consent Decree, the Association President and an expert chosen by the Association may review the raw data used to determine the validity coefficient of the cognitive test. This review will include all job analysis information that is used to or contributes to demonstrating the validity of all scored selection devices in the test battery (including the oral assessment process); pertinent descriptive statistics, including the item-construct map (breakdown of the number of questions that measure each component to be tested, as well as the pass/fail rate for each cognitive component tested); and requisite item (i.e., item-level construct)/KSA/task linkages, item analysis and statistics, along with all predictor and criterion data.

3. Once the Fire Chief has approved a hiring process for submission to the United States, the process will be made available to the HPOC and the Association President 14 days prior to its initial submission to the United States for review in compliance with the Consent Decree.

4. The hiring process information made available to the HPOC and the Association President shall not include the actual tests. The members of the HPOC and the Association agree that this information is confidential, and shall not be divulged in any manner, except the Association President may provide such information to an expert for review, provided that the expert likewise agrees to maintain such information in confidence. The members of the HPOC and the Association further agree that all copies of the provided information will be returned to the City upon completion of the review, and that no portion of the data shall be retained in any form by the HPOC, the Association, its President, or its expert.

Section 2. Benefit of the Bargain

The City is now under a Consent Decree with the United States of America to ensure that all provisions of Title VII of the Civil Rights Act of 1964 are fully enforced and to ensure that no unlawful discrimination exists within any hiring process of the Austin Fire Department. It is the express intent of the City to comply with the terms of the Consent Decree. To insure that the City and the Association fully enjoy the benefit of this bargain, the City and the Association expressly agree that nothing in this Agreement shall prevent the City from implementing changes in a Selection Devices(s) or the overall hiring selection process in order to comply with:

- (a) The Consent Decree;
- (b) Any agreement reached by the City, United States and the Association; or
- (c) A Court order made under the Consent Decree concerning the City's use of a Selection Device or the overall hiring selection process.

Section 3. Expedited Contract Grievance Procedure

A. For the provisions of Part A, Sections 1 and 2 of this Article that may be submitted for resolution as a Contract Grievance, the parties have agreed to the following expedited Contract Grievance procedure.

B. Within ten (10) days of the date upon which the Association President knew of or should have known of the facts or events giving rise to the grievance, the Association President shall file the grievance with the Fire Chief and the City's Labor Relations Office. After receipt of the grievance, the Fire Chief shall, within seven (7) days of receipt of the grievance, submit his/her response in writing to the Association President.

C. If the grievance is not resolved, the Association shall have seven (7) days from receipt of the Fire Chiefs decision to submit the matter to arbitration. Such arbitrations shall be conducted pursuant to the Expedited Labor Arbitration Procedures established by the American Arbitration Association ("AAA"), and in effect at the time of the dispute. To be appointed, the arbitrator must be available to hear the arbitration within thirty (30) calendar days of selection and a decision shall be made within one (1) week of the hearing. The parties agree to create a list of pre-approved arbitrators. Failing same, or in the absence of an available arbitrator from such pre-approved list, the arbitrator designated by the AAA shall be required to be licensed as an attorney in the State of Texas. The parties both agree that the arbitrator has the discretion to receive and hear issues and testimony by written submission or phone conference, but may also require live testimony where appropriate.

D. Article 20 of this Agreement shall not apply to any grievance as to the provisions of Part A, Sections 1 and 2 of this Article.

Section 4. Life of Eligibility List

Notwithstanding the provisions of Section 143.025, each eligibility list created during the life of this Agreement will be designated with a life of no less than twelve (12) months nor more than twenty-four (24) months from the date that the list is effective as a final eligibility list. The duration of the list shall be specified in the notice to submit applications. A final eligibility list in existence on the expiration date of this Agreement may continue to be used until the latter of the following dates: (a) six months beyond the expiration date of the Consent Decree, or (b) the last day the parties remain in good faith negotiation of a successor Agreement without declaration of an impasse. Any applicant hired under a list in effect on the expiration date of this Agreement shall continue to be trained utilizing the training standards in Part B of this Article.

Section 5. Life of Certain Provisions of Hiring Article

Notwithstanding any other part of this Agreement, Sections 1, 2, 3, and 4 of Part A of this Article shall survive the expiration of the Agreement, and shall remain in full force and effect so long as the Consent Decree in this Lawsuit is in effect, and for the term of any future collective bargaining agreement between the parties that may be in effect on the date the Consent Decree terminates.

Section 6. Travis County ESD Merger

If the City proposes to merge a Travis County ESD into the Austin Fire Department during the life of this Agreement, the parties agree that the City may use either of the options set forth below as the merger entry process:

Option 1

A. Applicability

The Travis County ESD merger entry process applies only to the hiring of certified fire fighters who work for a Travis County ESD and meet the requirements established in Appendix C.

B. Eligibility Requirements

1. Eligibility requirements established in Appendix C. The requirements need not be the same as those established by Chapter 143 or those applicable to applicants for the position of Cadet in the Department's regular Training Academy.

2. Upon hire, each ESD merger entry candidate must complete a modified training academy established in Appendix C. The probation period for ESD merger entry candidates ends twelve months from the date of hire.

3. Each ESD merger entry candidate must successfully complete all Training

Standards established in this Agreement and Appendix C.

C. Civil Service Status

Upon successful completion of the Modified Training Academy and probationary period, each fire fighter hired through this process shall immediately become a full-fledged Civil Service employee.

D. Pay and Seniority

1. Within the guidelines established in Appendix C, The Fire Chief may determine the pay rate for each ESD merger entry class during the Modified Training Academy within the guidelines established in Appendix C. Upon completion of the Academy, the Fire Chief may determine the pay rate for each class hired through this ESD merger entry process within the guidelines established in Appendix C. Any pay rate established by the Chief shall not exceed that of a fire fighter with two years of experience in the Austin Fire Department. Each ESD merger entry hire shall be placed in the rank of fire fighter.

2. Regardless of the pay rate established for each ESD merger entry hire, seniority for purposes of longevity pay shall begin from the date of hire.

E. Promotional Eligibility

Fire fighters hired through the ESD merger entry process must meet the same promotional eligibility requirements as Austin Fire Department fire fighters hired through the Department's regular initial hiring process.

F. Implementation

The ESD merger entry process described by this Article may be used at any time, for any number of Travis County ESD's, as authorized by the Fire Chief.

Option 2

The Association will be provided advance notice and an opportunity to negotiate the terms and conditions of an ESD merger. The bargaining process shall be limited to 60 days unless extended by agreement. In the event the parties are unable after 60 days of bargaining to reach an agreement, a party may request, but neither party shall be required, to use mediation or arbitration to resolve disputed issues under Texas Local Government Code Chapter 174.

Section 7. Internship Program

The Association will be provided advance notice and an opportunity to negotiate the terms and conditions of an internship program. The bargaining process shall be limited to 60 days unless extended by agreement. In the event the parties are unable after 60 days of bargaining to reach an agreement, a party may request, but neither party shall be required, to use mediation or arbitration to resolve disputed issues under Texas Local Government Code Chapter 174.

Section 8. Lateral Entry

A. Applicability

1. The lateral entry process applies only to the hiring of certified fire fighters.

2. Eligibility Requirements

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

(b) At the time of application, each applicant must have been actively employed as a structural fire fighter for one or more municipalities, ESDs, military or county fire departments within the two years prior to the date of application, and must have a total of at least three years of active service as a fire fighter for one or more municipalities, ESDs, military or county fire departments. Austin-Travis County EMS employees, who have structural firefighting certification and three or more year's prior experience with a fire department, also qualify for the lateral entry program.

(c) Each applicant will be subject to a background investigation.

3. Selection and Placement

(a) The Fire Chief shall use the selection criteria and procedures set out in this Article to establish an eligibility list, except that the age limits of §143.023 shall not apply.

(b) Applicants who successfully complete all of the screening and testing procedures will be placed on an eligibility list. Applicants on the eligibility list may be offered a position as fire cadet in any upcoming Fire Academy class or placed in any Alternate Cadet Training class, if so determined by the Chief.

(c) Notwithstanding the provisions of 143.025, the life of each eligibility list created during the life of this Agreement will be designated a life of no less than twelve (12) months and not more than twenty-four (24) months from the date that the list is effective as a final eligibility list. The duration of the list shall be specified in the notice to submit applications for lateral entry. A list in existence on September 30, 2022 (the expiration date of this Agreement) may continue to be used until the latter of the following dates: (a) six months beyond the expiration date of this Agreement, (b) the last day the parties remain in good faith negotiation of a successor Agreement without declaration of an impasse. Any applicant hired under a list in effect on the expiration date of this Agreement shall continue to be trained utilizing the training standards in this Article.

(d) Upon hire, each lateral entry candidate must complete a modified training academy of not less than fourteen (14) weeks, as determined by the Chief.

(e) The probation period for lateral entry candidates is twelve months from the date of hire.

(f) Each lateral entry candidate must successfully complete all Training Standards established in this Agreement.

4. Civil Service Status

Upon successful completion of the Modified Training Academy and probationary period, each fire fighter hired through this process shall immediately become a full-fledged Civil Service employee.

5. Pay and Seniority

(a) The Fire Chief may determine the pay rate for each lateral entry hire during the Modified Training Academy. Upon completion of the Academy, the Fire Chief may determine the pay rate for each fire fighter hired through this lateral entry process. Any pay rate established by the Chief shall not exceed that of a fire fighter with two years' experience in the Austin Fire Department. Each lateral entry hire shall be placed in the rank of fire fighter.

(b) Regardless of the pay rate established for each lateral entry hire, seniority for purposes of longevity pay shall begin from the date of hire.

6. Promotional Eligibility

Fire fighters hired through the lateral entry process must meet the same promotional eligibility requirements as Austin Fire Department fire fighters hired through the Department's regular initial hiring process.

7. Implementation

The lateral entry process described by this Article may be used at any time, for any number of candidates, as authorized by the Fire Chief.

PART B. CADET TRAINING

Section 1. Cadets

Every Fire Cadet applicant hired by the Department must attend an Austin Fire Department Cadet Training Academy. Every applicant selected for a Training Academy must successfully complete the training program by meeting or exceeding all of the requirements established for that Academy.

Section 2. Training Manual

A. The Fire Chief shall issue a Cadet Manual prior to the beginning of each Academy class. Subject to the Fire Chief's authority described below, the provisions of the Cadet Manual shall be published and enforced as written.

B. The Cadet Manual must include the following:

1. Requirement for Cadets to achieve all academic and skill performance criteria as mandated by governing agencies such as Texas Commission on Fire Protection, Texas Department of State Health Services, Office of the Medical Director and the National Registry of Emergency Medical Technicians.

2. Requirement for Cadets to achieve all Job Performance Requirements (JPR) and objectives as listed in the Cadet Training Academy curriculum.

3. Requirement for Cadets to achieve satisfactory performance for all Austin Fire Department Cadet Performance Standards. These performance standards must be comprised of essential job functions for an Austin Fire Department fire fighter and have been validated using an accepted process.

4. The composition and role of the Cadet Oversight Committee for the Training Academy to which the Manual applies. The Association will be entitled to have one committee member attend all Cadet Oversight Committee meetings, unless prohibited by law or in the event of confidential privacy issues, as determined by the Chief. In the event that the Cadet Oversight Committee meeting occurs on short notice due to unforeseen circumstances, the Association's observer will be briefed as soon as possible. The observer will use ABL if scheduled to work and will not otherwise be compensated.

5. A description of the process for referring Cadets to the Cadet Oversight Committee when their academic performance or skill performance does not meet the requirements or their behavior is deemed to be unsatisfactory. This process must require written documentation to be presented to the Cadet Oversight Committee and includes:

- (a) Lead Instructor documentation of any Cadet Training Academy curriculum JPR or objective not successfully achieved.
- (b) Training Academy staff documentation of any Cadet Manual academic and/or performance criteria not successfully met.
- (c) Training Academy staff or Team Leader documentation of any Cadet Manual violation.
- (d) Team Leader documentation of any unacceptable performance and/or behavior.

6. A description of the process that will be used for developing a Performance Improvement Plan (PIP) when the Cadet Oversight Committee determines that a Cadet's academic performance, skill performance or behavior is unsatisfactory. A Cadet PIP must:

- (a) Explain the performance and/or behavior that is unsatisfactory.

- (b) List the specific objective(s) that must be achieved including criteria for measuring successful achievement of the objective(s).
- (c) Indicate the date by which the objective(s) must be achieved. No Cadet PIP will extend beyond the end date of the Training Academy.
- (d) State any assistance that may be available to help the Cadet achieve the objective(s).
- (e) Identify the consequences for failing to achieve the objective(s) and for not improving to a satisfactory level of performance and/or behavior.

Section 3. Termination Recommendation for Unsatisfactory Performance and/or Behavior

A. The Cadet Oversight Committee or the Training Academy staff shall make a written detailed recommendation that the Fire Chief terminate the employment of a Cadet based on the Cadet's failure to meet the objective(s) of a PIP and achieve a satisfactory level of performance and/or behavior.

B. The Fire Chief may review whether the conditions of the PIP were appropriate and whether an additional PIP is indicated. If the Fire Chief believes that an additional PIP may be indicated, the Chief shall convene a Chief's Review Committee to assist him/her in reviewing the information regarding the issue. The Association will be entitled to have a non-participating observer attend all Chief's Review Committee meetings, unless prohibited by law or in the event of confidential privacy issues, as determined by the Chief.

C. If the Fire Chief determines that the Cadet will be provided with an additional PIP, he/she shall provide written reasons to the Association President for his/her decision. The Association agrees to indemnify the City for any amounts awarded against the City due to a breach of confidentiality or release of this information that is demonstrated to be due to the Association's actions.

Section 4. Extenuating Life Circumstances

During a Training Academy, the Fire Chief shall have authority to consider extenuating life circumstances that may be related to a Cadet's failure to improve performance to a satisfactory level. "Extenuating Life Circumstances" are events which are beyond the control of both the Cadet and the Training staff. If the Fire Chief finds that extenuating life circumstances justify an exception to the Cadet Training Manual, the Fire Chief may direct that the Cadet be retested. The Fire Chief shall notify the Association President, in writing, of his/her (the Chief's) decision and the extenuating life circumstances that justify his/her decision. The Association may challenge the Fire Chief's decision to retain the Cadet by filing a grievance in accordance with Article 20. In any arbitration resulting from the grievance, an arbitrator shall determine whether the extenuating life circumstances justified the Fire Chief's decision. If the arbitrator determines that the Fire Chief's decision was not justified, the arbitrator shall order that the Cadet's employment be

terminated, even if the Cadet has graduated from the Academy and/or completed probation at the time of the order. The arbitrator's decision shall be final.

Section 5. Actions by the Fire Chief

A. Once a hiring cycle has begun, the Fire Chief may update the Cadet Training Manual, at any time, to implement any criteria required by law, regulation, or industry standard such as the Texas Commission on Fire Protection, Texas Department of State Health Services, American Heart Association, and the Office of the Medical Director or the National Registry of Emergency Medical Technicians.

B. This Article shall not affect the Chief's existing authority to make determinations about cadets on issues of attendance, discipline, personality, suitability or other such matters not covered by the performance and academic standards established for each cadet class.

C. This Article shall not affect the Chiefs authority to make any determination concerning the continued employment of probationary fire fighters.

D. No grievance or other remedy shall apply in the event of termination of a cadet by the Fire Chief.

E. This Agreement does not create any rights in continued employment for cadets, as third party beneficiaries or otherwise.

Section 6. Miscellaneous Provisions

A. Training of Academy Instructors.

AFD Management along with the Association will provide a class before the academy begins to the academy staff and team leaders on contract compliance as it relates to the training standards.

B. Association Representative on Curriculum Committee

The Curriculum Committee is the group charged with creating the recommendation to the Fire Chief regarding amending the AFD operational and cadet training manual objectives. The Curriculum Committee may appoint sub-committees to accomplish a defined scope of work. The sub-committees will report back to the Curriculum Committee with their recommendations. The Association will be able to appoint (1) one member to the AFD Curriculum Committee.

PART C. OTHER PROVISIONS

Section 1. Challenges to the Hiring/Training Process

In the event of a lawsuit or administrative claim asserted against the Association based on an allegation that a deviation by the City from Chapter 143 hiring or training procedures authorized by this Article violates a state or federal law, the City will reimburse the Association for sums paid as damages in such lawsuit or settlement, and for sums paid as attorney's fees and court costs in defending such lawsuit or claim, subject to each of the following required conditions:

1. The Association will fully and vigorously defend the claim on the merits.
2. The City has the right to approve the amount of any settlement of any such claim against the Association.
3. The Association will not assert a claim against the City based on an action by the City that was required by the terms of this Article.
4. Reimbursement for amounts paid as damages or settlement will be made after resolution of the lawsuit by either final judgment in court (including appeals), or settlement approved by the City.
5. Reimbursement for attorney's fees and costs will be ongoing as such fees and costs are paid by the Association. The City will reimburse the Association for attorney's fees at the actual hourly rate normally paid by the Association to the attorney, and in any event no greater than the average hourly rate paid by the City for outside counsel during the preceding fiscal year.
6. The City's total liability for damages and/or attorney's fees and costs under this Section will not exceed one hundred fifty thousand (\$150,000.00) dollars for the term of this Agreement, regardless of the number or size of claims asserted against the Association

Section 2. Effective Dates of Article

The provisions of this Article shall not apply to any Training Academies commenced before the effective date of this Agreement.

ARTICLE 18
INVESTIGATION & DISCIPLINARY ACTIONS

PART A. INVESTIGATIONS

Section 1. Definitions

In Part A of this Article, the following terms and phrases have these meanings:

- A. "Complainant" means a person claiming to be the victim of misconduct by a Fire Fighter, or the Fire Chiefs designee acting on information of alleged misconduct by a Fire Fighter that could result in disciplinary action.
- B. "Investigation" means an administrative investigation, conducted by the Department, of alleged misconduct by a Fire Fighter that could result in disciplinary action against the Fire Fighter.
- C. "Investigator" means any agent or employee of the Department who is assigned to conduct an administrative investigation.
- D. "Normally assigned working hours" includes those hours during which a Fire Fighter is actually at work or at the Fire Fighter's assigned place of work, but does not include any time when the Fire Fighter is off duty on authorized leave, including sick leave.
- E. "Disciplinary action" means temporary disciplinary suspension, indefinite suspension, demotion in rank, alternative discipline under this Agreement, or any combination of those actions.
- F. "Complaint" means an allegation that a Fire Fighter engaged in misconduct.

Section 2. Interview of Subject Fire Fighter

A. An investigator may interview a Fire Fighter who is the subject of an investigation only during the Fire Fighter's normally assigned working hours, unless:

- 1. The seriousness of the investigation, as determined by the Fire Chief, or designee, requires interview at another time; and
- 2. The Fire Fighter is compensated for the interview time on an overtime time basis.

B. The Fire Chief may not consider work time missed from regular duties by a Fire Fighter due to participation in the conduct of an investigation in determining whether to impose disciplinary action or in determining the severity of disciplinary action.

C. An investigator may not interview a Fire Fighter who is the subject of an investigation or conduct any part of the investigation at the Fire Fighter's home without the Fire Fighter's

permission.

D. Not less than forty-eight (48) hours before an investigator begins the initial interview of a Fire Fighter who is the subject of an investigation, the investigator must inform the Fire Fighter in writing of the allegations in the complaint. The Department may omit the name and/or identity of the person making the complaint(s). In the event the original notice does not contain all allegations of misconduct under investigation, not less than forty-eight (48) hours before the investigator conducts a subsequent interview of the subject Fire Fighter into the additional allegations, the investigator must inform the Fire Fighter in writing of the additional allegations being investigated. The notice of allegations need not reference any law, Department policy, or civil service rule that may have been violated.

E. An investigator may not interview a Fire Fighter based on a complaint by a complainant who is not a Fire Fighter unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. An investigator may interview a Fire Fighter about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. An interview may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. The provisions of this Subsection do not apply to an on-the-scene investigation that occurs immediately after an incident being investigated, except that the Fire Fighter under investigation must be furnished, as soon as practicable, a written statement of the allegations in the complaint.

F. An interview session of a Fire Fighter who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigator shall allow reasonable interruptions to permit the firefighter to attend to personal physical necessities.

G. An investigator may not threaten a Fire Fighter who is the subject of an investigation with disciplinary action during an interview. An investigator may inform a Fire Fighter that failure to answer truthfully reasonable questions directly related to the investigation or to cooperate fully in the conduct of the investigation may result in disciplinary action.

H. If prior notification of intent to record an interview is given to the other party, either the investigator or the Fire Fighter who is the subject of an interview may record the interview.

I. A Fire Fighter who is the subject of an investigation shall have the right to be represented by an attorney or Authorized Association Representative, both referred to as "representative" in this Article, of the Fire Fighter's choice during an interview and in any subsequent disciplinary and/or appeal proceedings. The attorney or representative cannot be a Fire Fighter who has any involvement with the matter under investigation, other than the Fire Fighter's role as representative of the Fire Fighter who is the subject of the investigation. At the conclusion of the interview, the Fire Fighter and/or the representative can offer mitigating circumstances to be considered, and to offer investigatory leads for the investigator's consideration. The right to representation does not apply to matters that are addressed through

the member's chain of command and that do not rise to the level of an investigation as defined in this Article.

J. To ensure a fair and unbiased review of the facts surrounding the alleged conduct, the Professional Standards Office (PSO) will adhere to the following principles.

1. The purpose of the PSO investigation is to gather information related to the alleged event and then provide a summary of that information to the Fire Fighter's chain of command.
2. The PSO will plan the interviews in an effort to limit the time period between the interviews of the first witnesses and the subject of the investigation.
3. The PSO will assign to each allegation against the Fire Fighter one of the following:
 - Not sustained – The evidence fails to prove the allegation.
 - Exonerated – The alleged conduct in fact did occur but the Fire Fighter's actions were acceptable under the circumstances.
 - Unfounded – The alleged conduct in fact did not occur.
 - Sustained – The department established by a preponderance of evidence that the alleged conduct occurred and constituted misconduct.

Section 3. Access to Records by Fire Fighters

A. Before the Fire Fighter who is the subject of an investigation provides a statement to an investigator, the Fire Fighter and his/her representative shall be provided an opportunity to review any videotape, photograph, or other recording of the operative conduct or alleged injuries, which is the subject of the allegations if such recording is within the possession or control of the Department.

B. Before the Fire Fighter who is the subject of an investigation provides a statement to an investigator, the Fire Fighter and his/her representative shall be allowed to review the portions of any document(s) in which it is alleged that the Fire Fighter provided false, incomplete, inconsistent, or conflicting information, or in which it is alleged that the Fire Fighter omitted information in violation of any law or Department policy.

C. Before the Fire Fighter who is the subject of an investigation provides a statement to an investigator, the Fire Fighter and his/her representative shall be allowed to review any report, supplement, or other statement recorded or written by the Fire Fighter, setting forth particulars or facts regarding the operative conduct which is the subject of the allegation(s).

Section 4. Statements

A. All recorded interviews of a Fire Fighter who is the subject of an investigation will be transcribed by the Professional Standards Office and signed by the Fire Fighter.

B. A Fire Fighter is entitled to a copy of his/her statement to the Professional Standards Office at the time the statement is finalized and signed by the Fire Fighter, but the statement

remains confidential in the hands of the Fire Fighter and his/her attorney or representative, pursuant to 143.089(g), and any orders of non-communication about internal investigations, except for consultations with the Fire Fighter's attorney or representative.

Section 5. Investigators

A. A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision-maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct.

B. A Fire Fighter who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identity of each investigator participating in an interview of the Fire Fighter.

Section 6. Polygraph Examinations

A. A Fire Fighter will not be required to submit to a polygraph examination as part of an investigation unless:

1. The complainant submits to and passes a polygraph examination; or
2. The Fire Fighter is ordered to take an examination under Subsection E below.

B. Subsection A does not apply if the complainant is physically or mentally incapable of being polygraphed.

C. For the purposes of this Section, a Fire Fighter passes a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated in the examination regarding matters critical to the subject matter under investigation.

D. The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the Civil Service Commission or a Hearing Examiner.

E. The Fire Chief, or designee, may order a Fire Fighter to submit to a polygraph examination if the Chief, or designee, considers the circumstances to be extraordinary or believes that the integrity of a Fire Fighter or the Fire Department is in question.

Section 7. Chain of Command & Disciplinary Meetings

A. When a Chain of Command Meeting is scheduled to consider the information presented to the PSO and to recommend, if any, the level of discipline against a Fire Fighter, the following procedures shall apply:

1. The Chain of Command Meeting will include the Fire Fighter's immediate and/or second level supervisors, unless the Fire Chief deems there is an investigatory conflict.

2. Prior to the Chain of Command Meeting, the Fire Fighter and his/her representative shall be allowed up to one (1) consecutive eight (8) hour period of time to review any and all evidence gathered or obtained during the investigation, including the PSO Summary, if any. The information available for review shall not include protected evidence from a pending criminal investigation or judicial proceeding, or information that is otherwise made confidential by law. (However, such information will be provided as soon as possible, and prior to the administrative appeal hearing, if any.) Neither the Fire Fighter nor the representative will be permitted to make copies of any of the evidence reviewed. At the conclusion of his/her evidence review, the Fire Fighter and his/her representative will be provided 48 hours to prepare a written rebuttal to be included with the PSO Summary at the same time it is presented to the Chain of Command panel.
3. The PSO shall present the information gathered during the investigation to the chain of command, including the PSO Summary (and Fire Fighter's written rebuttal, if any). The Fire Fighter will be offered the opportunity to be present during this meeting, although the Fire Fighter's presence is not mandatory, and a decision not to attend the Chain of Command Meeting shall not be held against the Fire Fighter.
4. After the Summary has been presented, the Fire Fighter may address the chain of command prior to its deliberation. During this time the Fire Fighter will be allowed to present his/her written rebuttal and/or any other exculpatory evidence or extenuating circumstances which he/she would like considered. If deemed appropriate or prudent by the representative, the chain of command may allow the Fire Fighter's representative to make a statement, and may impose reasonable limits on tone and duration.
5. The Fire Fighter and his/her representative shall be excused during the chain of command's deliberation.
6. At the conclusion of this process, the chain of command will consider each allegation against the Fire Fighter and provide a recommendation as to the appropriate level of discipline, if any, to be imposed.

B. When a Disciplinary Meeting is scheduled between the Fire Fighter and the Fire Chief for the purpose of determining whether the Fire Chief shall take disciplinary action against a Fire Fighter for alleged misconduct, the following procedures shall apply:

Not less than forty eight (48) hours before the scheduled Disciplinary Meeting:

- (a) The Fire Fighter will be notified of the Disciplinary Meeting.

- (b) The Department shall provide the Fire Fighter written notice of the policy violations and the range of discipline being recommended by the chain of command. The recommendation from the Fire Fighter's chain of command regarding the appropriate discipline is not binding on the Fire Chief. The Fire Chief will make the final determination on what charges are sustained, if any, and the appropriate disciplinary action, if any, up to and including indefinite suspension.

C. The time-lines set forth in this Section may be waived by the Fire Chief and shall not be considered a violation of the Fire Fighter's rights on appeal, if compliance with any such time-line would interfere or conflict with the 180 day statutory deadline for imposing discipline.

Section 8. 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 insure confidentiality and to prevent retaliation or the threat of retaliation against any witness in an investigation:

A. Information provided or made available for review remains confidential in the hands of the Fire Fighter and his/her 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 a Fire Fighter, or by an individual at the direction of the Fire Fighter, 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 a Fire Fighter is suspended for an alleged violation of Subsection B, the Fire Fighter shall have the right to appeal the suspension to the Civil Service Commission or to an Independent Third Party Hearing Examiner pursuant to the provisions of this Agreement and Chapter 143 of the Texas Local Government Code. The Commission or the Hearing Examiner shall decide whether the specific charge related to Subsection B 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 9. Violation of Fire Fighter Rights

A violation of Part A of this Article may be considered by the Civil Service Commission or a Hearing Examiner during a disciplinary appeal hearing if the violation substantially impaired the Fire Fighter's ability to defend against the allegations of misconduct.

PART B. DISCIPLINARY ACTIONS

Section 1. Alternative Discipline

The Fire Chief shall have the authority to impose alternative disciplinary actions or enter into alternative discipline agreements under this Article when the Fire Chief determines that the use of alternative discipline is in the best interest of the Fire Department. Nothing in this Article shall diminish or otherwise affect the Fire Chiefs authority to take other disciplinary actions under Chapter 143.

Section 2. Alternative Discipline by Fire Chief

In considering appropriate disciplinary action, the Fire Chief may require that a Fire Fighter be evaluated by a qualified professional approved by the Fire Chief. If that professional recommends a program of counseling and/or rehabilitation for the Fire Fighter, the Fire Chief may, as an alternative to temporary or indefinite suspension, or in combination with a temporary suspension, require that the Fire Fighter successfully complete the recommended program. The program of counseling and/or rehabilitation will be completed on the Fire Fighter's own time, unless the Fire Chief approves the use of vacation time. The Fire Fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the Fire Fighter's health insurance plan. If the Fire Fighter's misconduct involves alcohol and/or drug related behavior, the Fire Chief may require that the Fire Fighter submit to mandatory alcohol and/or drug testing, upon order by the Fire Chief, for a specified period of time. If, after entering the program of counseling and/or rehabilitation, the Fire Fighter fails or refuses to complete the program, the Fire Fighter may be indefinitely suspended. The Fire Fighter has the right to appeal to the Civil Service Commission or to a third-party hearing examiner any discipline imposed under this Section by filing an appeal notice in accordance with the provisions of Chapter 143. On appeal, the Civil Service Commission's or hearing examiner's authority shall be limited to determining the facts, whether the facts reflect a policy violation, and the appropriate length of suspension, if any. Neither the Commission nor a hearing examiner may substitute a program of counseling and/or rehabilitation different than the program imposed by the Fire Chief or to substitute any period of suspension for the required program of counseling and/or rehabilitation.

Section 3. Alternative Discipline by Agreement

In considering appropriate disciplinary action, the Fire Chief may require that a Fire Fighter be evaluated by a qualified professional approved by the Fire Chief. If that professional recommends a program of counseling and/or rehabilitation for the Fire Fighter, the Fire Chief may, as an alternative to temporary or indefinite suspension, or in combination with a temporary suspension, offer the Fire Fighter the opportunity to enter into an alternative disciplinary agreement under which the Fire Fighter would accept a temporary suspension of up to ninety (90) days and agree to successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional approved by the Fire Chief. The program of counseling and/or rehabilitation will be completed on the Fire Fighter's own time, unless the Fire Chief approves the use of vacation time. The Fire Fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the Fire Fighter's

health insurance plan. If the Fire Fighter's misconduct involves alcohol and/or drug-related behavior, the Fire Chief may require that the Fire Fighter submit to mandatory alcohol and/or drug testing, upon order by the Fire Chief, for a specified period of time. If the Fire Fighter accepts the opportunity for agreed alternative discipline, the Fire Fighter may not appeal any terms of the agreement. If the Fire Fighter fails to successfully complete the program of counseling and/or rehabilitation, the Fire Fighter may be indefinitely suspended without right of appeal.

Section 4. Last Chance Probation Agreement

In considering appropriate disciplinary action, the Fire Chief may require that a Fire Fighter be evaluated by a qualified professional approved by the Fire Chief. If that professional recommends a program of counseling and/or rehabilitation for the Fire Fighter, the Fire Chief may offer the Fire Fighter, as an alternative to indefinite suspension, the opportunity to enter into a "Last Chance Probation" agreement. The agreement may include the following provisions in addition to any other provisions agreed upon by the Fire Fighter and the Fire Chief.

1. The Fire Fighter will successfully complete the program of counseling and/or rehabilitation recommended by the qualified professional approved by the Fire Chief.
2. The program of counseling and/or rehabilitation will be completed on the Fire Fighter's own time, unless the Fire Chief approves the use of vacation time. The Fire Fighter shall be responsible for paying all costs of the program of counseling and/or rehabilitation which are not covered by the Fire Fighter's health insurance plan.
3. The Fire Fighter will agree to a probationary period not to exceed one year, with the additional requirement that if, during the probationary period, the Fire Fighter commits the same or a similar act of misconduct, the Fire Fighter will be indefinitely suspended without right of appeal.

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

Section 5. Publishing Notice of Discipline

The Fire Chief must publish and circulate within the Department a communication which informs Fire Fighters of disciplinary suspensions imposed by the Fire Chief or disciplinary suspensions agreed to by the Fire Chief and a Fire Fighter. The communication may include the Fire Fighter's rank; each policy or rule which was violated; any extenuating or mitigating circumstances; a brief factual description if the policy or rule violation is not self-explanatory; and the discipline imposed or agreed to by the Fire Fighter. The communication shall not identify the

Fire Fighter by name.

Section 6. Extending Disciplinary Deadline by Agreement

A. A Fire Fighter and the Chief, or his/her designee, may agree to extend the 180-day statutory deadline for disciplinary action for a period not to exceed thirty (30) days. Either the Fire Fighter or the Fire Chief may offer or request the extension. The agreement to extend the statutory deadline shall be in writing and shall be signed by both the Fire Fighter and the Chief, or his/her designee.

B. Any disciplinary action taken by the Fire Chief before the extended deadline shall be considered timely. An agreement to extend the deadline does not affect a Fire Fighter's right of appeal from the disciplinary action.

Section 7. Written Response to Disciplinary Action

If a Fire Fighter is temporarily or indefinitely suspended, the document imposing the suspension may not be placed in the Fire Fighter's Civil Service Commission file unless the Fire Fighter is first given an opportunity to read and sign the document. If the Fire Fighter refuses to sign the document, it may be placed in the personnel file with a notation that the person refused to sign it. A Fire Fighter who receives a temporary or indefinite suspension and who elects not to appeal the action may file a written response by submitting a written response to the Director of Civil Service not later than the 10th day after the date the Fire Fighter is given written notice of the disciplinary action.

Section 8. Transfers Related to Discipline

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

Section 9. Use of Accrued Leave

Any Fire Fighter who is suspended from duty for up to fifteen (15) days may request approval of the Fire Chief to use accrued vacation leave to cover all or part of the suspension. The Fire Chief may, in his/her sole discretion, determine whether to approve the Fire Fighter's request and the number of days' vacation leave that may be used. The Fire Fighter must request the use of vacation leave within ten (10) days after receipt of notice of the disciplinary suspension. By requesting the use of vacation leave to cover all or part of the suspension, the Fire Fighter waives all right to appeal the disciplinary suspension to the Civil Service Commission or a Hearing Examiner.

Section 10. Non-disciplinary Corrective Action

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

B. If a written counseling or written reprimand is issued to a Fire Fighter, the written counseling or written reprimand may not be placed in the Fire Fighter's departmental personnel file unless the Fire Fighter is first given an opportunity to read and sign the document. If the Fire Fighter refuses to sign the document, it may be placed in the personnel file with a notation that the person refused to sign it. A Fire Fighter may respond in writing to a written counseling or written reprimand by submitting a written response to the Professional Standards Office not later than the 10th day after the date the Fire Fighter is asked to sign the document.

C. A written reprimand shall not be used or relied upon in connection with any future corrective action or discipline after 12 months from the date of its approval. If a written reprimand is offered as proof of progressive discipline in a disciplinary appeal hearing, any written response that was timely filed by the Fire Fighter shall be offered in evidence with the written reprimand.

PART C. EFFECT OF CONTRACT EXPIRATION

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

- A. Any investigation assigned a "PSO Number" by the Professional Standards Office prior to the expiration of this Agreement;
- B. Any disciplinary decision by the Fire Chief prior to the expiration of this Agreement; and
- C. Any appeals of such disciplinary action.

ARTICLE 19 USE OF CIVILIAN EMPLOYEES

Section 1. Goals and Objectives

The parties acknowledge that they share the interest of utilizing civilian employees in a manner which best accomplishes the goals and objectives of the Department while preserving job security for Chapter 143 Civil Service employees. To fulfill this interest, the parties agree that this Article shall apply to the duties set out herein.

Section 2. Fire Prevention

Fire prevention duties shall be performed by Fire Fighters, except that degreed engineers who are civilian employees may be assigned fire prevention duties.

Section 3. Fire Communications

Fire communications duties will be performed by Fire Fighters, except that the one (1) dispatch position currently filled by a civilian employee will be converted to a Fire Fighter position through attrition. No additional dispatch positions will be filled by civilian employees.

Section 4. Fire Administration

Fire Administration duties, within the meaning of Local Gov't Code 143.003(4)(A)(ix), may be performed by civilian employees. The Department agrees that civilian employees working in Fire Administration will not be used to perform the duties listed in Section 143.003(4)(A)(i–viii and x), or to perform Fire Administration duties currently performed by Fire Fighters.

Section 5. Recruiting

Subject to the requirements of the Consent Decree, the Association agrees that the City may use civilian contractors and/or one-full time civilian employee, in the Recruiting Section, to recruit applicants for the Fire Department. The Association recognizes that recruiting activities are cyclical and during the months immediately preceding the hiring process, the city may employ additional temporary or part time civilian employees to assist in the recruiting efforts.

Section 6. Public Information Officer

The position of Public Information Officer may continue to be a civilian position. The Fire Chief will continue to use Fire Fighters as public information officers for on-camera interviews and/or comments at fire or emergency scenes. The parties specifically agree, however, that no grievances or other claims may be filed by any Fire Fighter if any reporter or camera operator inadvertently speaks with and/or photographs a civilian at a fire or emergency scene.

Section 7. Photography and Videography

Photography and videography for public information purposes, marketing and training video production may be performed by civilian employees. However, such civilian employees will not be allowed to perform fire photography duties within the meaning of Local Gov't Code §143.003.

Section 8. Air Shop

The Air Shop supervisor will be under the direct supervision of an on-site Fire Fighter.

Section 9. Wildfire Management Division

Civilians working in the Wildfire Management Division will not be used for fire suppression duties. Civilians working in the Wildfire Management Division may perform community outreach and education, administer programs, provide training, and conduct wildfire prevention, including prescribed burns, under the direct supervision of a firefighter. These civilians will serve as technical advisors in the Wildfire Management, Wildfire Mitigation and Operations divisions.

Section 10. Intent

The parties agree that current job duties or functions now being performed by civilian employees may continue during this Agreement except as specifically modified in this Article. However, the Department agrees that it will not use civilians to perform duties that would not be permitted under Chapter 143, except as provided in this Article. Furthermore, civilian employees will not supervise the work of Fire Fighters. The City agrees that the use of civilian employees shall not cause a reduction in authorized force.

ARTICLE 20

CONTRACT GRIEVANCE PROCEDURE

Section 1. Contract Grievances

The purpose of this grievance procedure is to establish an effective method for the fair, expeditious and orderly adjustment of grievances and, except as provided in Section 5, is exclusively for contract grievances. A contract grievance is defined as any dispute, claim, or complaint involving the interpretation, application, or alleged violation of any provisions of this Agreement.

The Association or any bargaining unit member may file a contract grievance under the terms of this Agreement. Each contract grievance shall be submitted on a form agreed to by the parties and must include:

1. A brief statement of the grievance and the facts or events upon which it is based;
2. The section(s) of the Agreement alleged to have been violated;
3. The remedy or adjustment sought;
4. The steps taken by the grievant to resolve the issue; and
5. For a maintenance of standards or past practice grievance, the specific right or practice that is the basis of the complaint must be reasonably identified.

Section 2. Procedure

A. Step 1

The Association President or an employee who is aggrieved must file a grievance with the Association Grievance Committee within twenty (20) days of the date upon which the Fire Fighter knew of or should have known of the facts or events giving rise to the grievance. A copy of the grievance shall be forwarded to the Fire Chief or his/her designee and the City's Labor Relations Office by the Association Grievance Committee within three (3) days of receipt of the grievance.

The Association Grievance Committee shall within fifteen (15) days of receipt of the grievance, determine in its sole discretion, if a valid grievance exists. If the Association Grievance Committee determines that no valid grievance exists, it shall notify the Fire Chief or his/her designee and the City's Labor Relations Office that no further proceedings will be necessary. If the Association Grievance Committee determines that the grievance is valid, it shall process the grievance on behalf of the Fire Fighter(s) by forwarding the written grievance to Step 2 of this procedure.

B. Step 2

Any grievance found to be valid by the Association Grievance Committee, shall be submitted to the Fire Chief and the City's Labor Relations Office within ten (10) days of the Step 1 ruling. After receipt of the grievance, the Fire Chief shall, within ten (10) days of receipt of the

grievance, submit his/her response in writing to the Association Grievance Committee.

C. Step 3

If the grievance is not resolved at Step 2, the Association shall have ten (10) days from receipt of the Fire Chiefs decision to submit the matter to arbitration. The arbitration procedure will be implemented by the Association notifying the Fire Chief and the City's Labor Relations Office in writing of its intent to submit the grievance to arbitration.

D. Step 4

If a grievance is submitted to arbitration, the City and the Association may, within five (5) days of such request, mutually agree to a neutral arbitrator. If the parties are unable to agree on the selection of an arbitrator, the City and Association shall, within five (5) days, jointly request a list of seven (7) arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service. Within ten (10) days following receipt of the list of arbitrators, the parties shall select an arbitrator by each party in turn striking one (1) name from the list until only one (1) name remains. The remaining individual on the list shall serve as the arbitrator. The arbitrator so selected shall, through the agency selected, be promptly notified of his/her selection and the parties, in agreement with the arbitrator, shall select a time, place and date for the hearing of the grievance.

1. Within thirty (30) days after conclusion of the hearing, the arbitrator shall issue a written opinion and ruling with respect to the issues presented, a copy of which shall be mailed or delivered to the Association and the City.
2. With respect to the application, interpretation and enforcement of the provisions of this Agreement the decision of the arbitrator shall be final and binding on the parties to this Agreement.
3. The arbitrator's authority shall be limited to the interpretation and application of the terms of this Agreement and/or any supplement thereto. The arbitrator shall have no jurisdiction or authority to establish provisions of a new agreement or modify the present Agreement or to arbitrate away, in whole or in part, any provisions of the Agreement or amendments thereto.
4. The cost of the impartial arbitrator shall be borne by the losing party. In the event of a composite decision, the arbitrator shall determine the portion of such cost to be borne by each party. If a transcript of the proceedings is requested, then the party so requesting shall pay for such transcript, unless otherwise agreed to by the parties.
5. Each party shall be responsible for the cost of the attendance of its witnesses at a contract grievance hearing.

Section 3. Timelines and Calculation of Days

For the purposes of this Article, a day is defined as a business day on which the City conducts normal business. In calculating deadlines, the day of the act, event or default after which a period of time begins to run is not included. The last day of the period is included unless it is a

weekend or City observed holiday. All time limits set forth in this Article may be extended by written mutual consent, but if not so extended must be strictly observed. Failure of the Association or the grievant to comply with the time limits set forth will serve to declare the grievance settled, and no further action shall be taken. Failure of the Fire Chief or the City to respond within the time limits shall constitute a denial of the grievance and the grievant (Association) may proceed to the next step.

Section 4. Election of Remedies

It is specifically and expressly understood that filing a grievance under this Article, which has as its last step final and binding arbitration, constitutes an election of remedies. Any appeal of an arbitrator's decision in this procedure shall be strictly and solely limited to the grounds that the arbitrator exceeded his/her authority and jurisdiction as provided under this Agreement, that the decision of the arbitrator was procured by fraud or collusion, or that the arbitrator's decision is based upon a clear and manifest error of law.

Section 5. Statutory Appeals and Hearings

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

Section 6. Informal Grievance Resolution

In an attempt to avoid costly arbitration, the parties will try to informally resolve grievances both prior to their filing and prior to arbitration. The attempt to informally resolve grievances does not extend any deadlines unless specifically agreed upon by the parties. Failure to comply with this section shall not serve as the basis of a grievance, nor shall it be admissible by either party at arbitration.

ARTICLE 21
PERSONNEL DEVELOPMENT EVALUATIONS

The parties have agreed that Personnel Development Evaluations/PDE's shall be conducted at least annually, notwithstanding Local Government Code Section 143.082 or Commission rules. The Fire Chief shall determine the frequency of administration of the Evaluations. No information on discipline or reprimands shall be included on the efficiency report/PDE.

ARTICLE 22

HEALTH RELATED BENEFITS

Section 1. Health Insurance

During the term of this Agreement, eligible Fire Fighters and their eligible dependents shall be offered the same health insurance coverage at the same subsidized cost as approved by Council for other City employees on an annual basis.

Section 2. Retiree Medical Coverage

During the term of this Agreement, the City will comply with Chapter 175 of the Local Government Code regarding continued health insurance coverage for eligible retired fire fighters and their eligible dependents. During the term of this Agreement, eligible retired fire fighters and their eligible dependents shall be offered the same health insurance coverage at the same subsidized cost as approved by Council for other retired City employees on an annual basis.

In addition, the City agrees to include Fire Fighters in any Post Employment Health Plan (PEHP) established for any of the City's employees, either public safety or non-public safety, during the term of this Agreement.

ARTICLE 23 FIRE CADETS

Section 1. Status of Fire Cadets

By including this Article, the City does not concede that the Association is the exclusive bargaining agent for fire cadets as provided in Local Government Code Section 174.101, and the Association does not concede that it is not the exclusive bargaining agent for fire cadets as provided in Local Government Code Section 174.101.

Section 2. Vacation and Sick Leave Accruals

A. Accrual Rates

Fire Cadets will earn vacation and sick leave at the rate of entry level Fire Fighters during the time they are in Cadet Class.

B. Leave Conversion for Fire Cadets

Leave time accrued by Fire Cadets during their Cadet Class will be converted, upon graduation, by applying the standard rate already in use by the Department for converting leave accruals from 40 to the Operations Division work week schedules.

Section 3. Bilingual Proficiency Examination for Fire Cadets

Fire Cadets will be given the opportunity to take a language proficiency examination before graduation from the Fire Academy for any language for which Bilingual Translation Pay is available under Article 9 of this Agreement. The examination may be scheduled by the Department during the Fire Cadets off-duty time. Any Fire Cadet who elects to take the examination during off-duty hours shall not be entitled to compensation for the time spent taking the examination. Each Fire Cadet who passes the examination shall be entitled to begin receiving Bilingual Translation Pay at the first pay period after graduation from the Academy.

Section 4. Service Credit

Upon graduation from the Fire Academy, Fire Cadets will receive seniority and longevity credit for time spent in the Fire Academy, but such credit will not be counted as time in grade for determining eligibility for promotion.

Section 5. Association Access to Cadet Classes

The Association, with the approval of the content by the Chief, shall be allowed up to four hours to address each Cadet class to inform them about the Association and its activities. Such time spent addressing Cadet classes shall be deducted from the Association Business Leave pool.

ARTICLE 24 DRUG TESTING

Section 1. Commitment to an Effective Drug Interdiction Program

The City and the Association agree that Fire Fighters work in hazardous situations and that their readiness to perform emergency functions cannot be compromised by the use of illegal drugs or controlled substances. In order to further this joint interest in protecting Fire Fighters and the public, the City and Association agree to mandatory drug testing as described in this Article. The City and the Association are committed to the principle that the mandatory drug testing policy for Fire Fighters is designed, and shall be administered, to result in disciplinary action only against those Fire Fighters who have violated the Department's rules, regulations, policies, and procedures.

Section 2. Drug Testing

A. Definitions

1. As used in this Article in connection with post-motor vehicle collision testing pursuant to Section 3 and random testing pursuant to Section 4, "drug testing" means the compulsory production and submission of a urine sample by a Fire Fighter for chemical analysis to detect the presence of prohibited substance usage. Direct observation will not be included in the testing process.

2. As used in this Article in connection with testing on reasonable suspicion pursuant to Section 8, "drug testing" means the compulsory production and submission of a blood sample by a Fire Fighter for analysis to detect the presence and level of alcohol and prohibited substances.

B. Specimen testing shall be conducted using techniques, equipment, and laboratory facilities in compliance with regulations and guidelines of the U.S. Department of Health and Human Services (DHHS) by a laboratory certified by DHHS. Testing shall be consistent with procedures provided in 49 CFR §§40.71 and 40.73 as amended, except where provided otherwise in this Agreement.

C. The prohibited substances that will be tested for shall be the substances listed in 49 CFR §§40.85 and 40.87 at the time of the testing. A positive test is defined as one where there is a quantifiable presence of one of the above prohibited substances in an amount that meets or exceeds the thresholds under CFR §40.87.

D. A Fire Fighter will not be disciplined for the use of a controlled substance for which the Fire Fighter has a valid prescription, provided the employee is using the controlled substance in compliance with the prescription and Department policy, and is not impaired on duty.

Section 3. Post-Motor Vehicle Collision Drug Testing

If a Fire Fighter is involved in a motor vehicle collision while driving a City-owned vehicle at any time, or a personally-owned vehicle while on City business, the driver will be subject to post-accident drug testing if:

1. The collision results in a human fatality; or

2. An individual is transported for medical treatment away from the scene; or
3. Any vehicle involved in the collision is towed from the scene; or
4. If the Fire Fighter requests to be tested.

Section 4. Random Drug Testing

All Fire Fighters at all ranks and the Fire Chief shall be subject to selection for mandatory testing for prohibited drugs and controlled substances during each calendar year on a fair and impartial statistical basis at the City's expense. Each year, up to twenty-five percent (25%) of the number of Fire Fighters in the Department will be randomly tested. The random selection process will be conducted using a scientifically valid method administered by a Third Party Administrator. Selections for random testing will be made for a defined period, no less frequently than monthly.

Section 5. Providing a Urine Sample for Testing

A. Upon being directed to submit a urine specimen for any drug test under this Agreement, a Fire Fighter shall provide a urine sample in accordance with protocols set out in 49 CFR Part 40, as amended, except where provided otherwise in this Agreement. The Fire Chief retains discretion to determine whether specimen collection will occur at a central location or on site at an AFD facility.

B. If the Fire Fighter is unable to provide at least 45ml of specimen on the first attempt, the provision under 49 CFR §40.193 shall be followed under the direction of the Medical Review Officer (MRO).

C. Failure to provide a urine sample other than for a medically verified inability may be considered insubordination, and may be the basis for suspension or indefinite suspension. The laboratory's Medical Review Officer (MRO) shall be contacted for instructions in the event of a claimed inability to provide a sample.

D. The parties recognize that individual testing facilities may have their own unique waiver forms they require the Fire Fighter to sign. Regardless of what the waiver form language states, the only testing and results the City will obtain shall be limited to the provisions of this Article.

Section 6. Assurance of Accurate Results

A. Fire Fighters shall have the right to request that their urine sample be stored in case of legal disputes. The urine sample will be submitted to the designated testing facility where a sample will be maintained for the period of one year. Drug testing shall consist of a two-step procedure:

1. Initial screening test.
2. Confirmation test.

B. Should a confirmation test be required, the test procedure will be technologically different and more sensitive than the initial screening test. All positive test results will be reviewed by a Medical Review Officer who shall be selected by the testing laboratory. Fire Fighters shall

be provided with a notice of the result and may obtain a copy of the actual laboratory result upon request to the Department's Drug Testing Coordinator.

C. A Fire Fighter who disputes the results of a drug test required under this Agreement may request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. The test must be conducted on a split specimen that was provided by the Fire Fighter at the same time as the original specimen. The Fire Fighter may witness the splitting of the specimen at the time of collection. The method of collecting, storing, and testing the split specimen will be consistent with the procedures set out in 49 CFR Part 40, as amended. The Fire Fighter's request for a split specimen test must be made to the Medical Review Officer within seventy-two (72) hours after the Fire Fighter received notice of the original specimen's verified positive result. Requests received after expiration of the seventy-two (72) hour period can be accepted only if the delay is determined, in the sole discretion of the Fire Chief, to be the result of documentable facts that were beyond the control of the Fire Fighter. The cost of the split specimen test will be paid by the City. If the result of the employee's split specimen test is positive, the Fire Fighter will reimburse the City for the cost of the test.

D. Each year the Drug Testing Program will be evaluated by a third party in accordance with the vendor agreement and CFR §40.121.

Section 7. Confidentiality of Records

The Austin Fire Department is committed to protect the individual dignity, privacy, and confidentiality (consistent with the purposes of the testing program). All records pertaining to required drug tests shall remain confidential except when disclosure is mandated by law or judicial order, or when used in a disciplinary or fitness for duty proceeding. Drug test results and records shall be stored in a locked file under the control of the Department's Drug Testing Coordinator, under the supervision of the Fire Chief, who will maintain original copies submitted by the laboratory. No access to these files shall be allowed without written approval of the Fire Chief.

Section 8. Testing on Reasonable Suspicion

Nothing in this Article shall be construed to prohibit the Fire Chief from conducting an alcohol or drug test on a Fire Fighter, or a search of any areas in which the Fire Fighter does not have a personal privacy expectation, based upon reasonable suspicion that the Fire Fighter has violated the Department's rules, regulations, policies, or procedures. Indicators that form the basis for reasonable suspicion shall be documented in writing.

Section 9. Education

Mandatory educational programs regarding alcohol and drug use will be implemented for all Fire Fighters and printed educational materials will be available to Fire Fighters, including Department policies and relevant federal regulations referred to in this Agreement.

Section 10. Self-Disclosure Prior to Testing Requirement

A. If a Fire Fighter self-discloses to the Fire Chief that the Fire Fighter has used illegal drugs or controlled substances and seeks treatment for drug use, the Fire Chief may use one of the alternative discipline processes in Article 18. Any such self-disclosure must occur:

1. Before the Fire Fighter is notified of selection for random drug testing under

Section 4 above;

2. Before the Fire Fighter is involved in any motor vehicle collision that would subject the Fire Fighter to drug testing under Section 3 above; or

3. Before the occurrence of any event which forms the basis of the Fire Chiefs decision to require a drug test based on reasonable suspicion that the Fire Fighter has violated the Department's rules, regulations, policies, or procedures.

Section 11. Conflicts

A. The terms of this Agreement shall prevail in a conflict with Departmental policy regarding alcohol or drug testing.

B. Nothing in this Article restricts the authority of the Fire Chief to impose appropriate disciplinary action for the violation of Department rules, regulations, policies, or procedures regarding:

1. The use or possession of prohibited substances; and/or

2. The misuse of controlled substances or the consumption of alcohol.

ARTICLE 25
PRE-EMPTION OF CIVIL SERVICE AND OTHER PROVISIONS

In this Agreement the parties agree to the following;

"Conflict preemption" applies unless otherwise specified. Texas Local Gov't Code §174.006 authorizes the parties to alter a "state or local civil service provision" through collective bargaining. To the full extent authorized by §174.006, the parties agree that the provisions of this Agreement shall preempt those portions of any state statute, executive order, local ordinance, or rule with which they specifically conflict only to the extent of such conflict; remaining portions of such provisions will continue to govern the parties' actions.

"Total preemption" applies only where specified. However, to the extent allowed by §174.006, the parties may totally preempt a state statute, executive order, local ordinance, or rule, by placing a provision in this Agreement that: (1) specifically states it is intended to "totally preempt" the law in question, and (2) specifically identifies the law(s) being totally preempted.

ARTICLE 26
ENTIRE AGREEMENT

Section 1. Subjects Bargained

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to raise issues and make proposals with respect to any subject or matter which is a mandatory subject of the collective bargaining process, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Association, for the duration of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated, to bargain with respect to any subject or matter, whether or not referred to, or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

Section 2. Amendment to the Agreement

Except as otherwise explicitly stated, this Agreement may be amended during its term by the parties only by written mutual agreement ratified in accordance with the provisions of Chapter 174.

ARTICLE 27

MAINTENANCE OF STANDARDS

Section 1. Scope of Article

Subject to Section 2 below, all economic benefits, privileges, and working conditions which are properly and lawfully in effect in the Austin Fire Department as to matters subject to mandatory bargaining under Local Government Code Chapter 174, and enjoyed by the Fire Fighters of the bargaining unit as of the effective date of this Agreement, but which are not included in this Agreement, shall remain unchanged for the duration of this Agreement.

Section 2. Operational Needs of the Department

Department management may change those benefits, privileges, and working conditions which it determines, in accordance with this subsection, to interfere with the operation of the Department. Any such changes must be made in good faith, must be consistent with the spirit and intent of the relevant provision or practice, must be reasonable and not discriminatory, must be reasonably related to the safe and orderly operation of the Fire Department, and must not conflict with any state or federal law, governmental regulation, or provision of this Agreement.

ARTICLE 28

SAVINGS CLAUSE

If any provision of this Agreement is subsequently declared by legislative or judicial authority to be unlawful, unenforceable, or contrary to applicable statutes, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement, and the parties shall meet as soon as possible to agree on a substitute provision. However, if the parties are unable to agree within thirty (30) days following commencement of the initial meeting, then the matter shall be postponed until collective bargaining negotiations are resumed.

ARTICLE 29 NOTICES

Section 1. Association Notices

Notices the Association is required to provide to the City under this Agreement or Chapter 174, unless specifically noted otherwise, will be provided in writing (by e-mail or U.S. mail) to the Fire Chief's office, the designated attorney in the City Attorney's Office and the City's Labor Relations Office.

Section 2. City Notices

Notices the City is required to provide to the Association under this Agreement or Chapter 174, unless specifically noted otherwise, will be provided in writing (by e-mail or U.S. mail) to the Association President, Secretary/Treasurer and Office Administrator.

Section 3. Designation of Notice Recipients

Within 7 days after the effective date of this Agreement, both parties will provide the other written notice of the correct mailing and e-mail addresses of its designated recipients.

Section 4. Timeliness of Notice

A notice will be deemed timely if postmarked or time stamped no later than the date such notice is due.

Section 5. Adequacy of E-mail Notice

Use of e-mail communications under this Article shall be preceded by confirmed exchanges at the outset of the Agreement, from the sending to receiving servers, prior to using the e-mail option for notices under this Article. Any system change by either party which would modify IT protocols, filters, or other technical configurations shall require a confirmed exchange again. A notice sent by e-mail will be deemed timely if addressed to the correct e-mail addresses for the City or the Association and sent by 11:59 p.m. on the due date.

Section 6. Notice of Address Changes

Notice of any changes of address or e-mail address must be provided in writing to the other party within 7 days of the change.

ARTICLE 30 TERMINATION OF AGREEMENT

Section 1. Term of Agreement

A. This Agreement shall be effective as of the date it is ratified by the City Council, except as to any provisions herein specifically made retroactive. It shall remain in full force and effect until the 30th day of September, 2022.

B. The provisions of this Agreement do not apply to any Fire Fighter who separates from City employment before the effective date of this Agreement or before the effective date of any specific provisions hereof.

Section 2. Continuation during Negotiations

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

Section 3. Funding Obligations

The City presently intends to continue this Agreement each fiscal year through its term, to pay all payments due, and to fully and promptly perform all of the obligations of the City under this Agreement. All obligations of the City shall be paid only out of current revenues or any other funds lawfully available therefore and appropriated for such purpose by the City Council, if necessary to comply with the Texas Constitution, Article XI.

ARTICLE 31
MERGER WITH ATCEMS

If the City proposes to merge the Austin Fire Department with the Austin-Travis County Emergency Medical Services Department during the life of this Agreement, the parties agree that the Association will be provided advance notice and an opportunity to negotiate the mandatory subjects of bargaining applicable to and directly resulting from the addition of such employees to the bargaining unit before the merger occurs. The bargaining process shall be limited to 120 days unless extended by agreement. In the event the parties are unable after 120 days of bargaining to reach an agreement, a party may request, but neither party shall be required, to use mediation or arbitration to resolve disputed issues under Texas Local Government Code Chapter 174.

ARTICLE 32
LINE OF DUTY DEATHS

In the event of a Line of Duty Death (LODD) in the Austin Fire Department, the Fire Chief may authorize TCFP Certified Fire Fighters employed by other municipalities to ride on AFD apparatus as temporary volunteer replacements during the time of the funeral services or other ceremonial involvement of regular Austin Fire Fighters.

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APPENDIX A-1 PAY SCALES FY 2017-18

40 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	25,034	27,206	29,520	32,222	32,222	32,222	33,831	33,831	33,831	35,524	35,524	35,524	37,297
14050	MO	4,339	4,716	5,117	5,585	5,585	5,585	5,864	5,864	5,864	6,157	6,157	6,157	6,465
F02	YR	52,070	56,588	61,402	67,021	67,021	67,021	70,369	70,369	70,369	73,889	73,889	73,889	77,578
FIRE SPECIALIST	HR			31,882	34,799	34,799	34,799	36,538	36,538	36,538	38,365	38,365	38,365	40,281
14025	MO			5,526	6,032	6,032	6,032	6,333	6,333	6,333	6,650	6,650	6,650	6,982
F06	YR			66,314	72,383	72,383	72,383	75,999	75,999	75,999	79,800	79,800	79,800	83,785
FIRE LIEUTENANT	HR					37,583	37,583	39,461	39,461	39,461	41,435	41,435	41,435	43,504
14020	MO					6,514	6,514	6,840	6,840	6,840	7,182	7,182	7,182	7,541
F08	YR					78,173	78,173	82,079	82,079	82,079	86,184	86,184	86,184	90,487
FIRE CAPTAIN	HR							42,618	42,618	42,618	44,749	44,749	44,749	46,984
13995	MO							7,387	7,387	7,387	7,757	7,757	7,757	8,144
F09	YR							88,645	88,645	88,645	93,079	93,079	93,079	97,726
FIRE BATTALION CHIEF	HR									46,453	48,777	48,777	48,777	51,212
13985	MO									8,052	8,455	8,455	8,455	8,877
F10	YR									96,623	101,456	101,456	101,456	106,522
FIRE DIVISION CHIEF	HR									50,170	52,679	52,679	52,679	55,309
14015	MO									8,696	9,131	9,131	9,131	9,587
F11	YR									104,353	109,572	109,572	109,572	115,044
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	37,297	37,297	39,165	39,165	39,165	41,121	41,121	41,121	43,177	43,177	43,177	43,177	43,177
14050	MO	6,465	6,465	6,789	6,789	6,789	7,128	7,128	7,128	7,484	7,484	7,484	7,484	7,484
F02	YR	77,578	77,578	81,463	81,463	81,463	85,531	85,531	85,531	89,808	89,808	89,808	89,808	89,808
FIRE SPECIALIST	HR	40,281	40,281	42,298	42,298	42,298	44,410	44,410	44,410	46,631	46,631	46,631	46,631	46,631
14025	MO	6,982	6,982	7,332	7,332	7,332	7,698	7,698	7,698	8,083	8,083	8,083	8,083	8,083
F06	YR	83,785	83,785	87,980	87,980	87,980	92,374	92,374	92,374	96,993	96,993	96,993	96,993	96,993
FIRE LIEUTENANT	HR	43,504	43,504	45,682	45,682	45,682	47,963	47,963	47,963	50,362	50,362	50,362	50,362	50,362
14020	MO	7,541	7,541	7,918	7,918	7,918	8,314	8,314	8,314	8,729	8,729	8,729	8,729	8,729
F08	YR	90,487	90,487	95,018	95,018	95,018	99,764	99,764	99,764	104,752	104,752	104,752	104,752	104,752
FIRE CAPTAIN	HR	46,984	46,984	49,336	49,336	49,336	51,800	51,800	51,800	54,390	54,390	54,390	54,390	54,390
13995	MO	8,144	8,144	8,552	8,552	8,552	8,979	8,979	8,979	9,428	9,428	9,428	9,428	9,428
F09	YR	97,726	97,726	102,620	102,620	102,620	107,745	107,745	107,745	113,132	113,132	113,132	113,132	113,132
FIRE BATTALION CHIEF	HR	51,212	51,212	53,777	53,777	53,777	56,462	56,462	56,462	59,286	59,286	59,286	59,286	59,286
13985	MO	8,877	8,877	9,321	9,321	9,321	9,787	9,787	9,787	10,276	10,276	10,276	10,276	10,276
F10	YR	106,522	106,522	111,856	111,856	111,856	117,442	117,442	117,442	123,314	123,314	123,314	123,314	123,314
FIRE DIVISION CHIEF	HR	55,309	55,309	58,079	58,079	58,079	60,979	60,979	60,979	64,028	64,028	64,028	64,028	64,028
14015	MO	9,587	9,587	10,067	10,067	10,067	10,570	10,570	10,570	11,098	11,098	11,098	11,098	11,098
F11	YR	115,044	115,044	120,804	120,804	120,804	126,837	126,837	126,837	133,179	133,179	133,179	133,179	133,179
Rank Differentials: All rank differentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 1: 0.25% effective the first pay period FY 2017-18														

APPENDIX A-1 PAY SCALES FY 2017-18

53 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	18,893	20,533	22,279	24,318	24,318	24,318	25,533	25,533	25,533	26,810	26,810	26,810	28,149
14050	MO	4,339	4,716	5,117	5,585	5,585	5,585	5,864	5,864	5,864	6,157	6,157	6,157	6,465
F02	YR	52,070	56,588	61,402	67,021	67,021	67,021	70,369	70,369	70,369	73,889	73,889	73,889	77,578
FIRE SPECIALIST	HR			24,062	26,264	26,264	26,264	27,576	27,576	27,576	28,955	28,955	28,955	30,401
14025	MO			5,526	6,032	6,032	6,032	6,333	6,333	6,333	6,650	6,650	6,650	6,982
F06	YR			66,314	72,383	72,383	72,383	75,999	75,999	75,999	79,800	79,800	79,800	83,785
FIRE LIEUTENANT	HR					28,365	28,365	29,782	29,782	29,782	31,271	31,271	31,271	32,833
14020	MO					6,514	6,514	6,840	6,840	6,840	7,182	7,182	7,182	7,541
F08	YR					78,173	78,173	82,079	82,079	82,079	86,184	86,184	86,184	90,487
FIRE CAPTAIN	HR							32,164	32,164	32,164	33,773	33,773	33,773	35,460
13995	MO							7,387	7,387	7,387	7,757	7,757	7,757	8,144
F09	YR							88,645	88,645	88,645	93,079	93,079	93,079	97,726
FIRE BATTALION CHIEF	HR									35,059	36,813	36,813	36,813	38,651
13985	MO									8,052	8,455	8,455	8,455	8,877
F10	YR									96,623	101,456	101,456	101,456	106,522
FIRE DIVISION CHIEF	HR									37,864	39,758	39,758	39,758	41,743
14015	MO									8,696	9,131	9,131	9,131	9,587
F11	YR									104,353	109,572	109,572	109,572	115,044
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	28,149	28,149	29,558	29,558	29,558	31,035	31,035	31,035	32,586	32,586	32,586	32,586	32,586
14050	MO	6,465	6,465	6,789	6,789	6,789	7,128	7,128	7,128	7,484	7,484	7,484	7,484	7,484
F02	YR	77,578	77,578	81,463	81,463	81,463	85,531	85,531	85,531	89,808	89,808	89,808	89,808	89,808
FIRE SPECIALIST	HR	30,401	30,401	31,923	31,923	31,923	33,517	33,517	33,517	35,193	35,193	35,193	35,193	35,193
14025	MO	6,982	6,982	7,332	7,332	7,332	7,698	7,698	7,698	8,083	8,083	8,083	8,083	8,083
F06	YR	83,785	83,785	87,980	87,980	87,980	92,374	92,374	92,374	96,993	96,993	96,993	96,993	96,993
FIRE LIEUTENANT	HR	32,833	32,833	34,477	34,477	34,477	36,199	36,199	36,199	38,009	38,009	38,009	38,009	38,009
14020	MO	7,541	7,541	7,918	7,918	7,918	8,314	8,314	8,314	8,729	8,729	8,729	8,729	8,729
F08	YR	90,487	90,487	95,018	95,018	95,018	99,764	99,764	99,764	104,752	104,752	104,752	104,752	104,752
FIRE CAPTAIN	HR	35,460	35,460	37,235	37,235	37,235	39,095	39,095	39,095	41,049	41,049	41,049	41,049	41,049
13995	MO	8,144	8,144	8,552	8,552	8,552	8,979	8,979	8,979	9,428	9,428	9,428	9,428	9,428
F09	YR	97,726	97,726	102,620	102,620	102,620	107,745	107,745	107,745	113,132	113,132	113,132	113,132	113,132
FIRE BATTALION CHIEF	HR	38,651	38,651	40,586	40,586	40,586	42,613	42,613	42,613	44,744	44,744	44,744	44,744	44,744
13985	MO	8,877	8,877	9,321	9,321	9,321	9,787	9,787	9,787	10,276	10,276	10,276	10,276	10,276
F10	YR	106,522	106,522	111,856	111,856	111,856	117,442	117,442	117,442	123,314	123,314	123,314	123,314	123,314
FIRE DIVISION CHIEF	HR	41,743	41,743	43,833	43,833	43,833	46,022	46,022	46,022	48,323	48,323	48,323	48,323	48,323
14015	MO	9,587	9,587	10,067	10,067	10,067	10,570	10,570	10,570	11,098	11,098	11,098	11,098	11,098
F11	YR	115,044	115,044	120,804	120,804	120,804	126,837	126,837	126,837	133,179	133,179	133,179	133,179	133,179
Rank Differentials: All rank diferentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 1: 0.25% effective the first pay period FY 2017-18														

APPENDIX A-2 PAY SCALES FY 2018-19

40 Hour Week														
GRADE	A	B	C	D	E	F	G	H	I	J	K	L	M	
PAYSTEP	10	20	30	40	50	60	70	80	90	100	110	120	130	
YEAR	BASE	1	2	3	4	5	6	7	8	9	10	11	12	
FIREFIGHTER	HR	25,159	27,342	29,668	32,383	32,383	32,383	34,001	34,001	34,001	35,701	35,701	35,701	37,484
14050	MO	4,361	4,739	5,142	5,613	5,613	5,613	5,893	5,893	5,893	6,188	6,188	6,188	6,497
F02	YR	52,331	56,871	61,709	67,356	67,356	67,356	70,721	70,721	70,721	74,258	74,258	74,258	77,966
FIRE SPECIALIST	HR			32,041	34,973	34,973	34,973	36,721	36,721	36,721	38,557	38,557	38,557	40,483
14025	MO			5,554	6,062	6,062	6,062	6,365	6,365	6,365	6,683	6,683	6,683	7,017
F06	YR			66,645	72,744	72,744	72,744	76,379	76,379	76,379	80,199	80,199	80,199	84,204
FIRE LIEUTENANT	HR					37,771	37,771	39,658	39,658	39,658	41,642	41,642	41,642	43,721
14020	MO					6,547	6,547	6,874	6,874	6,874	7,218	7,218	7,218	7,578
F08	YR					78,564	78,564	82,489	82,489	82,489	86,615	86,615	86,615	90,940
FIRE CAPTAIN	HR							42,831	42,831	42,831	44,973	44,973	44,973	47,219
13995	MO							7,424	7,424	7,424	7,795	7,795	7,795	8,185
F09	YR							89,088	89,088	89,088	93,544	93,544	93,544	98,215
FIRE BATTALION CHIEF	HR									46,686	49,021	49,021	49,021	51,468
13985	MO									8,092	8,497	8,497	8,497	8,921
F10	YR									97,106	101,963	101,963	101,963	107,054
FIRE DIVISION CHIEF	HR									50,421	52,942	52,942	52,942	55,586
14015	MO									8,740	9,177	9,177	9,177	9,635
F11	YR									104,875	110,120	110,120	110,120	115,619
GRADE	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	
PAYSTEP	140	150	160	170	180	190	200	210	220	230	240	250	260	
YEAR	13	14	15	16	17	18	19	20	21	22	23	24	25	
FIREFIGHTER	HR	37,484	37,484	39,361	39,361	39,361	41,326	41,326	41,326	43,393	43,393	43,393	43,393	43,393
14050	MO	6,497	6,497	6,823	6,823	6,823	7,163	7,163	7,163	7,521	7,521	7,521	7,521	7,521
F02	YR	77,966	77,966	81,870	81,870	81,870	85,959	85,959	85,959	90,257	90,257	90,257	90,257	90,257
FIRE SPECIALIST	HR	40,483	40,483	42,510	42,510	42,510	44,633	44,633	44,633	46,864	46,864	46,864	46,864	46,864
14025	MO	7,017	7,017	7,368	7,368	7,368	7,736	7,736	7,736	8,123	8,123	8,123	8,123	8,123
F06	YR	84,204	84,204	88,420	88,420	88,420	92,836	92,836	92,836	97,477	97,477	97,477	97,477	97,477
FIRE LIEUTENANT	HR	43,721	43,721	45,910	45,910	45,910	48,203	48,203	48,203	50,613	50,613	50,613	50,613	50,613
14020	MO	7,578	7,578	7,958	7,958	7,958	8,355	8,355	8,355	8,773	8,773	8,773	8,773	8,773
F08	YR	90,940	90,940	95,493	95,493	95,493	100,263	100,263	100,263	105,276	105,276	105,276	105,276	105,276
FIRE CAPTAIN	HR	47,219	47,219	49,583	49,583	49,583	52,059	52,059	52,059	54,662	54,662	54,662	54,662	54,662
13995	MO	8,185	8,185	8,594	8,594	8,594	9,024	9,024	9,024	9,475	9,475	9,475	9,475	9,475
F09	YR	98,215	98,215	103,133	103,133	103,133	108,284	108,284	108,284	113,698	113,698	113,698	113,698	113,698
FIRE BATTALION CHIEF	HR	51,468	51,468	54,046	54,046	54,046	56,745	56,745	56,745	59,582	59,582	59,582	59,582	59,582
13985	MO	8,921	8,921	9,368	9,368	9,368	9,836	9,836	9,836	10,328	10,328	10,328	10,328	10,328
F10	YR	107,054	107,054	112,415	112,415	112,415	118,029	118,029	118,029	123,931	123,931	123,931	123,931	123,931
FIRE DIVISION CHIEF	HR	55,586	55,586	58,369	58,369	58,369	61,284	61,284	61,284	64,349	64,349	64,349	64,349	64,349
14015	MO	9,635	9,635	10,117	10,117	10,117	10,623	10,623	10,623	11,154	11,154	11,154	11,154	11,154
F11	YR	115,619	115,619	121,408	121,408	121,408	127,471	127,471	127,471	133,845	133,845	133,845	133,845	133,845
Rank Differentials: All rank differentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 2: 0.50% effective the first pay period FY 2018-19														

APPENDIX A-2 PAY SCALES FY 2018-19

53 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	18,988	20,635	22,391	24,440	24,440	24,440	25,661	25,661	25,661	26,944	26,944	26,944	28,290
14050	MO	4,361	4,739	5,142	5,613	5,613	5,613	5,893	5,893	5,893	6,188	6,188	6,188	6,497
F02	YR	52,331	56,871	61,709	67,356	67,356	67,356	70,721	70,721	70,721	74,258	74,258	74,258	77,966
FIRE SPECIALIST	HR			24,182	26,395	26,395	26,395	27,714	27,714	27,714	29,100	29,100	29,100	30,553
14025	MO			5,554	6,062	6,062	6,062	6,365	6,365	6,365	6,683	6,683	6,683	7,017
F06	YR			66,645	72,744	72,744	72,744	76,379	76,379	76,379	80,199	80,199	80,199	84,204
FIRE LIEUTENANT	HR					28,507	28,507	29,931	29,931	29,931	31,428	31,428	31,428	32,997
14020	MO					6,547	6,547	6,874	6,874	6,874	7,218	7,218	7,218	7,578
F08	YR					78,564	78,564	82,489	82,489	82,489	86,615	86,615	86,615	90,940
FIRE CAPTAIN	HR							32,325	32,325	32,325	33,942	33,942	33,942	35,637
13995	MO							7,424	7,424	7,424	7,795	7,795	7,795	8,185
F09	YR							89,088	89,088	89,088	93,544	93,544	93,544	98,215
FIRE BATTALION CHIEF	HR									35,234	36,997	36,997	36,997	38,844
13985	MO									8,092	8,497	8,497	8,497	8,921
F10	YR									97,106	101,963	101,963	101,963	107,054
FIRE DIVISION CHIEF	HR									38,053	39,957	39,957	39,957	41,952
14015	MO									8,740	9,177	9,177	9,177	9,635
F11	YR									104,875	110,120	110,120	110,120	115,619
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	28,290	28,290	29,706	29,706	29,706	31,190	31,190	31,190	32,749	32,749	32,749	32,749	32,749
14050	MO	6,497	6,497	6,823	6,823	6,823	7,163	7,163	7,163	7,521	7,521	7,521	7,521	7,521
F02	YR	77,966	77,966	81,870	81,870	81,870	85,959	85,959	85,959	90,257	90,257	90,257	90,257	90,257
FIRE SPECIALIST	HR	30,553	30,553	32,083	32,083	32,083	33,685	33,685	33,685	35,369	35,369	35,369	35,369	35,369
14025	MO	7,017	7,017	7,368	7,368	7,368	7,736	7,736	7,736	8,123	8,123	8,123	8,123	8,123
F06	YR	84,204	84,204	88,420	88,420	88,420	92,836	92,836	92,836	97,477	97,477	97,477	97,477	97,477
FIRE LIEUTENANT	HR	32,997	32,997	34,649	34,649	34,649	36,380	36,380	36,380	38,199	38,199	38,199	38,199	38,199
14020	MO	7,578	7,578	7,958	7,958	7,958	8,355	8,355	8,355	8,773	8,773	8,773	8,773	8,773
F08	YR	90,940	90,940	95,493	95,493	95,493	100,263	100,263	100,263	105,276	105,276	105,276	105,276	105,276
FIRE CAPTAIN	HR	35,637	35,637	37,421	37,421	37,421	39,290	39,290	39,290	41,255	41,255	41,255	41,255	41,255
13995	MO	8,185	8,185	8,594	8,594	8,594	9,024	9,024	9,024	9,475	9,475	9,475	9,475	9,475
F09	YR	98,215	98,215	103,133	103,133	103,133	108,284	108,284	108,284	113,698	113,698	113,698	113,698	113,698
FIRE BATTALION CHIEF	HR	38,844	38,844	40,789	40,789	40,789	42,826	42,826	42,826	44,968	44,968	44,968	44,968	44,968
13985	MO	8,921	8,921	9,368	9,368	9,368	9,836	9,836	9,836	10,328	10,328	10,328	10,328	10,328
F10	YR	107,054	107,054	112,415	112,415	112,415	118,029	118,029	118,029	123,931	123,931	123,931	123,931	123,931
FIRE DIVISION CHIEF	HR	41,952	41,952	44,052	44,052	44,052	46,252	46,252	46,252	48,565	48,565	48,565	48,565	48,565
14015	MO	9,635	9,635	10,117	10,117	10,117	10,623	10,623	10,623	11,154	11,154	11,154	11,154	11,154
F11	YR	115,619	115,619	121,408	121,408	121,408	127,471	127,471	127,471	133,845	133,845	133,845	133,845	133,845
Rank Differentials: All rank diferentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 2: 0.50% effective the first pay period FY 2018-19														

APPENDIX A-3 PAY SCALES FY 2019-20

40 Hour Week														
GRADE	A	B	C	D	E	F	G	H	I	J	K	L	M	
PAYSTEP	10	20	30	40	50	60	70	80	90	100	110	120	130	
YEAR	BASE	1	2	3	4	5	6	7	8	9	10	11	12	
FIREFIGHTER	HR	25,411	27,615	29,964	32,706	32,706	32,706	34,341	34,341	34,341	36,058	36,058	36,058	37,859
14050	MO	4,404	4,787	5,194	5,669	5,669	5,669	5,952	5,952	5,952	6,250	6,250	6,250	6,562
F02	YR	52,854	57,440	62,326	68,030	68,030	68,030	71,428	71,428	71,428	75,001	75,001	75,001	78,746
FIRE SPECIALIST	HR			32,361	35,323	35,323	35,323	37,088	37,088	37,088	38,943	38,943	38,943	40,887
14025	MO			5,609	6,123	6,123	6,123	6,429	6,429	6,429	6,750	6,750	6,750	7,087
F06	YR			67,312	73,472	73,472	73,472	77,143	77,143	77,143	81,001	81,001	81,001	85,046
FIRE LIEUTENANT	HR					38,149	38,149	40,055	40,055	40,055	42,058	42,058	42,058	44,158
14020	MO					6,612	6,612	6,943	6,943	6,943	7,290	7,290	7,290	7,654
F08	YR					79,350	79,350	83,314	83,314	83,314	87,481	87,481	87,481	91,849
FIRE CAPTAIN	HR							43,259	43,259	43,259	45,423	45,423	45,423	47,691
13995	MO							7,498	7,498	7,498	7,873	7,873	7,873	8,266
F09	YR							89,979	89,979	89,979	94,480	94,480	94,480	99,197
FIRE BATTALION CHIEF	HR									47,153	49,511	49,511	49,511	51,983
13985	MO									8,173	8,582	8,582	8,582	9,010
F10	YR									98,077	102,983	102,983	102,983	108,125
FIRE DIVISION CHIEF	HR									50,925	53,472	53,472	53,472	56,142
14015	MO									8,827	9,268	9,268	9,268	9,731
F11	YR									105,923	111,221	111,221	111,221	116,775
GRADE	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	
PAYSTEP	140	150	160	170	180	190	200	210	220	230	240	250	260	
YEAR	13	14	15	16	17	18	19	20	21	22	23	24	25	
FIREFIGHTER	HR	37,859	37,859	39,754	39,754	39,754	41,740	41,740	41,740	43,827	43,827	43,827	43,827	43,827
14050	MO	6,562	6,562	6,891	6,891	6,891	7,235	7,235	7,235	7,597	7,597	7,597	7,597	7,597
F02	YR	78,746	78,746	82,689	82,689	82,689	86,819	86,819	86,819	91,160	91,160	91,160	91,160	91,160
FIRE SPECIALIST	HR	40,887	40,887	42,935	42,935	42,935	45,079	45,079	45,079	47,333	47,333	47,333	47,333	47,333
14025	MO	7,087	7,087	7,442	7,442	7,442	7,814	7,814	7,814	8,204	8,204	8,204	8,204	8,204
F06	YR	85,046	85,046	89,304	89,304	89,304	93,764	93,764	93,764	98,452	98,452	98,452	98,452	98,452
FIRE LIEUTENANT	HR	44,158	44,158	46,369	46,369	46,369	48,685	48,685	48,685	51,119	51,119	51,119	51,119	51,119
14020	MO	7,654	7,654	8,037	8,037	8,037	8,439	8,439	8,439	8,861	8,861	8,861	8,861	8,861
F08	YR	91,849	91,849	96,448	96,448	96,448	101,265	101,265	101,265	106,328	106,328	106,328	106,328	106,328
FIRE CAPTAIN	HR	47,691	47,691	50,079	50,079	50,079	52,580	52,580	52,580	55,209	55,209	55,209	55,209	55,209
13995	MO	8,266	8,266	8,680	8,680	8,680	9,114	9,114	9,114	9,570	9,570	9,570	9,570	9,570
F09	YR	99,197	99,197	104,164	104,164	104,164	109,366	109,366	109,366	114,835	114,835	114,835	114,835	114,835
FIRE BATTALION CHIEF	HR	51,983	51,983	54,586	54,586	54,586	57,312	57,312	57,312	60,178	60,178	60,178	60,178	60,178
13985	MO	9,010	9,010	9,462	9,462	9,462	9,934	9,934	9,934	10,431	10,431	10,431	10,431	10,431
F10	YR	108,125	108,125	113,539	113,539	113,539	119,209	119,209	119,209	125,170	125,170	125,170	125,170	125,170
FIRE DIVISION CHIEF	HR	56,142	56,142	58,953	58,953	58,953	61,897	61,897	61,897	64,992	64,992	64,992	64,992	64,992
14015	MO	9,731	9,731	10,219	10,219	10,219	10,729	10,729	10,729	11,265	11,265	11,265	11,265	11,265
F11	YR	116,775	116,775	122,622	122,622	122,622	128,746	128,746	128,746	135,183	135,183	135,183	135,183	135,183
Rank Differentials: All rank differentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 3: 1.00% effective the first pay period FY 2019-20														

APPENDIX A-3 PAY SCALES FY 2019-20

53 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	19,178	20,842	22,615	24,684	24,684	24,684	25,917	25,917	25,917	27,214	27,214	27,214	28,573
14050	MO	4,404	4,787	5,194	5,669	5,669	5,669	5,952	5,952	5,952	6,250	6,250	6,250	6,562
F02	YR	52,854	57,440	62,326	68,030	68,030	68,030	71,428	71,428	71,428	75,001	75,001	75,001	78,746
FIRE SPECIALIST	HR			24,424	26,659	26,659	26,659	27,991	27,991	27,991	29,391	29,391	29,391	30,858
14025	MO			5,609	6,123	6,123	6,123	6,429	6,429	6,429	6,750	6,750	6,750	7,087
F06	YR			67,312	73,472	73,472	73,472	77,143	77,143	77,143	81,001	81,001	81,001	85,046
FIRE LIEUTENANT	HR					28,792	28,792	30,230	30,230	30,230	31,742	31,742	31,742	33,327
14020	MO					6,612	6,612	6,943	6,943	6,943	7,290	7,290	7,290	7,654
F08	YR					79,350	79,350	83,314	83,314	83,314	87,481	87,481	87,481	91,849
FIRE CAPTAIN	HR							32,648	32,648	32,648	34,281	34,281	34,281	35,993
13995	MO							7,498	7,498	7,498	7,873	7,873	7,873	8,266
F09	YR							89,979	89,979	89,979	94,480	94,480	94,480	99,197
FIRE BATTALION CHIEF	HR									35,587	37,367	37,367	37,367	39,233
13985	MO									8,173	8,582	8,582	8,582	9,010
F10	YR									98,077	102,983	102,983	102,983	108,125
FIRE DIVISION CHIEF	HR									38,434	40,356	40,356	40,356	42,371
14015	MO									8,827	9,268	9,268	9,268	9,731
F11	YR									105,923	111,221	111,221	111,221	116,775
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	28,573	28,573	30,003	30,003	30,003	31,502	31,502	31,502	33,077	33,077	33,077	33,077	33,077
14050	MO	6,562	6,562	6,891	6,891	6,891	7,235	7,235	7,235	7,597	7,597	7,597	7,597	7,597
F02	YR	78,746	78,746	82,689	82,689	82,689	86,819	86,819	86,819	91,160	91,160	91,160	91,160	91,160
FIRE SPECIALIST	HR	30,858	30,858	32,404	32,404	32,404	34,022	34,022	34,022	35,723	35,723	35,723	35,723	35,723
14025	MO	7,087	7,087	7,442	7,442	7,442	7,814	7,814	7,814	8,204	8,204	8,204	8,204	8,204
F06	YR	85,046	85,046	89,304	89,304	89,304	93,764	93,764	93,764	98,452	98,452	98,452	98,452	98,452
FIRE LIEUTENANT	HR	33,327	33,327	34,996	34,996	34,996	36,744	36,744	36,744	38,581	38,581	38,581	38,581	38,581
14020	MO	7,654	7,654	8,037	8,037	8,037	8,439	8,439	8,439	8,861	8,861	8,861	8,861	8,861
F08	YR	91,849	91,849	96,448	96,448	96,448	101,265	101,265	101,265	106,328	106,328	106,328	106,328	106,328
FIRE CAPTAIN	HR	35,993	35,993	37,795	37,795	37,795	39,683	39,683	39,683	41,667	41,667	41,667	41,667	41,667
13995	MO	8,266	8,266	8,680	8,680	8,680	9,114	9,114	9,114	9,570	9,570	9,570	9,570	9,570
F09	YR	99,197	99,197	104,164	104,164	104,164	109,366	109,366	109,366	114,835	114,835	114,835	114,835	114,835
FIRE BATTALION CHIEF	HR	39,233	39,233	41,197	41,197	41,197	43,254	43,254	43,254	45,417	45,417	45,417	45,417	45,417
13985	MO	9,010	9,010	9,462	9,462	9,462	9,934	9,934	9,934	10,431	10,431	10,431	10,431	10,431
F10	YR	108,125	108,125	113,539	113,539	113,539	119,209	119,209	119,209	125,170	125,170	125,170	125,170	125,170
FIRE DIVISION CHIEF	HR	42,371	42,371	44,493	44,493	44,493	46,715	46,715	46,715	49,051	49,051	49,051	49,051	49,051
14015	MO	9,731	9,731	10,219	10,219	10,219	10,729	10,729	10,729	11,265	11,265	11,265	11,265	11,265
F11	YR	116,775	116,775	122,622	122,622	122,622	128,746	128,746	128,746	135,183	135,183	135,183	135,183	135,183
Rank Differentials: All rank differentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 3: 1.00% effective the first pay period FY 2019-20														

APPENDIX A-4 PAY SCALES FY 2020-21

40 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	25,919	28,168	30,564	33,361	33,361	33,361	35,027	35,027	35,027	36,779	36,779	36,779	38,616
14050	MO	4,493	4,882	5,298	5,783	5,783	5,783	6,071	6,071	6,071	6,375	6,375	6,375	6,693
F02	YR	53,911	58,589	63,572	69,390	69,390	69,390	72,857	72,857	72,857	76,501	76,501	76,501	80,321
FIRE SPECIALIST	HR			33,009	36,029	36,029	36,029	37,830	37,830	37,830	39,722	39,722	39,722	41,705
14025	MO			5,722	6,245	6,245	6,245	6,557	6,557	6,557	6,885	6,885	6,885	7,229
F06	YR			68,658	74,941	74,941	74,941	78,685	78,685	78,685	82,621	82,621	82,621	86,747
FIRE LIEUTENANT	HR					38,912	38,912	40,856	40,856	40,856	42,899	42,899	42,899	45,041
14020	MO					6,745	6,745	7,082	7,082	7,082	7,436	7,436	7,436	7,807
F08	YR					80,937	80,937	84,980	84,980	84,980	89,231	89,231	89,231	93,686
FIRE CAPTAIN	HR							44,124	44,124	44,124	46,331	46,331	46,331	48,645
13995	MO							7,648	7,648	7,648	8,031	8,031	8,031	8,432
F09	YR							91,779	91,779	91,779	96,369	96,369	96,369	101,181
FIRE BATTALION CHIEF	HR									48,096	50,501	50,501	50,501	53,023
13985	MO									8,337	8,754	8,754	8,754	9,191
F10	YR									100,039	105,042	105,042	105,042	110,287
FIRE DIVISION CHIEF	HR									51,943	54,541	54,541	54,541	57,265
14015	MO									9,003	9,454	9,454	9,454	9,926
F11	YR									108,042	113,446	113,446	113,446	119,111
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	38,616	38,616	40,549	40,549	40,549	42,574	42,574	42,574	44,703	44,703	44,703	44,703	44,703
14050	MO	6,693	6,693	7,029	7,029	7,029	7,380	7,380	7,380	7,749	7,749	7,749	7,749	7,749
F02	YR	80,321	80,321	84,343	84,343	84,343	88,555	88,555	88,555	92,983	92,983	92,983	92,983	92,983
FIRE SPECIALIST	HR	41,705	41,705	43,793	43,793	43,793	45,980	45,980	45,980	48,279	48,279	48,279	48,279	48,279
14025	MO	7,229	7,229	7,591	7,591	7,591	7,970	7,970	7,970	8,368	8,368	8,368	8,368	8,368
F06	YR	86,747	86,747	91,090	91,090	91,090	95,639	95,639	95,639	100,421	100,421	100,421	100,421	100,421
FIRE LIEUTENANT	HR	45,041	45,041	47,297	47,297	47,297	49,659	49,659	49,659	52,142	52,142	52,142	52,142	52,142
14020	MO	7,807	7,807	8,198	8,198	8,198	8,608	8,608	8,608	9,038	9,038	9,038	9,038	9,038
F08	YR	93,686	93,686	98,377	98,377	98,377	103,290	103,290	103,290	108,455	108,455	108,455	108,455	108,455
FIRE CAPTAIN	HR	48,645	48,645	51,081	51,081	51,081	53,632	53,632	53,632	56,313	56,313	56,313	56,313	56,313
13995	MO	8,432	8,432	8,854	8,854	8,854	9,296	9,296	9,296	9,761	9,761	9,761	9,761	9,761
F09	YR	101,181	101,181	106,248	106,248	106,248	111,554	111,554	111,554	117,131	117,131	117,131	117,131	117,131
FIRE BATTALION CHIEF	HR	53,023	53,023	55,678	55,678	55,678	58,458	58,458	58,458	61,381	61,381	61,381	61,381	61,381
13985	MO	9,191	9,191	9,651	9,651	9,651	10,133	10,133	10,133	10,639	10,639	10,639	10,639	10,639
F10	YR	110,287	110,287	115,810	115,810	115,810	121,594	121,594	121,594	127,673	127,673	127,673	127,673	127,673
FIRE DIVISION CHIEF	HR	57,265	57,265	60,132	60,132	60,132	63,135	63,135	63,135	66,292	66,292	66,292	66,292	66,292
14015	MO	9,926	9,926	10,423	10,423	10,423	10,943	10,943	10,943	11,491	11,491	11,491	11,491	11,491
F11	YR	119,111	119,111	125,075	125,075	125,075	131,321	131,321	131,321	137,887	137,887	137,887	137,887	137,887
Rank Differentials: All rank diferentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 4: 2.00% effective the first pay period FY 2020-21														

APPENDIX A-4 PAY SCALES FY 2020-21

53 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	19,561	21,259	23,067	25,178	25,178	25,178	26,436	26,436	26,436	27,758	27,758	27,758	29,144
14050	MO	4,493	4,882	5,298	5,783	5,783	5,783	6,071	6,071	6,071	6,375	6,375	6,375	6,693
F02	YR	53,911	58,589	63,572	69,390	69,390	69,390	72,857	72,857	72,857	76,501	76,501	76,501	80,321
FIRE SPECIALIST	HR			24,912	27,192	27,192	27,192	28,551	28,551	28,551	29,979	29,979	29,979	31,476
14025	MO			5,722	6,245	6,245	6,245	6,557	6,557	6,557	6,885	6,885	6,885	7,229
F06	YR			68,658	74,941	74,941	74,941	78,685	78,685	78,685	82,621	82,621	82,621	86,747
FIRE LIEUTENANT	HR					29,367	29,367	30,835	30,835	30,835	32,377	32,377	32,377	33,994
14020	MO					6,745	6,745	7,082	7,082	7,082	7,436	7,436	7,436	7,807
F08	YR					80,937	80,937	84,980	84,980	84,980	89,231	89,231	89,231	93,686
FIRE CAPTAIN	HR							33,301	33,301	33,301	34,967	34,967	34,967	36,713
13995	MO							7,648	7,648	7,648	8,031	8,031	8,031	8,432
F09	YR							91,779	91,779	91,779	96,369	96,369	96,369	101,181
FIRE BATTALION CHIEF	HR									36,299	38,114	38,114	38,114	40,017
13985	MO									8,337	8,754	8,754	8,754	9,191
F10	YR									100,039	105,042	105,042	105,042	110,287
FIRE DIVISION CHIEF	HR									39,202	41,163	41,163	41,163	43,219
14015	MO									9,003	9,454	9,454	9,454	9,926
F11	YR									108,042	113,446	113,446	113,446	119,111
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	29,144	29,144	30,603	30,603	30,603	32,132	32,132	32,132	33,738	33,738	33,738	33,738	33,738
14050	MO	6,693	6,693	7,029	7,029	7,029	7,380	7,380	7,380	7,749	7,749	7,749	7,749	7,749
F02	YR	80,321	80,321	84,343	84,343	84,343	88,555	88,555	88,555	92,983	92,983	92,983	92,983	92,983
FIRE SPECIALIST	HR	31,476	31,476	33,052	33,052	33,052	34,702	34,702	34,702	36,437	36,437	36,437	36,437	36,437
14025	MO	7,229	7,229	7,591	7,591	7,591	7,970	7,970	7,970	8,368	8,368	8,368	8,368	8,368
F06	YR	86,747	86,747	91,090	91,090	91,090	95,639	95,639	95,639	100,421	100,421	100,421	100,421	100,421
FIRE LIEUTENANT	HR	33,994	33,994	35,696	35,696	35,696	37,478	37,478	37,478	39,352	39,352	39,352	39,352	39,352
14020	MO	7,807	7,807	8,198	8,198	8,198	8,608	8,608	8,608	9,038	9,038	9,038	9,038	9,038
F08	YR	93,686	93,686	98,377	98,377	98,377	103,290	103,290	103,290	108,455	108,455	108,455	108,455	108,455
FIRE CAPTAIN	HR	36,713	36,713	38,551	38,551	38,551	40,477	40,477	40,477	42,501	42,501	42,501	42,501	42,501
13995	MO	8,432	8,432	8,854	8,854	8,854	9,296	9,296	9,296	9,761	9,761	9,761	9,761	9,761
F09	YR	101,181	101,181	106,248	106,248	106,248	111,554	111,554	111,554	117,131	117,131	117,131	117,131	117,131
FIRE BATTALION CHIEF	HR	40,017	40,017	42,021	42,021	42,021	44,120	44,120	44,120	46,326	46,326	46,326	46,326	46,326
13985	MO	9,191	9,191	9,651	9,651	9,651	10,133	10,133	10,133	10,639	10,639	10,639	10,639	10,639
F10	YR	110,287	110,287	115,810	115,810	115,810	121,594	121,594	121,594	127,673	127,673	127,673	127,673	127,673
FIRE DIVISION CHIEF	HR	43,219	43,219	45,383	45,383	45,383	47,649	47,649	47,649	50,032	50,032	50,032	50,032	50,032
14015	MO	9,926	9,926	10,423	10,423	10,423	10,943	10,943	10,943	11,491	11,491	11,491	11,491	11,491
F11	YR	119,111	119,111	125,075	125,075	125,075	131,321	131,321	131,321	137,887	137,887	137,887	137,887	137,887
Rank Differentials: All rank diferentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 4: 2.00% effective the first pay period FY 2020-21														

APPENDIX A-5 PAY SCALES FY 2021-22

40 Hour Week														
GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12	
FIREFIGHTER	HR	26,567	28,872	31,328	34,195	34,195	34,195	35,903	35,903	35,903	37,699	37,699	37,699	39,581
14050	MO	4,605	5,004	5,430	5,927	5,927	5,927	6,223	6,223	6,223	6,534	6,534	6,534	6,861
F02	YR	55,259	60,053	65,162	71,125	71,125	71,125	74,678	74,678	74,678	78,414	78,414	78,414	82,329
FIRE SPECIALIST	HR			33,834	36,930	36,930	36,930	38,775	38,775	38,775	40,715	40,715	40,715	42,748
14025	MO			5,865	6,401	6,401	6,401	6,721	6,721	6,721	7,057	7,057	7,057	7,410
F06	YR			70,375	76,815	76,815	76,815	80,653	80,653	80,653	84,687	84,687	84,687	88,915
FIRE LIEUTENANT	HR				39,885	39,885	41,877	41,877	41,877	43,972	43,972	43,972	43,972	46,168
14020	MO				6,913	6,913	7,259	7,259	7,259	7,622	7,622	7,622	7,622	8,002
F08	YR				82,960	82,960	87,105	87,105	87,105	91,462	91,462	91,462	91,462	96,028
FIRE CAPTAIN	HR						45,228	45,228	45,228	47,490	47,490	47,490	47,490	49,861
13995	MO						7,839	7,839	7,839	8,232	8,232	8,232	8,232	8,643
F09	YR						94,073	94,073	94,073	98,778	98,778	98,778	98,778	103,711
FIRE BATTALION CHIEF	HR								49,298	51,764	51,764	51,764	51,764	54,348
13985	MO								8,545	8,972	8,972	8,972	8,972	9,420
F10	YR								102,540	107,669	107,669	107,669	107,669	113,045
FIRE DIVISION CHIEF	HR								53,242	55,905	55,905	55,905	55,905	58,696
14015	MO								9,229	9,690	9,690	9,690	9,690	10,174
F11	YR								110,743	116,282	116,282	116,282	116,282	122,088
GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25	
FIREFIGHTER	HR	39,581	39,581	41,563	41,563	41,563	43,639	43,639	43,639	45,821	45,821	45,821	45,821	45,821
14050	MO	6,861	6,861	7,204	7,204	7,204	7,564	7,564	7,564	7,942	7,942	7,942	7,942	7,942
F02	YR	82,329	82,329	86,451	86,451	86,451	90,769	90,769	90,769	95,307	95,307	95,307	95,307	95,307
FIRE SPECIALIST	HR	42,748	42,748	44,888	44,888	44,888	47,130	47,130	47,130	49,486	49,486	49,486	49,486	49,486
14025	MO	7,410	7,410	7,781	7,781	7,781	8,169	8,169	8,169	8,578	8,578	8,578	8,578	8,578
F06	YR	88,915	88,915	93,367	93,367	93,367	98,030	98,030	98,030	102,932	102,932	102,932	102,932	102,932
FIRE LIEUTENANT	HR	46,168	46,168	48,479	48,479	48,479	50,900	50,900	50,900	53,445	53,445	53,445	53,445	53,445
14020	MO	8,002	8,002	8,403	8,403	8,403	8,823	8,823	8,823	9,264	9,264	9,264	9,264	9,264
F08	YR	96,028	96,028	100,837	100,837	100,837	105,873	105,873	105,873	111,166	111,166	111,166	111,166	111,166
FIRE CAPTAIN	HR	49,861	49,861	52,358	52,358	52,358	54,972	54,972	54,972	57,721	57,721	57,721	57,721	57,721
13995	MO	8,643	8,643	9,075	9,075	9,075	9,529	9,529	9,529	10,005	10,005	10,005	10,005	10,005
F09	YR	103,711	103,711	108,904	108,904	108,904	114,343	114,343	114,343	120,060	120,060	120,060	120,060	120,060
FIRE BATTALION CHIEF	HR	54,348	54,348	57,070	57,070	57,070	59,920	59,920	59,920	62,916	62,916	62,916	62,916	62,916
13985	MO	9,420	9,420	9,892	9,892	9,892	10,386	10,386	10,386	10,905	10,905	10,905	10,905	10,905
F10	YR	113,045	113,045	118,705	118,705	118,705	124,633	124,633	124,633	130,865	130,865	130,865	130,865	130,865
FIRE DIVISION CHIEF	HR	58,696	58,696	61,635	61,635	61,635	64,713	64,713	64,713	67,949	67,949	67,949	67,949	67,949
14015	MO	10,174	10,174	10,683	10,683	10,683	11,217	11,217	11,217	11,778	11,778	11,778	11,778	11,778
F11	YR	122,088	122,088	128,202	128,202	128,202	134,604	134,604	134,604	141,334	141,334	141,334	141,334	141,334
Rank Differentials: All rank differentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 5: 2.50% effective the first pay period FY 2021-22														

APPENDIX A-5 PAY SCALES FY 2021-22

53 Hour Week														
	GRADE PAYSTEP YEAR	A 10 BASE	B 20 1	C 30 2	D 40 3	E 50 4	F 60 5	G 70 6	H 80 7	I 90 8	J 100 9	K 110 10	L 120 11	M 130 12
FIREFIGHTER	HR	20,050	21,790	23,644	25,807	25,807	25,807	27,097	27,097	27,097	28,452	28,452	28,452	29,873
14050	MO	4,605	5,004	5,430	5,927	5,927	5,927	6,223	6,223	6,223	6,534	6,534	6,534	6,861
F02	YR	55,259	60,053	65,162	71,125	71,125	71,125	74,678	74,678	74,678	78,414	78,414	78,414	82,329
FIRE SPECIALIST	HR			25,535	27,872	27,872	27,872	29,264	29,264	29,264	30,728	30,728	30,728	32,262
14025	MO			5,865	6,401	6,401	6,401	6,721	6,721	6,721	7,057	7,057	7,057	7,410
F06	YR			70,375	76,815	76,815	76,815	80,653	80,653	80,653	84,687	84,687	84,687	88,915
FIRE LIEUTENANT	HR					30,102	30,102	31,606	31,606	31,606	33,186	33,186	33,186	34,843
14020	MO					6,913	6,913	7,259	7,259	7,259	7,622	7,622	7,622	8,002
F08	YR					82,960	82,960	87,105	87,105	87,105	91,462	91,462	91,462	96,028
FIRE CAPTAIN	HR							34,134	34,134	34,134	35,841	35,841	35,841	37,631
13995	MO							7,839	7,839	7,839	8,232	8,232	8,232	8,643
F09	YR							94,073	94,073	94,073	98,778	98,778	98,778	103,711
FIRE BATTALION CHIEF	HR									37,206	39,067	39,067	39,067	41,018
13985	MO									8,545	8,972	8,972	8,972	9,420
F10	YR									102,540	107,669	107,669	107,669	113,045
FIRE DIVISION CHIEF	HR									40,183	42,192	42,192	42,192	44,299
14015	MO									9,229	9,690	9,690	9,690	10,174
F11	YR									110,743	116,282	116,282	116,282	122,088
	GRADE PAYSTEP YEAR	N 140 13	O 150 14	P 160 15	Q 170 16	R 180 17	S 190 18	T 200 19	U 210 20	V 220 21	W 230 22	X 240 23	Y 250 24	Z 260 25
FIREFIGHTER	HR	29,873	29,873	31,368	31,368	31,368	32,935	32,935	32,935	34,582	34,582	34,582	34,582	34,582
14050	MO	6,861	6,861	7,204	7,204	7,204	7,564	7,564	7,564	7,942	7,942	7,942	7,942	7,942
F02	YR	82,329	82,329	86,451	86,451	86,451	90,769	90,769	90,769	95,307	95,307	95,307	95,307	95,307
FIRE SPECIALIST	HR	32,262	32,262	33,878	33,878	33,878	35,570	35,570	35,570	37,348	37,348	37,348	37,348	37,348
14025	MO	7,410	7,410	7,781	7,781	7,781	8,169	8,169	8,169	8,578	8,578	8,578	8,578	8,578
F06	YR	88,915	88,915	93,367	93,367	93,367	98,030	98,030	98,030	102,932	102,932	102,932	102,932	102,932
FIRE LIEUTENANT	HR	34,843	34,843	36,588	36,588	36,588	38,415	38,415	38,415	40,336	40,336	40,336	40,336	40,336
14020	MO	8,002	8,002	8,403	8,403	8,403	8,823	8,823	8,823	9,264	9,264	9,264	9,264	9,264
F08	YR	96,028	96,028	100,837	100,837	100,837	105,873	105,873	105,873	111,166	111,166	111,166	111,166	111,166
FIRE CAPTAIN	HR	37,631	37,631	39,515	39,515	39,515	41,489	41,489	41,489	43,563	43,563	43,563	43,563	43,563
13995	MO	8,643	8,643	9,075	9,075	9,075	9,529	9,529	9,529	10,005	10,005	10,005	10,005	10,005
F09	YR	103,711	103,711	108,904	108,904	108,904	114,343	114,343	114,343	120,060	120,060	120,060	120,060	120,060
FIRE BATTALION CHIEF	HR	41,018	41,018	43,072	43,072	43,072	45,223	45,223	45,223	47,484	47,484	47,484	47,484	47,484
13985	MO	9,420	9,420	9,892	9,892	9,892	10,386	10,386	10,386	10,905	10,905	10,905	10,905	10,905
F10	YR	113,045	113,045	118,705	118,705	118,705	124,633	124,633	124,633	130,865	130,865	130,865	130,865	130,865
FIRE DIVISION CHIEF	HR	44,299	44,299	46,517	46,517	46,517	48,840	48,840	48,840	51,282	51,282	51,282	51,282	51,282
14015	MO	10,174	10,174	10,683	10,683	10,683	11,217	11,217	11,217	11,778	11,778	11,778	11,778	11,778
F11	YR	122,088	122,088	128,202	128,202	128,202	134,604	134,604	134,604	141,334	141,334	141,334	141,334	141,334
Rank Differentials: All rank differentials are 8% except Captain to Battalion Chief is 9% and Division Chief to Assistant chief is at least 12.8%														
Step Structure: 5% step increase at years 6, 9, 12, 15, 18, & 21 years and 9.15% increase at 3 years														
Notes: Month & Annual Pay Rates are approximations due to statistical rounding.														
Year 5: 2.50% effective the first pay period FY 2021-22														

APPENDIX B
PROMOTIONAL EXAMINATION SCHEDULE

- (a) The Specialist examination shall be given during June of 2019, and each successive June in odd numbered years. Initial source materials shall be identified and timely posted, as per Chapter 143, in March 2019, and in March of each successive odd numbered year, together with all other test information required under Chapter 143 to be in the posted notice for promotional examinations.
- (b) The Lieutenant examination shall be given during June of 2019, and each successive June in odd numbered years. Initial source materials shall be identified and timely posted, as per Chapter 143, in March 2019, and in March of each successive odd numbered year, together with all other test information required under Chapter 143 to be in the posted notice for promotional examinations.
- (c) The Captain examination shall be given during September of 2019, and each successive September in odd numbered years. Initial source materials shall be identified and timely posted, as per Chapter 143, in June 2019, and in June of each successive odd numbered year, together with all other test information required under Chapter 143 to be in the posted notice for promotional examinations.
- (d) The Battalion Chief examinations shall be given during November of 2019, and each successive November in odd numbered years. Initial source materials shall be identified and timely posted, as per Chapter 143, in August 2019, and in August of each successive odd numbered year, together with all other test information required under Chapter 143 to be in the posted notice for promotional examinations.

APPENDIX C

Entry Standards Requirements

Entry standards shall be completed before merger commitment, unless management and labor from both Austin Fire and the merging ESD mutually agree to a deviation. The merging ESD must pay AFD for all costs associated with the evaluation of entry standards. Entry standards will include:

- Minimum experience of 2 years firefighting experience in a Travis County ESD as defined by:
 - A Travis County ESD carried their TCFP certification for at least 24 of the past 48 months.
 - Over the last two years, the firefighter must have worked at least 1,500 hours per year for an ESD classified as a full-time firefighter by TCFP
- Certifications including;
 - TCFP Structure Firefighting
 - EMT
 - Credentialed by the Travis County Office of the Medical Director
- AFD Physical Ability:
 - CPAT (AFD)
 - Aerobic capacity assessment measuring 12 METS
- Medical
- Drug Screening
- Psychological evaluation
- Criminal background check
- Salary will be set at a level to be determined but will not exceed the pay of a two year AFD firefighter.
- Similar to traditional cadets, the Executive Team will review all candidates disqualified because of Entry Standards. For ESD mergers, the Executive Team will include two AFA representatives.

Training Standards Requirements

A. The ESD firefighters will be tested on all initial cadet and Probationary Fire Fighter (PFF) skills while in the Academy.

B. There will be a preparation packet delivered to the ESD firefighters while still employed at their ESD:

- a. Time Frame (3.5 – 4 months)
- b. Overview: ESD firefighters will be given a prep pack to start preparing for the merger academy. The packet will consist of: AFD Policies as are usually provided to an AFD Probationary Firefighter; Cadet and Probationary Skills (skill sheets and videos); COG's, 130/190 coursework. An AFD Liaison will be assigned to assist them.

C. The ESD firefighters will successfully complete an ESD merger academy before being hired by the City of Austin.

The merger academy will be a minimum of 14 weeks in length.

All Initial Cadet and PFF skills current within AFD at the time of the beginning of the merger transfer period would be tested, with the rules for retest, etc. in place that are current for traditional AFD cadets at that time.

AFD ESD Merger Academy

a. Overview: During this time the ESD firefighters will be tested on all cadet and probationary skills at Shaw Lane. ESD firefighters will prepare themselves to show up for the AFD Merger Academy prepared to pass the skill tests and AFD policy tests on day one of the Merger Academy. , There will be scenario based training allowing for evaluation of understanding of AFD Policies. Scenarios will include, but will not be limited to,: Wildland, High rise, fire attack, RIC and EMT. The ESD firefighter will graduate AFD Merger Academy upon successful completion of cadet and probationary skills and an AFD Policy test written to the same difficulty as a traditional AFD Probationary Policy Test.

ESD firefighters' Probation evaluations should not test on Policies, as this has been completed during the Merger Academy (and learned during the Prep Packet period). Each module, they should practice and be tested by their Captain on one Fire and one EMT module, chosen by the Captain. The practices and test results would be placed in RMS. They will not test on skills at the end of Probation.

The ESD Fire Fighters' probation period ends one year from their date of hire.

Station Assignment Requirements

- Merging ESD employees shall receive a station assignment upon completion of the AFD Training Academy through the normal AFD station assignment process. The exceptions below shall remain in place until successful completion of their probationary period. During the probationary period:
 - o Merging ESD employees shall not receive an assignment to any fire station located within the former ESD's response area.
 - o Merging ESD employees shall not be grouped in one geographical area but shall be dispersed throughout the entire department.
 - o Merging ESD employees shall not be assigned to the same unit on the same shift.

Seniority Requirements

With regard to civil service seniority:

- Seniority: Maintain system as it exists currently with seniority accrual beginning with Austin Fire Department hire date.
- Promotion Eligibility: Maintain the requirement of two years in classified rank with the Austin Fire Department prior to promotional exam eligibility.
- Tie Breakers: In the event of a tie on a promotional exam
 - The current first tie breaker of “time in rank,” will serve adequately between any two members regardless of merger unless they have the same hire date.
 - All new merged members should have the same AFD hire date and therefore in the instance they are tied with each other a new civil service rule will be required. The following is proposed:
 - After “time in rank” with AFD, the next tie breaker – Highest rank held in original/merged department. (eg. Lt in former dept would win tie breaker over firefighter)
 - The next tie breaker, if needed, would be time in that rank. (eg. Driver with the most time in that rank at former dept would win tie breaker over driver from former dept with less time at that rank.
 - The next tie breaker, if needed, would be date of hire with original/merged department.
 - The next tie breaker, if needed, would be by randomized lottery, which, the subcommittee believes the civil service commission already utilizes.
- Vacation Selection: Maintain system of selecting vacation dates as it currently exists.
- Force Reduction: Maintain current civil service order of release and rehire for any future force reductions.
 - The current CBA gives further protection to members demoted/laid off and placed on reinstatement lists. Those protections should be maintained and should apply equally to merged members.
 - Assuming the following doesn’t disagree with the CBA and assuming all merged members would have the same hire date, then a system would be needed to determine order of release and rehire as between those members. The following is proposed:
 - Hire date with original/merged department would act as seniority to order those members for last in / first out decisions.
 - The lowest seniority date with the original/merged department would be the first to be laid off.
 - The highest seniority date with the original/merged department would be the first to be rehired
 - This date/order would need to be determined at the time of hiring and maintained by the civil service commission

EXHIBIT 2

CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; JAY WILEY,	)	IN THE DISTRICT COURT
	)	
PLAINTIFFS	)	
	)	
AND	)	
	)	
TEXAS,	)	
	)	
INTERVENOR-PLAINTIFF,	)	419TH JUDICIAL DISTRICT
	)	
VS.	)	
	)	
CITY OF AUSTIN, TEXAS;	)	
ELAINE HART, IN HER	)	
OFFICIAL CAPACITY AS CITY	)	
MANAGER OF THE CITY OF	)	
AUSTIN,	)	
	)	
DEFENDANTS	)	TRAVIS COUNTY, TEXAS

ORAL DEPOSITION

OF

SYLVIA FLORES

OCTOBER 29, 2018

ORAL DEPOSITION OF SYLVIA FLORES, produced as a
Witness at the instance of Plaintiffs, and duly sworn, was
taken in the above-styled and numbered cause on the 29th
day of October, 2018, from 9:48 a.m. to 10:38 a.m., before
JUDY A. COUGHENOUR JOHNSON, Certified Shorthand Reporter
No. 1198, in and for the State of Texas, reported by

1 machine shorthand at AUSTIN CITY HALL, 301 West Second
2 Street, Austin, Texas, pursuant to the Texas Rules of
3 Civil Procedure and the provisions stated on the record or
4 attached herein.

5 * * * * *

6 APPEARANCES

7 For Plaintiffs:

8 SCHARF-NORTON CENTER FOR CONSTITUTIONAL
9 LITIGATION AT THE GOLDWATER INSTITUTE
10 BY: JONATHAN RICHES
11 500 East Coronado Road
12 Phoenix, AZ 85004
13 PH: (602) 256-4000
14 e-mail: Jriches@goldwaterinstitute.org

15 - AND -

16 TEXAS PUBLIC POLICY FOUNDATION
17 BY: ROBERT HENNEKE
18 901 Congress Avenue
19 Austin, TX 78701
20 PH: (512) 472-2700
21 e-mail: Rhenneke@texaspolicy.com

22 For Intervenor-Plaintiff:

23 OFFICE OF THE ATTORNEY GENERL
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25 P. O. Box 12548
Austin, TX 78711-2548
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1 APPEARANCES (CONTINUED)

2 For Defendants:

3 CITY OF AUSTIN LAW DEPARTMENT
 4 BY: SAMEER S. BIRRING
 - AND -
 HANNAH M. VAHL
 5 P. O. Box 1546
 Austin, TX 78767-1546
 6 PH: (512) 974-3042
 e-mail: Sameer.birring@austintexas.gov

7 For Intervenor Austin Fire Fighters Assoc., Local 975:

8 WOODLEY & MCGILLIVARY
 9 BY: JOHN W. STEWART
 1101 Vermont Avenue, N.W.
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 Washington, D.C. 20005
 11 PH: (202) 833-8855
 e-mail: Jws@wmlaborlaw.com

12 Also Present:

13 Ronnell Paulsen
 14 Aaron Woolverton

15 Reported By:

16 JUDY A. COUGHENOUR & ASSOCIATES
 17 BY: JUDY A. COUGHENOUR JOHNSON
 8109 Asmara Drive
 Austin, TX 78750
 18 PH: (512) 346-4707
 e-mail: Jude@prodigy.net

19 * * * * *

20 STIPULATIONS

21 The attorneys for all parties present stipulate and
 22 agree to the following items:

23 THAT the deposition of SYLVIA FLORES is taken
 24 pursuant to Notice;

25 THAT all objections will be made pursuant to the

1 Texas Rules of Civil Procedure;

2 AND THAT the original transcript will be submitted
3 for signature to the Witness' attorney, SAMEER S. BIRRING,
4 and that the Witness or the Witness' attorney will return
5 the signed transcript to JUDY A. COUGHENOUR & ASSOCIATES
6 within 20 days of the date the transcript is provided to
7 the Witness' attorney. If not returned, the Witness may
8 be deemed to have waived the right to make the changes,
9 and an unsigned copy may be used as though signed.

10 * * * * *

11 INDEX

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EXHIBITS			
EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED	PAGE REF'D
1	Being a copy of the Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	10	10
2	Being the original booklet entitled Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	28	28

1 A (The Witness) Yes, I do.

2 Q Can --

3 A I --

4 Q -- you identify it?

5 A This is the current negotiated agreement between
6 the City of Austin and the Austin Fire Fighters
7 Association.

8 Q Were you familiar with that document before you
9 came in for depositions today?

10 A Yes.

11 Q What's the purpose of that agreement?

12 A This agreement allows the City of Austin to
13 address different items that are outside of Chapter 143 of
14 the local code.

15 It addresses things like hiring, and
16 promotions, disciplines, and how we will monitor pay for
17 the fire fighters.

18 It includes thirty-two articles that we
19 have negotiated with the Association.

20 Q Have you negotiated a - agreements, prior to
21 this agreement between Austin and the Austin Fire Fighters
22 Association?

23 A Yes, I have.

24 Q And how many previous agreements have you
25 negotiated?

1 A The 2009, the 2015, and this one.

2 Q Who's bound by this agreement?

3 A I don't understand your question.

4 Q To what employees is it intended to apply?

5 A I'm sorry?

6 Q To what employees is the agreement intended to
7 apply?

8 A This applies to the fire fighters.

9 Q The --

10 A The employees of the Austin Fire Department.
11 That does not include civilians.

12 Q Got it.

13 Just the fire fighters, but not civilians.

14 A Not civilians.

15 Q Does it include all fire fighters that are a
16 part of the Department?

17 A Yes.

18 Q And is that the case, whether they are members
19 of the AFA or not?

20 A Correct.

21 Q And when I say AFA, I'm referring to the Austin
22 Fire Fighters Association, if I use that abbreviation,
23 which I'm sure you're familiar with.

24 A Understood.

25 Q Would you mind turning to Article 10 of this

1 are being carried out?

2 A There is a process.

3 Anytime an employee, including the Fire
4 Department - the Fire Association President, wants to
5 utilize ABL hours, there's a process they need to follow,
6 which requires approval by the management of that type of
7 leave to be used for that type of activity.

8 Q Are you responsible for the approval of any of
9 those hours for requested ABL usage?

10 A No. I'm - I'm not.

11 Q Do you ever see reports from ABL usage or
12 requests?

13 Well, do you ever see requests for ABL
14 usage, at all?

15 A I do not.

16 Q Do you ever see reports for how ABL is used?

17 A Every now and then we may ask for the
18 utilization of hours, but it's not something we do
19 frequently.

20 Q What would be the purpose of asking for those
21 utilization reports?

22 A We want to ensure that the members have enough
23 time that they can utilize for contract bargaining.

24 So when we're getting ready to bargain, we
25 may ask to see what hours are on the books, and whether or

1 not there is enough time for them to negotiate contracts
2 with the City.

3 Q Is that the only purpose that you request the
4 usage hours for, to ensure that there's enough time for
5 collective bargaining negotiations?

6 A To my knowledge, there has not been a need for
7 the LR office to request those reports, at any time.

8 Q Okay. How are you - how is the LR office, then,
9 assured that the purposes outlined in Article 10 are being
10 fulfilled, if you're not aware of the usage?

11 A Like I say --

12 MR. BIRRING: Can I object, Jon?

13 I think some of these questions are outside
14 of the scope of the topics for which we designated Sylvia.

15 So I wonder if you're going to ask them
16 again to the other witnesses, or --

17 MR. RICHES: Some we will --

18 MR. BIRRING: -- will --

19 MR. RICHES: -- be asking for other
20 witnesses, but - but these, in particular, pertain to the
21 collective bargaining process between both the AFA and the
22 City. She's the City's representative for collective
23 bargaining, so I think it's relevant as to what goes in to
24 the collective bargaining process and the determination
25 she makes.

1 Q Okay. So is it your position that you cannot
2 assign a monetary value to Article 10?

3 A Correct.

4 Q Does the City derive nonmonetary benefits from
5 the use of ABL, in Article 10?

6 A Yes.

7 Q And where are those?

8 A Everything in this contract is a benefit.

9 The hiring article allows us to hire,
10 utilizing other mechanisms outside of Chapter 143.

11 The same thing for promotions.

12 It also allows us to pay some - different
13 amounts to different fire fighters, based on their rank or
14 tenure.

15 It allows us to address disciplinary
16 issues.

17 Everything on here is a benefit that we
18 gained. That also includes ABL.

19 Q If we could, could we focus just exclusively on
20 Article 10, and the benefits that purportedly accrue to
21 the City for the use of ABL, under that article?

22 A As I mentioned earlier, Article 10 allows the
23 Association to meet, and confer, and reach an agreement
24 with the City that is critical to the Fire's mission and
25 the City's mission that we can attain a contract that

1 allows us to hire, promote, and pay them outside of 143.

2 The other item that's in here that's
3 critical is that it allows the Association to participate
4 in disciplinary hearings.

5 Any employee should have a right to have
6 someone advise them of the process involving their career.
7 I believe that is a great benefit that ABL affords the
8 City, to allow that employee representation.

9 Q Anything else?

10 A It allows representation at the pickup training.
11 It allows members to attend conferences that could promote
12 items for the Fire Department.

13 Q So far you identify - and correct me if I'm
14 wrong - four - four separate benefits to the City of ABL,
15 collective bargaining, disciplinary representation,
16 training for AFA members, and the attendance at
17 conferences by AFA members? Is that correct?

18 A As I said earlier, the ABL allowed the City to
19 attain this contract.

20 So every article in here is in - a benefit
21 that we attained because of ABL.

22 Q So when --

23 A So I would not limit it to those items that you
24 mentioned. It's everything in here. (Indicating)

25 Q So when you say "everything in here," you say

1 resolution in here. (Indicating)

2 Q Okay.

3 (The Reporter asked that only one
4 person speak at a time.)

5 A (The Witness) Sorry.

6 Q (Mr. Riches) That's okay. (Indicating)

7 A Sorry.

8 There's a resolution in front of our
9 contract.

10 Q Okay.

11 MR. RICHES: Could we admit this as - I
12 guess - why don't we do 1 and - I guess we can do 2.
13 We'll just do Exhibit 2 --

14 MR. BIRRING: Yeah.

15 MR. RICHES: -- the memo - and it's the
16 book.

17 (Exhibit Number 2 marked.)

18 MR. RICHES: Oh. It's already a part of
19 this one. (Indicating) Yeah. It's a part of ours.
20 Okay.

21 Q (Mr. Riches) All right. Miss Flores, you had
22 referenced that resolution, what's identified as
23 Resolution Number 20170928-018, which is part of Exhibit
24 2, required the Association to negotiate with the City.

25 What portion of that resolution imposes

1 that requirement on the Association?

2 MR. BIRRING: Objection. Form.

3 MR. STEWART: The same objection.

4 A (The Witness) Section 2. It designates the
5 Fire Association as the sole and exclusive bargaining
6 agent.

7 Q (Mr. Riches) And is - is that - does that, in
8 your view, also entail a requirement to negotiate with the
9 City?

10 A Yes.

11 MR. BIRRING: Objection. Form.

12 MR. STEWART: The same objection.

13 Q (Mr. Riches) Okay. Does Article 10 - or any
14 other portion of the CBA - require the AFA President to
15 perform any other activities at the direction of the City,
16 apart from the collective negotiating with the City?

17 MR. BIRRING: Objection. Form.

18 MR. STEWART: The same objection.

19 A (The Witness) It is my understanding that all
20 public safety employees are required to perform duties
21 associated with their positions, in cases of emergency.

22 Article 10 talks about an approval process,
23 so it will be up to the chain of command to determine if
24 there's an emergency that employees have to be pulled back
25 to address public safety issues.

1 I am not involved, or engaged, or have any
2 authority over this process.

3 Q I understand.

4 Is there anything, in the Collective
5 Bargaining Agreement, that requires the AFA to provide
6 that representation, either in Article 18, or Article 10,
7 or elsewhere?

8 A (The Witness) Not --

9 MR. BIRRING: Objection. Form.

10 A (The Witness) Not --

11 MR. STEWART: The same objection.

12 A (The Witness) Not to my knowledge.

13 Q (Mr. Riches) Do you know what the total cost to
14 the City is for the Collective Bargaining Agreement, for
15 all the services that are provided to the City, under the
16 Collective Bargaining Agreement?

17 A I do not.

18 Q Do you know where that information could be
19 obtained?

20 A The - the Budget or the Finance Department may
21 have that information.

22 Q You had mentioned that the Austin Fire Fighters
23 Association is the exclusive bargaining representative,
24 within the Fire Department. Now what does that mean?

25 A That that is the Association we will confer and

1 reach an agreement on, and that it will provide all the
2 benefits of this contract to the fire fighters.

3 That means that we will not have separate
4 agreements with other Associations.

5 Q So is a contract, that's ratified between the
6 City and the AFA, binding on all fire fighters within the
7 City of Austin?

8 A Yes.

9 Q And is that true whether or not the fire fighter
10 is a member of the AFA?

11 A Yes.

12 Q Do you know if nonmembers could withhold funding
13 the ABA (sic.) pool of hours that's identified in Article
14 10?

15 MR. BIRRING: Objection. Form.

16 MR. STEWART: The same objection.

17 A (The Witness) I don't understand your question.

18 Q (Mr. Riches) Could nonmembers object to the
19 City providing a pool of hours for the AFA to use, that's
20 outlined in Article 10?

21 A Not --

22 MR. BIRRING: Objection.

23 A (The Witness) -- to my --

24 MR. BIRRING: Form.

25 A (The Witness) -- knowledge.

1 CAUSE NO. D-1-GN-16-004307

2 MARK PULLIAM; JAY WILEY,) IN THE DISTRICT COURT

3 PLAINTIFFS)

4 AND)

5 TEXAS,)

6 INTERVENOR-PLAINTIFF,) 419TH JUDICIAL DISTRICT

7 VS.)

8 CITY OF AUSTIN, TEXAS;)

9 ELAINE HART, IN HER)

10 OFFICIAL CAPACITY AS CITY)

11 MANAGER OF THE CITY OF)

12 AUSTIN,)

13 DEFENDANTS) TRAVIS COUNTY, TEXAS

12 *****

13 REPORTER'S CERTIFICATION

14 DEPOSITION OF SYLVIA FLORES

15 OCTOBER 29, 2018

16 *****

17 I, JUDY A. COUGHENOUR JOHNSON, a Certified

18 Shorthand Reporter in and for the State of Texas, do

19 hereby certify to the following:

20 THAT the Witness, SYLVIA FLORES, was duly sworn by

21 the officer, and that the transcript of the oral

22 deposition is a true record of the testimony given by the

23 Witness;

24 THAT the deposition transcript was submitted on

25 November 13, 2018 to the attorney for Defendants for

1 examination, signature, and return to JUDY A. COUGHENOUR &
2 ASSOCIATES, 8109 Asmara Drive, Austin, Texas, 78750, by
3 December 3, 2018.

4 THAT the amount of time used by each party at the
5 deposition is as follows:

6 JONATHAN RICHES - (44 minutes)

7 HALEY O'NEILL - (00:00 minutes)

8 SAMEER S. BIRRING - (00:00 minutes)

9 JOHN W. STEWART - (00:00 minutes)

10 THAT \$314.63 is the deposition officer's charges
11 for preparing the original deposition transcript and any
12 copies of exhibits, charged to Plaintiffs.

13 THAT pursuant to information given to the
14 deposition officer at the time said testimony was taken,
15 the following includes all parties of record:

16 For Plaintiffs:

17 SCHARF-NORTON CENTER FOR CONSTITUTIONAL
18 LITIGATION AT THE GOLDWATER INSTITUTE
19 BY: JONATHAN RICHES
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20 For Intervenor-Plaintiff:

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I further certify that I am neither Counsel for,
related to, nor employed by any of the parties in the
action in which this proceeding was taken, and further,
that I am not financially or otherwise interested in the
outcome of the action.

Further Certification requirements, pursuant to
Rule 203 of TRCP, will be certified to after they have
occurred.

SWORN TO by me this 12th of November, 2018.



JUDY A. COUGHENOUR JOHNSON
TEXAS CSR NO. 1198
EXPIRATION DATE: 12/31/18
8109 Asmara Drive
Austin, Texas 78750
PH: (512) 346-4707

EXHIBIT 3

CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; JAY WILEY,	)	IN THE DISTRICT COURT
	)	
PLAINTIFFS	)	
	)	
AND	)	
	)	
TEXAS,	)	
	)	
INTERVENOR-PLAINTIFF,	)	419TH JUDICIAL DISTRICT
	)	
VS.	)	
	)	
CITY OF AUSTIN, TEXAS;	)	
ELAINE HART, IN HER	)	
OFFICIAL CAPACITY AS CITY	)	
MANAGER OF THE CITY OF	)	
AUSTIN,	)	
	)	
DEFENDANTS	)	TRAVIS COUNTY, TEXAS

ORAL DEPOSITION

OF

AARON WOOLVERTON

OCTOBER 29, 2018

ORAL DEPOSITION OF AARON WOOLVERTON, produced as a Witness at the instance of Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 29th day of October, 2018, from 10:45 a.m. to 11:45 a.m., from 1:00 p.m. to 2:00 p.m., and from 3:07 p.m. to 3:32 p.m., before JUDY A. COUGHENOUR JOHNSON, Certified Shorthand

1 Reporter No. 1198, in and for the State of Texas, reported
2 by machine shorthand at AUSTIN CITY HALL, 301 West Second
3 Street, Austin, Texas, pursuant to the Texas Rules of
4 Civil Procedure and the provisions stated on the record or
5 attached herein.

6 * * * * *

7 APPEARANCES

8 For Plaintiffs:

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Also Present:

Ronnelle Paulsen

Reported By:

JUDY A. COUGHENOUR & ASSOCIATES
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 PH: (512) 346-4707
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* * * * *

STIPULATIONS

The attorneys for all parties present stipulate and agree to the following items:

THAT the deposition of AARON WOOLVERTON is taken pursuant to Notice;

THAT all objections will be made pursuant to the

1 Texas Rules of Civil Procedure;

2 AND THAT the original transcript will be submitted
3 for signature to the Witness' attorney, SAMEER S. BIRRING,
4 and that the Witness or the Witness' attorney will return
5 the signed transcript to JUDY A. COUGHENOUR & ASSOCIATES
6 within 20 days of the date the transcript is provided to
7 the Witness' attorney. If not returned, the Witness may
8 be deemed to have waived the right to make the changes,
9 and an unsigned copy may be used as though signed.

10 * * * * *

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23 * * * * *

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EXHIBITS			
EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED	PAGE REF'D
1	Being a copy of the Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	N/A	13
2	Being the original booklet entitled Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	N/A	109
3	Being the Austin Fire Department Policy and Procedure, General Order Number E111.2, Association Business Leave	40	40
4	Being a document entitled Association Business Leave - 2012, Quarterly Report, Q4 - Oct. thru Dec.	46	46
5	Being spread sheets, the first page entitled 2018-08-08 Formsite ABL Data Dump (ABL)	55	55
6	Being a document entitled Purpose, Mission, Vision, Goals	113	113

1 A I am.

2 Q How long have you been a member of the AFA?

3 A Since six months after I joined the Department.

4 So about twenty-six and a half years.

5 Q Do you currently hold any office or positions
6 with the AFA?

7 A No.

8 Q Have you ever held an officer position?

9 A No.

10 Q And you've been with the Fire Department for
11 twenty-six and a half years --

12 A I --

13 Q -- total? I'm sorry.

14 A Twenty-seven.

15 Q Twenty-seven.

16 A I - it - you can't be a member of the
17 Association the first six months, when you're a cadet.

18 Q You've been employed by the Fire Department,
19 with the City of Austin, for a period of approximately
20 twenty-seven years?

21 A Yes, sir.

22 Q Okay. What's the mission of the Fire
23 Department?

24 A It is to - to prepare for - oh. I'm sorry.
25 Prevent, prepare, and respond to - to emergency events.

1 A Yeah. It's paramilitary organizations.

2 Q Does the Fire Department have an employee
3 performance review policy?

4 MR. BIRRING: Is this individual or
5 corporate?

6 MR. RICHES: This is individual.

7 MR. BIRRING: Okay.

8 A (The Witness) So we - we used to have something
9 called a PEE system, which was set up similar to like
10 SSPRs. Every six months you would get a - you would get a
11 review.

12 Currently, are not doing PEEs.

13 Q (Mr. Riches) Okay. So there's no - there's no
14 performance review that's conducted, right now, for fire
15 fighters?

16 A No.

17 Q How do you ensure that individual fire fighters
18 are accomplishing what they're supposed to be
19 accomplishing, pursuant to their job description?

20 A Again - again, through direct - through direct
21 reports from - from their immediate supervisors. So
22 Lieutenants, Captains, and Battalion Chiefs, up through
23 the chain - chain of command, through Division Chiefs, and
24 to - to the Assistant Chief.

25 Q Does every fire fighter have a supervisor,

1 Q What's the purpose of the Collective Bargaining
2 Agreement?

3 MR. BIRRING: Objection. Form.

4 And is this an individual or a --

5 MR. RICHES: This is --

6 MR. BIRRING: -- corporate rep?

7 MR. RICHES: -- corporate rep.

8 MR. BIRRING: Okay. Objection. Form.

9 MR. STEWART: The same objection. Form.

10 A (The Witness) And so the purpose - the purpose
11 of - of the - of the - the contract is to negotiate
12 various topics that - that benefit both the fire fighters
13 and the City of Austin.

14 Q (Mr. Riches) What kind of topics are those?

15 A They --

16 MR. BIRRING: Objection. Form.

17 A (The Witness) Hiring is - is one. Promotions
18 is another.

19 As was stated earlier, there's thirty-two
20 different articles within there, and - and it - that
21 includes the things that I just talked about, but also
22 things like drug testing.

23 Q (Mr. Riches) And who is bound by the terms of
24 this agreement?

25 A Well, both the - the labor group, or the - you

1 I - I - somewhere probably in the
2 neighborhood of ninety-five percent.

3 Q Would you mind turning to Article 10 of that
4 agreement?

5 A Page --.

6 Q Section 1B1 discusses permitted uses of
7 Association Business Leave.

8 So actually, let me just ask you. What is
9 Association Business Leave?

10 A It is leave granted to the Association to be
11 used for purposes that benefit either the Department, the
12 Association, or both.

13 Q And when you say the Association, are you
14 referring to the Austin Fire Fighters Association?

15 A Yes, sir.

16 Q Getting back to the agreement, Section 1B1 says
17 that, "The Association President may use ABL for any
18 lawful Association business activities consistent with the
19 Association's purposes."

20 And the previous witness testified that
21 Mr. Nicks is currently the AFA President. Is that your
22 understanding, as well?

23 A Yes, sir.

24 Q Does the Fire Department have any say in who
25 becomes the AFA President?

1 A The management does not, but, of course, the
2 membership of the Fire Department does.

3 Q When you say the membership of the Fire
4 Department, do you mean Fire Department employees, or Fire
5 Department employees who are also members of the AFA?

6 A The latter. Members of the Fire Department who
7 are members of the AFA.

8 Q So the Fire Department, independent of the AFA,
9 has no say in who becomes the AFA President?

10 A No.

11 Q To your knowledge, is the AFA President
12 currently devoting all of his time to Association business
13 activities?

14 A Yes.

15 Q How would you define Association business
16 activities?

17 A It encompasses a lot of things.

18 It could be coming to grieve - well,
19 responding to grievances; representing members during
20 disciplinary processes; of course collective bargaining,
21 itself; attending conferences.

22 Yeah. I think that that encompasses most
23 of it.

24 Q Collective bargaining, assisting members with
25 grievances, assisting AFA members with disciplinary -

1 disciplinary proceedings, and attending conferences.

2 Anything else?

3 MR. BIRRING: Objection to form.

4 MR. STEWART: The same objection.

5 A (The Witness) I can't think of anything off
6 the - off the top of my head, but that - that is probably
7 the main purposes of ABL, or what it's used for.

8 Q (Mr. Riches) For the AFA President, are there
9 any limitations to what he can do, while on ABL?

10 MR. BIRRING: Objection. Form.

11 MR. STEWART: The same objection.

12 A (The Witness) I believe, if I - I remember
13 correctly, there - there is a stipulation that he - he
14 can't actually give money to political figures.

15 Q (Mr. Riches) So there's a - there's a
16 stipulation that the AFA President can't give campaign
17 contributions to candidates for public office?

18 A And that's just from my memory. I believe it
19 was some - some information about that, that says he
20 couldn't actually handle money - hand money to - to
21 individuals.

22 Q Do you happen to know where that prohibition is
23 contained?

24 A I do not.

25 Q Where - where are you remembering it from, to

1 Q Does anyone, in the Department, direct Mr. Nicks
2 on what to do, on a daily basis?

3 A No.

4 Q Does anyone, in the Department, tell Mr. Nicks
5 certain activities to perform?

6 MR. BIRRING: Objection to form.

7 MR. STEWART: The same objection.

8 A (The Witness) Within the contract, there is a -
9 a provision to assign - be able to assign him to special
10 projects, but I can't think of any that he's - he's done,
11 in recent times.

12 Q (Mr. Riches) Does anyone, in the Department,
13 place prohibitions on the activities that Mr. Nicks can
14 perform?

15 MR. BIRRING: Objection to form.

16 A (The Witness) I don't believe so.

17 MR. STEWART: The same objection.

18 Q (Mr. Riches) I'm sorry?

19 A (The Witness) I don't believe so.

20 Q Is Mr. Nicks required to provide an accounting
21 as to how he spends his time, each day, to the Department?

22 A No.

23 Q Is Mr. Nicks' - is Mr. Nicks evaluated for his
24 work performance, by the Department?

25 A No.

1 Q Who supervises Mr. Nicks, on a daily basis?

2 A Chief Dodds. It was - is who - is who he
3 reports to, within the - I guess the time - timekeeping
4 system.

5 Q And who is that?

6 A That - that - he's our Interim Fire Chief,
7 currently. He was previously our Chief of Staff.

8 Q So the Fire Chief is Mr. Nicks' technical
9 supervisor?

10 A Yes.

11 Q To your knowledge, does Mr. Nicks have scheduled
12 interactions between him and Department officials?

13 A Yes.

14 Q Are they regularly scheduled, on a - a regular
15 basis?

16 A There are some that are regularly scheduled.

17 For instance, we have a Chief Officer's
18 workday that - every - every quarter. All Battalion
19 Chiefs, and - and higher ranks, are required to - to
20 attend.

21 Of - of - of course there could be
22 something that conflicts with that, and he may not be at
23 that - that particular event - event, but he's supposed
24 to, unless he's - unless he's got an excuse - a - a valid
25 excuse.

1 Day-to-day? No.

2 Q So it's your understanding that there's one
3 quarterly meeting that is required to be attended by
4 certain people, including Mr. Nicks.

5 Is there any other required interactions
6 between Mr. Nicks and Department officials?

7 A Yes.

8 We have a - a - some - something called
9 LMI, the Labor Management Initiative. We - we - we meet -
10 I'd say it's quarterly or monthly. I can't - can't
11 remember. I think it's monthly. And he's required to be
12 at that.

13 Q So one monthly meeting for LMI, and another
14 quarterly meeting. What was the purpose of the quarterly
15 meeting?

16 A Oh. That's their Chief Officers Workday. And
17 because he's a Battalion Chief. That - that has nothing
18 to do with him being the President. It has to do more
19 with his - the rank that he holds, in the Fire Department.

20 Q I understand.

21 Are there any other meetings, apart from
22 the LMI and the - the Chief Officers' meeting that
23 Mr. Nicks is required to attend?

24 A The - the rest would be as-needed.

25 Q Can Mr. Nicks be removed from his position as

1 support the mission of the AFA?

2 A Yes.

3 Q Subsection - actually, I think we've covered
4 this.

5 Subsection 1B2 identifies certain uses for
6 ABL, including negotiations, grievances, dispute
7 resolution, addressing cadet meetings, and attending Union
8 conferences.

9 Are those the only activities that other
10 Authorized Association Representatives can use ABL for?

11 A Let me think about this here.

12 MS. VAHL: I'm sorry. Can you repeat the
13 question?

14 Q (Mr. Riches) Can Authorized Association
15 Representatives use ABL for activities, other than those
16 that are specifically outlined in 1B2?

17 MR. BIRRING: Objection. Form.

18 MR. STEWART: The same objection.

19 A (The Witness) I would say that yes, it could.
20 It could.

21 I can't think of any instances of - of - of
22 what I mean - mean by that, but I - as I see that list,
23 I'm thinking there's probably always one thing that we
24 didn't consider that it could be approved for.

25 Q (Mr. Riches) Do you know - can you identify any

1 of those --

2 A Yeah.

3 Q -- other --

4 A Sure.

5 Q -- activities?

6 A I - I could - I - just thinking of one that's -
7 that's going on right now that I'm - I'm not seeing where
8 it would fit in that, is they have - they've assigned fire
9 fighters to work on committees. One, for - for instance,
10 is looking at the particular shift period that we have
11 right now, and whether - whether they would recommend
12 changing it, or - or keeping it, and they're collecting
13 information for that.

14 So that, I would think, falls outside of
15 those, but it is something that - that ABL would be
16 granted for.

17 Q Okay. If you could help me kind of understand a
18 little bit as to what these activities are that are
19 specifically identified.

20 What is - what is the grievance procedure,
21 and how would ABL be used, during that process?

22 A So if, for instance, there was some action that
23 management took in the Fire Department, that the Union
24 disagreed or believed - believed to be a violation of the
25 contract, they - they - and usually brought by a member,

1 so someone is wronged - they will then go to the
2 Association, the Association will confer. I think they
3 actually have some - some paperwork that they have to do
4 to make - make sure it meets certain criteria.

5 And then, if the grievance goes forward,
6 they help the member file the grievance, and represent
7 them throughout the grievance.

8 Q When you say "they", do you mean the AFA?

9 A Yes, sir.

10 Q So the AFA is representing a member with a
11 grievance brought against management, or somebody from the
12 Fire Department?

13 A Yes.

14 Q During the grievance procedure, is there
15 hearings, or how does - how does that work?

16 A So there's a - there's a - a - a grievance
17 process, but yes. There - there will be a point where
18 they'll present something to the Fire Chief; the - the
19 Union - the member may or may not be present; the - the
20 representative will - will be there; they'll present their
21 case; and then the Chief will make a decision on it, one
22 way or another.

23 Q Is the Fire Department - does the Fire
24 Department have representatives for management, during the
25 grievance procedure?

1 A Representatives for --?

2 Q For management.

3 A For management?

4 Well, I mean, we have our - our City legal
5 team that - that we - we will confer with, to determine -
6 determine interpretation of the contract and whether or
7 not we're operating with - within the bounds of it.

8 Q Would you characterize the grievance procedure
9 as one in which the AFA member, bringing the grievance, is
10 in a position that's adverse to that of the Department?

11 A That's --

12 MR. BIRRING: Objection. Form.

13 MR. STEWART: The --

14 A (The Witness) Yes.

15 MR. STEWART: -- same objection.

16 A (The Witness) I mean, there have - there have
17 been instances. Are you looking for a specific one?

18 Q (Mr. Riches) Sure.

19 A Assignments to positions. The - the Department
20 is required to post positions a certain number of days
21 day - days before we close them and award positions.

22 In the past, we've had members that were
23 coming out of staff locations that felt that they weren't
24 given due consideration when that position was awarded,
25 and they'll - some - on - sometimes cite that we didn't

1 follow the - the process outlined in the contract or
2 within policy, and they'll - they'll bring a grievance
3 forward.

4 Q So if I understand it correctly, a decision has
5 been made by the Department, with respect to some
6 personnel policy, and an AFA member is bringing a
7 grievance against the Department for a decision that was
8 adverse to that AFA member?

9 A Yes.

10 Q And during that process, the AFA member is
11 represented by the AFA, or by a representative of the AFA?

12 A Yes.

13 Q And to your knowledge, is ABL used for that
14 process?

15 A Yes.

16 Q The provisions of Section 1B2 also identify
17 dispute resolution proceedings as a permissible use of
18 ABL? Do you know what those are?

19 A I'm sorry. Let me look. If I get context.

20 The dispute team - dispute resolution
21 proceedings.

22 I believe it would be along the same - same
23 line - lines of what I was - what I was talking about,
24 where it - where it might not actually rise to the level
25 of a official grievance - grievance, but could be a

1 dispute - a dispute, and so they will - they will
2 interject for the member there.

3 Q And during that process, is the position of the
4 AFA generally different from or adverse to that of the
5 Department?

6 A It - it varies, and to different degrees.

7 There are certainly times where it - it
8 could be - we could be diametrically opposed, and we - we
9 hold steadfast on our beliefs, as - as they do, and
10 there's other times where we - we reach compromise.

11 Q It also looks like addressing cadet classes is a
12 permissible use of AFA. What's - what's the purpose of
13 that?

14 A So when cadet classes are preparing to graduate,
15 we allow the Association to have - I think it's up to four
16 hours to - to talk with the - the cadets before - that
17 - that will be headed out to the stations, and they talk
18 to them about becoming members of the Association.

19 Q Would you characterize that as a recruitment
20 activity for the AFA?

21 A Yes.

22 MR. BIRRING: Objection. Form.

23 MR. STEWART: The same objection.

24 Q (Mr. Riches) And then the last area
25 identified - at least in this section - is attending Union

1 (Exhibit Number 3 marked.)

2 Q (Mr. Riches) All right. Do you recognize this
3 document?

4 A (The Witness) Yes, I do.

5 Q And what is it?

6 A It is our General Order. Our - our internal
7 policy regarding Association Business Leave.

8 Q It looks like it has an effective date of
9 September 1st, 2011 on it.

10 To your knowledge, is this policy still in
11 force and effect?

12 A Yes.

13 Q If you'd look at Section IV, it indicates that
14 "Members must notify the Association President, via
15 e-mail, of their request for ABL".

16 Does "members" refer to members of the AFA?

17 A Yes.

18 Q Does that mean that non AFA members can't use
19 ABL?

20 A I - I believe that they can use - use ABL, or at
21 least I - I - I believe that they have, in the - in the
22 past. Or at least have - have attempted, and we didn't -
23 did not not - or did not approve it.

24 Q All right.

25 I'm sorry. So you - there has been

1 instances in which non AFA members have used ABL?

2 A Yes.

3 Q And was that use approved by the Department?

4 A Yes.

5 Q Okay. Do you remember in - what the
6 circumstances were?

7 A So there - there is a - an - an African-American
8 Fire Fighters Association. I believe it's the triple A
9 FFA. And their President, I believe, is not a - an - a
10 975 Association member, and he has used A- - ABL time
11 before.

12 Q Do you - do you recall what he used it for?

13 A Cadet Oversight Committee meetings, being - being
14 one - one such thing.

15 Q What's that?

16 A So while - while we have cadet classes going on,
17 there is a committee that meets every Thursday to discuss
18 the performance of cadets for the previous week, and - and
19 how they're progressing through - through the Academy.

20 There is usually a 975 member that - that
21 sits on that - that committee, that listens to the reviews
22 by the - our team leaders that are over the cadets. A -
23 the cadet lieutenant, a cadet captain, and it - basically
24 that entire cadet - that cadet's entire chain of command.

25 And so the Union representative is -

1 Q How many ABL requests do you receive, pursuant
2 to this policy?

3 A Oh. I - a shot in the dark. I - I do get quite
4 a few, and of course it varies, depending on - on what -
5 what's going on at that particular time.

6 To give you a hard number, I'd - I'd - I'd
7 have to go back through my notes.

8 But I - I - I'd say I get at least three or
9 four a week. On average.

10 Q If you could put an estimation on it, what
11 percentage of those would you say have been disapproved,
12 during your time as the designee?

13 A A very low percentage. Maybe two or
14 three percent. The - the question would be much higher.

15 Q I understand.

16 At Section IV C then goes on to indicate
17 that requests for ABL received by noon three days - three
18 or more business days in advance of the requested time off
19 are automatically approved, subject only to operational
20 needs of the Department.

21 What does "automatically approved" mean?

22 A So if - it - it's not automatic, in the sense
23 that - that you suddenly go, "Oh, well. It's - it -
24 regardless of what the request is for."

25 No. It still has to - has to fall within

1 the - the bounds of - of Article 10. What he's talking
2 more of - of what's - that's actually addressing more is
3 with regard to staffing.

4 Q I see.

5 So even if you - even if a request is
6 received, three or more days in advance of the requested
7 time off date, you still review it to ensure it complies
8 with the terms of the CBA?

9 A Yes.

10 Q Does this policy apply to Chief Nicks' use of
11 ABL?

12 A So - so - I mean, so a little difficult -
13 difficult to say. I'd say yes, it does, but he doesn't
14 follow this - this process.

15 Because he's assigned to a forty-hour
16 workweek position, that he doesn't have to turn leave
17 request in for, that would not apply to him.

18 Q So nobody in the Department reviews Chief Nicks'
19 use of ABL?

20 MR. STEWART: Objection. Form.

21 MR. BIRRING: Objection to form.

22 A (The Witness) No.

23 Q (Mr. Riches) Okay. Are you doing all right?
24 Do you --

25 A Yes.

1 MR. STEWART: The same objection.

2 A (The Witness) No.

3 Q (Mr. Riches) It looks like a pretty large
4 percentage of all of the approved hours is for Other
5 Association Business. Do you know why that's the case?

6 MR. BIRRING: Objection to form.

7 MR. STEWART: The same objection.

8 A (The Witness) Simply because it was activity
9 that didn't fall under the - in the - one of the headed
10 categories there, or labeled categories.

11 Q (Mr. Riches) All right. We're going to turn
12 back to this one, so maybe if you just want to set it
13 aside for a moment?

14 MR. RICHES: And I'll ask that the Court
15 Reporter mark Exhibit 5.

16 (Exhibit Number 5 marked.)

17 MR. RICHES: Does everybody have an Exhibit
18 5? (Indicating)

19 Q (Mr. Riches) Okay. So I've just handed you a
20 report that's labeled 2018-8-8, Formsite ABL Data Dump.

21 Have you ever seen these reports before?

22 A (The Witness) Yes.

23 Q And what are they?

24 A So the - the form, that's referenced in the
25 policy that we just looked at, this is this - is - this is

1 all the - all the data that it - you know, when you fill
2 it out and submit it, it goes - it goes in to a
3 spreadsheet that's - that's collected and - and forms
4 this. (Indicating)

5 We use a system called Formsite. That's a
6 software. You build a form and launch it, and then - and
7 then it has a work flow so that if you sit - if you submit
8 it saying, "I want to use ABL for these purposes," you
9 fill out the form, you hit Submit, it gets e-mailed to
10 whoever you want it to be e-mailed to.

11 And so that's how I get the notification,
12 "Hey. This - this - this is being requested."

13 I'll then fill that - fill my portion of
14 the form out - or form out, either approving or denying
15 it. I may put notes in it. And - and I'll hit Reply, and
16 the - and the e-mails go back.

17 Part of that goes in to this Formsite
18 system, and - and we collect the information that you see
19 here. (Indicating)

20 Q So if a Authorized Association Representative
21 wants to use ABL, they fill out a pre-approved form --

22 A Um hum.

23 Q -- that the City has prepared. Is that correct?

24 A Yes.

25 Q And then they submit that form. And who's the

1 and things like that, is the way I would - I - the way I
2 interpret it, not necessarily a Political Action Committee
3 meeting.

4 Q (Mr. Riches) So you're - and so you - it would
5 be your view that attendance at Political Action Committee
6 meetings is not prohibited by Article 10?

7 A That would be my interpretation.

8 Q Okay.

9 A Yes.

10 Q Thanks.

11 If we could go back to Exhibit 5, which is
12 the ABL data dump?

13 On the very first page there, which is
14 867a, or Alpha, there's three separate entries, all for -
15 from July 1st, 2018, and they reference "An ATX Combat
16 Challenge Team will be competing in the Fire Fighter
17 Combat Challenge Event, being held in Longmont, Colorado."
18 Do you see those?

19 A Yes, sir.

20 Q Do you know what that event was?

21 A Yes.

22 That's the - the Combat Challenge Team,
23 which is a - a competitive event where fire fighters can
24 compete doing various - doing various - I won't say
25 skills, but tasks that are associated with fire fighting.

1 So a - in a competitive - like I say, in a competitive
2 sense. So it will be for time, racing against someone
3 else.

4 So they'll pull hose, they'll climb stairs,
5 they'll hoist things up the stairs. Things like that.
6 It's - it's almost like a fire fighter Olympic event.

7 Q Do you authorize individual fire fighters to
8 attend that, outside of the use of ABL?

9 A No.

10 Q Okay. If we could look at - so what category of
11 records would that - or I'm sorry - what category of use
12 would that fall in, under the Hours by Reason of Exhibit
13 4?

14 A It would fall under Other Association Business.

15 Q Okay. There's two other sets of records that I
16 think are similar here.

17 If you look at 867b? It appears as though
18 there's two separate entries on June 13th, 2018, also
19 for the ATX Combat Challenge Team? Would those be the
20 same category of records for use of ABL?

21 A Yes.

22 Q And then if you flip to g, it looks like - and
23 maybe you can help explain the difference - but it looks
24 like there's two other entries, one from October 13th, and
25 one from October 11th, both in 2017, that reference a

1 World Scotts Fire Fighter Combat Challenge. Is that the
2 same thing, or is that something different?

3 A No, sir. That's the same thing.

4 Q Okay. And would those also fall under Other
5 Association Business, for the Hours by Reason?

6 A Yes, sir.

7 Q Do those activities advance the mission of the
8 Department, or that of the AFA?

9 A I think it - it's another one of those that -
10 that does both.

11 Q Can you explain how - can you explain how those
12 might advance the interests of the Department?

13 A Sure.

14 If - if you'll reference our - I believe
15 it's our goals? It talks about the Fire - Austin Fire
16 Department's goals.

17 One of them is to have a - a - oh - a -
18 well, what do they say? How exactly is it worded?

19 I think it's something along the lines of -
20 of fit and well - not well.

21 It - it's a fit and healthy workforce, and
22 this is certainly something that - for - promotes fitness
23 and wellness.

24 Q So the purpose - the - the Department's interest
25 in this would be to ensure that fire fighters have proper

1 Department went to Chief Nicks and asked that ABL be used
2 specifically for this purpose?

3 A I think actually the fire fighters did. If I
4 remember how that actually transpired, it was the fire
5 fighters went to it because of - we were in such dire
6 straits with overtime, in general - in general, that -
7 that having something like this, where we were - we were
8 paying fire fighters to work overtime to go participate or
9 backfill for it, the Department couldn't - couldn't
10 justify doing - doing it on - on its own, and so that was
11 something they went to him and said, "Could we do this".
12 He believed it fit.

13 We couldn't argue that it didn't, because
14 it's certainly part of our goals, and - and it's been
15 approved since.

16 Q Could fire fighters have been offered unpaid
17 leave to participate in this sort of activity?

18 MR. BIRRING: Objection. Form.

19 A (The Witness) Or they could have taken
20 vacation. So yes.

21 Q (Mr. Riches) Okay. Turning back to Exhibit 5?
22 If you could flip to 867b? There's an entry at
23 June 14th, 2018 for a fishing tournament setup. Do you
24 recall what that activity was?

25 A Yes.

1 So it's - it's exactly as it says. The
2 fishing tournament is set up, and the fishing tournament
3 is a - an event that the Austin Fire Fighters Association
4 sponsors, and it's to raise money for cancer.

5 Q And so the use of ABL is to assist in a
6 charitable activity of the AFA?

7 A Yes, sir.

8 Q Does this also fall in to Other Association
9 Business for the Hours by Reason that's reflected in
10 Exhibit 4?

11 A Yes.

12 Q There's a - three other similar entries there,
13 and I'll ask you to flip to j.

14 There's one from June 16th, 2017, and
15 it's "Attend annual fishing break as Board member of
16 Relief and Outreach."

17 Is that the same fishing tournament?

18 A Yes, sir. It is.

19 Q And is that also categorized as Other
20 Association Business?

21 A Yes, sir.

22 Q And the next page, on k, there's an entry from
23 April 18th, 2017, "Request time off to attend AFA
24 Fishing Tournament for Relief and Outreach."

25 Is that the same fishing tournament?

1 not.

2 Q (Mr. Riches) Okay. The - if you could turn to
3 Exhibit 5, 867u?

4 There's four separate entries - all of them
5 are from January 16th, 2016 - for Battle of the Badges
6 charity event; for Partnerships for Children; boxing in
7 the charity event".

8 Do you know what those are for?

9 A Yes, sir.

10 There was a - another - another charity
11 event, and in this particular case, it was a - it had, I
12 believe - well, law enforcement, fire, and EMS
13 departments. And so not limited to Austin, but it - also
14 in Travis County and the surrounding areas. They had a -
15 a boxing tournament, and the - the money, again, went to
16 a - a particular charity.

17 Q Does that fall in to Other Association Business,
18 as well, that's reflected in Exhibit 4 for the Hours by
19 Reason?

20 A Yes.

21 Q And does that support the - directly support the
22 mission of the Department, or the AFA, in your view?

23 A Again, I think both.

24 Q Both.

25 A Yeah. Both.

1 Q And how is it that that supports the mission of
2 the Department?

3 A Well, I - I - again, you - it's - you're talking
4 about a - a wellness issue. Boxing certainly encourages
5 fitness and wellness.

6 The other - the other one - the other
7 thing, in this particular deal, is it wasn't just for fire
8 fighters. This was for children.

9 I would think that it - it fosters good
10 will in the community, which is certainly something that's
11 at the interests for - for the Austin Fire Department and
12 City of Austin.

13 Q And - okay. If we could flip back to Exhibit 1,
14 which is the Collective Bargaining Agreement? Article 10.

15 When a - when a fire fighter is using ABL
16 to participate in the activities, some of which we just
17 discussed in Exhibit 5, what happens to that fire
18 fighter's position in the Fire Department while he or she
19 is on ABL? Is it backfilled by another fire fighter, or
20 how is that time covered?

21 A So it - it depends.

22 If - if our staffing is such that in that
23 particular - particular day or period of time that they're
24 asking for a - for leave, if we are plus, meaning that we
25 are above our minimum staffing, then that individual is

1 to perform specific activities for the Department?

2 A The special assignments section - section that
3 we talked about.

4 Q The special assignment section? That's the one
5 that is in --

6 A It's --

7 Q -- 2C?

8 A Yes, sir.

9 Or special projects. I leave that at the
10 discretion of the Fire Chief.

11 Q So the - the AFA President can be required to
12 perform special assignments at the direction of the Fire
13 Chief?

14 A Yes, sir.

15 Q And, to your knowledge, that hasn't happened
16 with Chief Nicks?

17 A No. No.

18 But I - in - but at - another one that
19 just popped in to my head - you know, because he's subject
20 to - to following the Code of Conduct, just like any other
21 fire - fire fighter, he has had charges brought up to - on
22 him for activity - for activity not - not related to ABL,
23 but him as a fire fighter, because he's - he's subject to
24 the same rules as every other fire fighter, and he's had
25 to go through a PSO investigation, and those were mandated

1 by the Fire Department, for him to participate in those.

2 Q For Chief Nicks to participate in an
3 investigation of his own alleged misconduct?

4 A Yes, sir.

5 Q But he didn't - he didn't use ABL for that
6 purpose?

7 A Well, no. He - he would have been on A- - ABL,
8 because his - all - all of his time is on ABL.

9 Q Okay. Do you recall when that - when that
10 occurred? When this investigation occurred?

11 A Hmmm. Last year. Probably around
12 November/December time frame.

13 Q It would have been November or December of 2017?

14 A '17.

15 Q And what was the allegation?

16 A A violation of Code of Conduct and I think
17 Social Media Policy.

18 Q Do you recall the specifics of what the
19 violation was, of the Social Media Policy or the Code of
20 Conduct?

21 A He had posted materials that were somewhat libel
22 and slanderous --

23 Q Okay.

24 A -- against another - another member of the
25 Department.

1 Number - oh. Okay. Number 7. Okay.

2 Q (Mr. Riches) Do you want me to repeat the
3 question, Chief?

4 A (The Witness) Yeah. Please.

5 Q Do you know what benefit - well, does the -
6 does - does the Fire Department receive any monetary
7 benefits, in exchange for the ABL hours that are
8 identified in Article 10?

9 MR. BIRRING: So I'll object.

10 I think this is part of a different topic,
11 on Number 3.

12 But - yeah. It's a form objection.

13 MR. RICHES: Okay. Thanks.

14 A (The Witness) Okay. So - so --

15 MR. STEWART: Object to form.

16 A (The Witness) -- so yes. It - well - but it's
17 a very complicated answer - answer to the why I think it's
18 yes --

19 Q (Mr. Riches) Sure.

20 A -- is because, again, it's a contract with
21 several different articles in it where the - the City and
22 the Fire Department benefits from having certain - certain
23 articles in it, the hiring being - being one, promotions
24 being another. Drug testing. Those are just three
25 examples.

1 And there's others, where the City has -
2 has gained rights that we wouldn't have had under a strict
3 143 standard, or our - our rule, and so we've gained in
4 those - in those - those - those areas. While you see ABL
5 as being something that the - the Association benefit -
6 benefited from.

7 So it was a - it was a quid pro quo,
8 give-and-take. Yes, we benefited, but not directly from
9 ABL. It was as a result of ABL being approved.

10 Does that make sense?

11 Q I think so.

12 A Okay.

13 Q So what would that - I - I believe I heard you
14 explain that maybe the benefits of collective bargaining,
15 and entering in to a Collective Bargaining Agreement,
16 itself? Is that what you were referring to --

17 A Yes.

18 Q -- as a benefit to the Department?

19 A Yes. That - that we gain certain rights,
20 management and - and the - and the City. Such - such
21 things like being able to appoint Division Chiefs, as - as
22 opposed to strict Civil Service testing; being able to put
23 assessment centers in to other - of - for other ranks,
24 where we think, you know, a - a - a 100 question multiple
25 choice test doesn't always yield your - your best leaders

1 and your best managers. It's just somebody that memorizes
2 things very well, and may not have a good fit, otherwise.
3 Well, we would like to put things in - in the process,
4 like assessment centers, or the right for the Chief to
5 appoint; that it - it provides us the benefit of getting -
6 getting better leaders in to those positions.

7 So that would be a benefit to us.

8 Now in exchange for that, there are things
9 like ABL, or - or whatever. They're - they're - they're
10 traded off.

11 Q I see.

12 Is there - is there other benefits, apart
13 from those that might be derived from the collective
14 bargaining process, and entering in to a Collective
15 Bargaining Agreement that the Department derives from ABL?

16 MR. STEWART: Objection. Form.

17 MR. BIRRING: Objection. Form.

18 A (The Witness) Other benefits besides
19 promotions?

20 Q (Mr. Riches) Right.

21 A Hiring is - is another area.

22 Q I mean, is there - is there other benefits,
23 outside the context of entering in to the Collective
24 Bargaining --

25 A Oh. Oh.

1 for a second.

2 MR. RICHES: Yeah. That's fine.

3 (The deposition was recessed at 2:01
4 p.m.)

5 (At 3:07 p.m., the deposition
6 continued as follows:)

7 MR. BIRRING: Okay. So we're back on the
8 record now with Chief Woolverton.

9

10 EXAMINATION

11 QUESTIONS BY MR. BIRRING:

12 Q So Chief, could you describe the process that a
13 request for ABL goes through, to be approved or
14 disapproved?

15 A Okay. So the - the first thing that - that
16 happens, of course, if a member wants to request ABL, is
17 they should reference the - the policy, and the Collective
18 Bargaining Agreement, that clearly states what it should
19 and shouldn't be used for.

20 They then have to send an e-mail, as the
21 policy states, to - to Chief Nicks to - to request whether
22 or not they could even ask for a ABL.

23 It's my belief that many requests get
24 turned away there. I don't know, for sure, because I
25 don't see that, but I know that, fire fighters being fire

1 fighters, can ask for some pretty far-fetched things,
2 not - not thinking things through.

3 So before - before it ever even makes it to
4 me, it goes through those screens.

5 Then, once the member gets approval from
6 Chief Nicks, they submit the electronic form, and - and
7 it's - that's the first that management actually sees the
8 request.

9 So for there to be, you know, ninety-eight
10 or ninety-nine percent of - of all requests being
11 approved, it's not surprising to me, because they've
12 already been through some filters.

13 Q So the request we see in Exhibit 5, on Formsite,
14 would a - fire fighters making a request for ABL that's
15 reflected in Exhibit 5, have they already - has he or she
16 already received approval from Chief Nicks?

17 A Yes, or --

18 Q Okay.

19 A -- they - or you wouldn't see it here, because
20 it can't - it can't make it to the electronic form without
21 his approval.

22 Q Okay. And then once a fire fighter submits an
23 electronic request, who then sees it next?

24 A So simultaneously, it may - may be seen by the
25 Battalion Chief and myself.

1 whether to approve or disapprove a request?

2 A Yes.

3 Q And the fire fighters are - know about
4 those - the policy on ABL before they send a request.
5 Right?

6 A Yes.

7 Q So by the time a request comes to you, the fire
8 fighter has read Article 10, understands what ABL can be
9 used for. It's been - they've requested permission from
10 Chief Nicks, and then it comes to you. And that would be
11 reflected in Exhibit 5. Right?

12 A Yes.

13 Q It - can you give us an example of times when
14 you've disapproved an ABL request that's made it all the
15 way to Formsight?

16 A Yes.

17 So the - the most - the most recent ones
18 that - that I had turned down involved fire fighters
19 wanting to go to the Travis County Courthouse to support a
20 female fire fighter who - who had been - been involved in
21 a - a criminal investigation - well, I say involved in a
22 criminal investigation. She was the victim in a
23 inappropriate or illegal recording at a fire station.
24 Specifically a Lieutenant hid a spy camera, and attempted
25 to record her while she was in the - the dressing

1 room/shower.

2 He was - he was charged criminally. It was
3 going through - through the legal proceedings.

4 I - I believe the DA had struck a plea
5 deal, and Chief - Chief Nicks, and several of the
6 Association member - Association members requested the use
7 of ABL to take off to go down and support this - this fire
8 fighter.

9 We looked at it, thinking that it's -
10 it's - it's not so much a support of the fire fighter, as
11 it was a political statement against the DA, because they
12 disagreed with the plea bargain that had been struck. I
13 believe the - the plea was he got five years deferred
14 adjudication. They felt like he should have actually done
15 some jail time, and they wanted to make a statement
16 rebuke - rebuking the - the DA's decision to - to - to go
17 in the direction it was.

18 We looked at that and thought that was
19 clearly a political move, and we denied those requests.

20 Q Because that would not have been within the
21 restriction that involves that ABL use in Article 10?

22 A Yes.

23 Q Okay. And can we talk a little bit about some
24 particular uses of ABL? For example, the Combat
25 Challenge?

1 You can - you - I believe earlier you
2 testified a little bit as to how this benefits the
3 Department, but could you kind of expand on that?

4 A Sure.

5 And - and is it possible to - to reference
6 the - the - the information that's in the - in - I guess
7 it's in whatever this document is here. (Indicating)

8 Q Is that --

9 A It's this - it's this one. (Indicating)

10 It's - it's like Page 2 or 3, where it
11 talks about the mission of the Austin Fire Department, and
12 the - or - or not mission, but goals.

13 MS. VAHL: Let me --

14 MR. BIRRING: Can we --

15 MS. VAHL: -- we can maybe print out a copy
16 of the - the mission statement --

17 A (The Witness) I - I just didn't want to --

18 MS. VAHL: -- if you want to --

19 A (The Witness) -- misquote what it actually
20 says.

21 But it talks about in - having a - a
22 healthy and well workforce, and that being one of - one of
23 our goals.

24 And - and the - the Combat Challenge Team,
25 as well as the boxing tournament, actually directly

1 supports that particular goal of the Austin Fire
2 Department.

3 And it may not be in that document.

4 It was in a - one of them that you gave me
5 to prepare for - or prepare with.

6 MS. VAHL: If I could have everyone's
7 indulgence, I can go print that out, quickly.

8 Well, maybe --

9 MR. BIRRING: Sure.

10 MS. VAHL: -- stop - if you wanted to ask
11 something else? I - I can --.

12 MR. BIRRING: Yeah.

13 So shall we go off the record for a second?

14 Would you be okay with us grabbing that,
15 and attaching it as an exhibit, so --?

16 MR. RICHES: Yeah.

17 (Recess from 3:15 p.m. to 3:19 p.m.)

18 (Exhibit Number 6 marked.)

19 Q (Mr. Riches) Okay. We're now back on the
20 record.

21 Chief Woolverton, do you see the document
22 that the Court Reporter marked Exhibit Number 6?

23 A (The Witness) I do.

24 Q Have you seen this before?

25 A Yes, I have.

1 Q And can you identify what it is?

2 A This is taken from the - the - the Internet, and
3 it's - it's information about the Austin Fire Department's
4 purpose, mission, visions, and goals.

5 Q Can you describe how participating in Combat
6 Challenge would support the mission, goals, or vision of
7 the Austin Fire Department?

8 A Yes. Specifically the - the - there are - there
9 are five goals listed under our purpose, mission, visions,
10 and goals.

11 The second one is, "The Austin Fire
12 Department will support and maintain a safe, healthy,
13 well-trained, and high-performing workforce."

14 And I would say that the - our
15 participation in the Combat Challenge supports that
16 particular goal.

17 Q And why - why is that?

18 A Well, you have to be extremely fit to
19 participate and - and - and - well, not only participate,
20 but to win, and our teams typically - typically win. And
21 they are motivators to other fire fighters to also be - be
22 fit, and well-trained, and high-performing individuals.

23 Q Okay. And how does it support the Austin Fire
24 Department to be fit and well-trained?

25 A So I - I believe that any citizen would want -

1 would want fire fighters coming to their - to their
2 emergency event to be - to be fit and well-trained.

3 And - and, in fact, if they weren't fit and
4 well- - well-trained, they might be - might not be able to
5 do their job very well, and, you know, citizens may pay
6 the price for that.

7 Q Right.

8 Now other activities for which ABL was
9 approved have been to promote other goals of the Austin
10 Fire Department, as well. Right? Such as fostering
11 goodwill?

12 A Yes.

13 Q And can you talk a little bit about the
14 importance of the City of Austin's Fire Department to
15 foster goodwill with the public?

16 A You - sure. I mean, one thing you definitely
17 want a - a - a - a community to do is have confidence in -
18 in their fire fighters, and - and part of that confidence,
19 of course, is - is in knowing who - who they are, knowing
20 that they care about what's important in the - in - to
21 them, in the community. The things like the - the boxing
22 tournament that - that was - that was for a - a - a
23 children's fund.

24 Q Is this the Battle of the Badges Boxing Charity
25 Tournament on COA 867u?

1 A Yes, sir.

2 Q Okay.

3 A And so - so that's - that's something that shows
4 the community that - that you care.

5 Q Can you talk a little bit about the grievance
6 process, and when an Association - when a - a AFA member,
7 an Austin fire fighter, is using ABL to represent another
8 fire fighter in a grievance, can you talk about the
9 benefits to the Austin Fire Department and to the City of
10 Austin from that?

11 A Sure. You know, management is comprised of
12 human beings, and human beings make - make mistakes.

13 And our interpretation of - of the - the -
14 the rules and - and contracts that are put before - before
15 us are - are not always a hundred percent. We - we - we
16 strive to be a hundred percent, but we're not always
17 perfect.

18 And so when those grievances are filed, you
19 know, it could be that we're interpreting something
20 incorrectly, and those grievances help to identify those -
21 those issues, and - and remedy them at the lowest level
22 possible.

23 If they weren't remedied at the lowest
24 level, you could certainly have a lawsuit that would cost
25 the City considerably more than a few hours of ABL.

1 Q So would it be inaccurate to describe the
2 grievance as always an adversarial process between the
3 City and the AFA?

4 A No. Some - sometimes it is - it has clearly
5 benefited both.

6 Q But would it be accurate, I guess would be the
7 question.

8 A No. It's - it's - it's not accurate to say it's
9 always adversarial.

10 Q Okay. Beyond the language of Article 10, can
11 you talk about other limitations, or restrictions, or
12 policies that would apply to an AFA member using ABL,
13 including the Chief, Chief Nicks, the Association
14 President?

15 A So for - for - for ABL - of course if - if - if
16 you're on leave for us, and so if you were supposed to
17 work from noon till noon, and the first four hours of the
18 day you're on ABL, you're still subject to all the same
19 rules that any other Fire Department member is - is
20 subject to. That includes the - the Code of Conduct, just
21 like Chief - Chief Nicks, and the story that I relayed
22 earlier. All of the same policies still - still apply.

23 Q So even though Chief Nicks does not have to use
24 Formsite the way an Association member does, he still is
25 subject to many policies and limitations on his conduct

1 CAUSE NO. D-1-GN-16-004307
2 MARK PULLIAM; JAY WILEY,) IN THE DISTRICT COURT
3 PLAINTIFFS)
4 AND)
5 TEXAS,)
6 INTERVENOR-PLAINTIFF,) 419TH JUDICIAL DISTRICT
7 VS.)
8 CITY OF AUSTIN, TEXAS;)
9 ELAINE HART, IN HER)
10 OFFICIAL CAPACITY AS CITY)
11 MANAGER OF THE CITY OF)
12 AUSTIN,)
13 DEFENDANTS) TRAVIS COUNTY, TEXAS

12 *****

13 REPORTER'S CERTIFICATION
14 DEPOSITION OF AARON WOOLVERTON
15 OCTOBER 29, 2018

16 *****

17 I, JUDY A. COUGHENOUR JOHNSON, a Certified
18 Shorthand Reporter in and for the State of Texas, do
19 hereby certify to the following:

20 THAT the Witness, AARON WOOLVERTON, was duly sworn
21 by the officer, and that the transcript of the oral
22 deposition is a true record of the testimony given by the
23 Witness;

24 THAT the deposition transcript was submitted on
25 November 9, 2018 to the attorney for Defendants for

Judy A. Coughenour & Associates

1 examination, signature, and return to JUDY A. COUGHENOUR &
2 ASSOCIATES, 8109 Asmara Drive, Austin, Texas, 78750, by
3 November 29, 2018.

4 THAT the amount of time used by each party at the
5 deposition is as follows:

6 JONATHAN RICHES - (1 hour 58 minutes)

7 HALEY O'NEILL - (00:00 minutes)

8 SAMEER S. BIRRING - (19 minutes)

9 JOHN W. STEWART - (00:00 minutes)

10 THAT \$757.82 is the deposition officer's charges
11 for preparing the original deposition transcript and any
12 copies of exhibits, charged to Plaintiffs.

13 THAT pursuant to information given to the
14 deposition officer at the time said testimony was taken,
15 the following includes all parties of record:

16 For Plaintiffs:

17 SCHARF-NORTON CENTER FOR CONSTITUTIONAL
18 LITIGATION AT THE GOLDWATER INSTITUTE
19 BY: JONATHAN RICHES
500 East Coronado Road
Phoenix, AZ 85004

20 For Intervenor-Plaintiff:

21 OFFICE OF THE ATTORNEY GENERAL
22 BY: HALEY O'NEILL
23 P. O. Box 12548
Austin, TX 78711-2548
24 PH: (512) 475-4094
e-mail: Haley.oneill@oag.texas.gov
25

For Defendants:

CITY OF AUSTIN LAW DEPARTMENT
BY: SAMEER S. BIRRING
P. O. Box 1546
Austin, TX 78767-1546

For Intervenor Austin Fire Fighters Assoc., Local 975:

WOODLEY & MCGILLIVARY
BY: JOHN W. STEWART
1101 Vermont Avenue, N.W., Suite 1000
Washington, D.C. 20005

I further certify that I am neither Counsel for,
related to, nor employed by any of the parties in the
action in which this proceeding was taken, and further,
that I am not financially or otherwise interested in the
outcome of the action.

Further Certification requirements, pursuant to
Rule 203 of TRCP, will be certified to after they have
occurred.

SWORN TO by me this 9th of November, 2018.



JUDY A. COUGHENOUR JOHNSON
TEXAS CSR NO. 1198
EXPIRATION DATE: 12/31/18
8109 Asmara Drive
Austin, Texas 78750
PH: (512) 346-4707

EXHIBIT 4

CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; JAY WILEY,	)	IN THE DISTRICT COURT
	)	
PLAINTIFFS	)	
	)	
AND	)	
	)	
TEXAS,	)	
	)	
INTERVENOR-PLAINTIFF,	)	419TH JUDICIAL DISTRICT
	)	
VS.	)	
	)	
CITY OF AUSTIN, TEXAS;	)	
ELAINE HART, IN HER	)	
OFFICIAL CAPACITY AS CITY	)	
MANAGER OF THE CITY OF	)	
AUSTIN,	)	
	)	
DEFENDANTS	)	TRAVIS COUNTY, TEXAS

ORAL DEPOSITION

OF

RONNELLE PAULSEN

OCTOBER 29, 2018

ORAL DEPOSITION OF RONNELLE PAULSEN, produced as a
Witness at the instance of Plaintiffs, and duly sworn, was
taken in the above-styled and numbered cause on the 29th
day of October, 2018, from 2:07 p.m. to 3:05 p.m., before
JUDY A. COUGHENOUR JOHNSON, Certified Shorthand Reporter
No. 1198, in and for the State of Texas, reported by

machine shorthand at AUSTIN CITY HALL, 301 West Second
Street, Austin, Texas, pursuant to the Texas Rules of
Civil Procedure and the provisions stated on the record or
attached herein.

* * * * *

APPEARANCES

For Plaintiffs:

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- AND -

TEXAS PUBLIC POLICY FOUNDATION
BY: ROBERT HENNEKE
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For Intervenor-Plaintiff:

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1 APPEARANCES (CONTINUED)

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 - AND -
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8 WOODLEY & MCGILLIVARY
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 10 Washington, D.C. 20005
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 11 e-mail: Jws@wmlaborlaw.com

12 Also Present:

13 Aaron Woolverton

14 Reported By:

15 JUDY A. COUGHENOUR & ASSOCIATES
 16 BY: JUDY A. COUGHENOUR JOHNSON
 8109 Asmara Drive
 17 Austin, TX 78750
 PH: (512) 346-4707
 18 e-mail: Jude@prodigy.net

19 * * * * *

20 STIPULATIONS

21 The attorneys for all parties present stipulate and
 22 agree to the following items:

23 THAT the deposition of RONNELLE PAULSEN is taken
 24 pursuant to Notice;

25 THAT all objections will be made pursuant to the

1 Texas Rules of Civil Procedure;

2 AND THAT the original transcript will be submitted
3 for signature to the Witness' attorney, SAMEER S. BIRRING,
4 and that the Witness or the Witness' attorney will return
5 the signed transcript to JUDY A. COUGHENOUR & ASSOCIATES
6 within 20 days of the date the transcript is provided to
7 the Witness' attorney. If not returned, the Witness may
8 be deemed to have waived the right to make the changes,
9 and an unsigned copy may be used as though signed.

10 * * * * *

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EXHIBITS			
EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED	PAGE REF'D
1	Being a copy of the Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	N/A	8
2	Being the original booklet entitled Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	N/A	31
4	Being a document entitled Association Business Leave - 2012, Quarterly Report, Q4 - Oct. thru Dec.	N/A	13

1 Q (Mr. Riches) I'm asking if he's prohibited from
2 performing any activities, under Article 10.

3 MR. BIRRING: Objection to form.

4 MR. STEWART: The same.

5 A (The Witness) I'm still uncertain as to the
6 types of activities you're referring to.

7 Q (Mr. Riches) That's what I'm asking about.

8 Are there any prohibitions placed on Chief
9 Nicks, while he's using ABL?

10 MR. STEWART: Objection. Form.

11 MR. BIRRING: Objection. Form.

12 Q (Mr. Riches) In terms of the activities that
13 Chief Nicks can engage in.

14 MR. STEWART: Objection. Form.

15 A (The Witness) The - not in the Collective
16 Bargaining Agreement. No.

17 Q (Mr. Riches) Are there other limitations or
18 prohibitions placed on Chief Nicks, while using ABL by the
19 City?

20 A He is bound by the same General Orders as the
21 rest of the fire fighters and most of the civilian
22 employees at the Austin Fire Department.

23 Q Chief Nicks is bound by the same rules and
24 regulations that would govern other Austin fire fighters

25 --

1 A (Witness nodded head up and down.)

2 Q -- as they're performing their official duties?

3 Is that --

4 A Yes.

5 Q -- correct? Okay.

6 How do you - well, let's actually - let's
7 look at Section 2B.

8 It looks like the City of Austin provides
9 5,600 hours of ABL, plus an additional thousand hours to
10 be carried over for ABL. Is that correct?

11 A Fifty-six is automatic each year, and then their
12 balance from the previous year, if it exceeds 1,000, will
13 go over as a thousand. If it's less than a thousand, it
14 will go over as that lower number.

15 Q And the City funds that pool of hours?

16 A Yes.

17 Q The AFA provides no funding for that pool. Is
18 that --

19 A Correct.

20 Q -- correct?

21 A (Witness nodded head up and down.)

22 Q When we're talking about ABL hours, do they
23 refer to any given fire fighter's working hours for use of
24 ABL?

25 MR. BIRRING: Objection. Form.

1 I might add that in - in addition to their
2 base pay, there are other elements of pay that could make
3 that vary. There's certification pay. They may have
4 approached - approached the threshold for overtime pay.
5 Things like that.

6 So it is more complicated than their base
7 pay, time this number - times this number of hours.

8 Q Is there any - can you identify any monetary
9 benefits that the City receives, in exchange for ABL
10 hours?

11 MR. BIRRING: Objection. Form.

12 A (The Witness) Monitory (sic.) meaning financial
13 benefits?

14 Q (Mr. Riches) Correct.

15 A No. I cannot think of any financial benefit
16 that comes in as a direct consequence.

17 Q Of ABL.

18 A Of ABL.

19 Q What are other benefits, if any, that the City
20 derives, in exchange for ABL hours?

21 A There are - there are many.

22 The - the ABL hours are a part of all of
23 the articles in the Collective Bargaining Agreement.

24 It's a - a package, as we call it. That
25 for that, it may have been bargained to get something with

1 regard to promotions, or hiring, or - or drug screening.

2 So there are a lot of intangible benefits
3 that come from the inclusion of this article.

4 In terms of the activities that occur under
5 ABL, there are issues that increase morale that could come
6 from this. There are benefits to members within the
7 Department. There are - that - it - it contributes
8 significantly to the decision-making process in the
9 Department.

10 Q Has the City ever conducted any studies or
11 reports to ascertain what the value of those indirect
12 benefits are?

13 A The City has not.

14 Q How does the City know that it's deriving
15 benefit, if it doesn't measure it?

16 MR. BIRRING: Objection to form.

17 Q (Mr. Riches) Let me - let me rephrase.

18 What obligations, if any, are put in place
19 to ensure that ABL is providing the benefits you
20 highlighted?

21 A (The Witness) One of the --

22 MR. STEWART: Objection.

23 A (The Witness) -- activities --

24 MR. STEWART: Form.

25 Sorry. You can answer it.

1 A (The Witness) Okay.

2 One of the activities I mentioned was the
3 oversight committees. One is for hiring. Another is for
4 cadets. There's attendance of those members on ABL at
5 those oversight committees.

6 Their perspective adds to the process.
7 Sometimes they see things slightly different than the
8 chain of command or the other representatives, the
9 management representatives, who sit on those committees.

10 So there is a consequence there, for
11 example.

12 Q (Mr. Riches) Okay. Turning back to Exhibit 1,
13 which is the Collective Bargaining Agreement.

14 Is there anything, in Article 10, that
15 requires the AFA President to perform specific activities
16 for the City?

17 A No.

18 MR. BIRRING: Objection to form.

19 MR. RICHES: The same objection.

20 Q (Mr. Riches) Is there anything, in Article 10,
21 that obligates the other Authorized Association
22 Representatives to perform specific activities for the --

23 MR. BIRRING: Objection to --

24 Q (Mr. Riches) -- City?

25 MR. BIRRING: -- form.

1 MR. BIRRING: Can we take a quick break?

2 MR. RICHES: Sure.

3 MR. BIRRING: Yeah.

4 (Recess from 2:35 p.m. to 2:59 p.m.)

5 MR. STEWART: Did you have any questions?

6 MR. BIRRING: I do not.

7 MR. STEWART: Okay.

8

9 EXAMINATION

10 QUESTIONS BY MR. STEWART:

11 Q Well, I just have a couple of questions for you.

12 You testified a little bit about the
13 monetary benefit of Association Business Leave. Do you
14 recall that?

15 A I did.

16 Q And I want to ask you about the contract.

17 Do you have Exhibit - I think this is 2 -
18 in front of you, or the --

19 A Okay. Well --

20 MR. BIRRING: Oh. Yeah.

21 A (The Witness) Oop. There is it. Yes.

22 Q (Mr. Stewart) So - so if you would turn to Page
23 12, which is Article 9?

24 A Yes.

25 Q So this article concerns base wages, and base

1 wage increases, longevity pay, other premium payments
2 along those lines. Is that right?

3 A Correct.

4 Q And they're set at certain levels, based on
5 this - on this article?

6 A Yes.

7 Q And if you could turn to the end of the
8 contract, Page 88? Appendix A-1?

9 A Yes.

10 Q This contains information about pay scales paid
11 to the fire fighters by the City of Austin. Is that
12 right?

13 A Yes.

14 Q And these - these amounts and provisions are
15 settled in contract negotiations? Is that --

16 A Yes.

17 Q -- right?

18 And so if you were to pluck, from the
19 bargaining table, the Association Business Leave
20 provision, would the City have to make additional
21 concessions, in order to do that?

22 A Yes.

23 Q And could those concessions come in the form of
24 reduced benefits, or reduced pay, or reduced numbers in
25 the charts that we just discussed?

1 MR. RICHES: Objection as to form.

2 Q (Mr. Stewart) I'll - I'll break that down a
3 little bit better.

4 Okay. Withdraw that.

5 Could those concessions come in the form of
6 reduced pay to fire fighters? That's - oh. Excuse me.

7 A (The Witness) If ABL was removed from the
8 contract?

9 Q If - if, at the bargaining table, the City
10 removed the ABL provision that is Article 10 --

11 A Um hum.

12 Q -- would the City have to make additional
13 concessions in negotiations, most likely, if they do that?

14 A Yes. They would have to make concessions.

15 Q And could those concessions come in the form of
16 changes to the wages paid to fire --

17 MR. RICHES: Objection.

18 Q (Mr. Stewart) -- fighters?

19 MR. RICHES: Speculation.

20 A (The Witness) It - it could be, with regard to
21 wages and benefits, but it could also be to a lot of other
22 articles within the bargaining agreement, because they're
23 taken in a totality before it's finished.

24 Q (Mr. Stewart) And wages and benefits are a part
25 of the totality that is negotiated in bargaining -

1 bargaining? Is that right?

2 A Yes.

3 Q That's all I have. Thank you.

4 A Thanks.

5 (Witness passed at 3:01 p.m.)

6 MR. RICHES: I do have some. Do you have
7 anything? (Indicating)

8 MR. HENNEKE: Well, it's - it's not their -
9 you passed.

10 MR. BIRRING: Yeah. I lknow. Just for
11 Chief Woolverton, I'll --.

12 And just to be clear, I passed for this
13 Witness.

14 I have some potential questions for Chief
15 Woolverton, as well.

16

17 FURTHER EXAMINATION

18 QUESTIONS BY MR. RICHES:

19 Q So you indicated that ABL was part of a larger
20 contract, and if ABL was withdrawn, you speculated that
21 maybe additional concessions would have to be offered by
22 the City to the AFA? Is that correct?

23 MR. STEWART: Object --

24 A (The Witness) In my --

25 MR. STEWART: -- as to form.

1 A (The Witness) -- in my experience with
2 bargaining sessions, over the last six and a half years,
3 there are various articles that are linked more to the
4 Association, and some that are linked more to the City.

5 And yes. I feel that there would be a
6 give-and-take, if ABL was removed from this - from this
7 agreement.

8 Q (Mr. Riches) How do you know that removal of
9 ABL would result in additional benefits, in terms of wages
10 and - and other monetary benefits?

11 A I don't --

12 MR. BIRRING: Objection.

13 A (The Witness) -- know that --

14 MR. BIRRING: Form.

15 A (The Witness) -- it - I don't know that it
16 would lead to changes to wages. That's a possibility.

17 It could lead to other changes in other
18 articles.

19 Q (Mr. Riches) Are you part of the City's
20 bargaining team?

21 A I was another Subject Matter Expert, as - as a
22 member of management, and I have been on bargaining - in
23 bargaining sessions.

24 Q Were you --

25 A Yeah.

1 Q -- part of that bargaining team that negotiated
2 this Collective Bargaining Agreement?

3 A For 2017? Yes.

4 Q Were you part of the team as something other
5 than a Subject Matter Expert?

6 A I'm - I don't think there are any other roles
7 for management.

8 Q So do you --

9 A So no.

10 Q So do you view Association Business Leave as
11 part of the overall compensation package that's offered to
12 Austin fire fighters?

13 A Yes.

14 Q Have, to your knowledge, Austin fire fighters
15 given their affirmative consent to have part of their
16 compensation directed to ABL?

17 MR. BIRRING: Objection to form.

18 MR. STEWART: The same objection.

19 A (The Witness) Could you rephrase that?

20 Q (Mr. Riches) Have Austin fire fighters given
21 consent to have a portion of their compensation directed
22 for ABL use?

23 MR. BIRRING: Objection to form.

24 MR. STEWART: The same objection.

25 A (The Witness) In the sense that they voted for

1 CAUSE NO. D-1-GN-16-004307
2 MARK PULLIAM; JAY WILEY,) IN THE DISTRICT COURT
3 PLAINTIFFS)
4 AND)
5 TEXAS,)
6 INTERVENOR-PLAINTIFF,) 419TH JUDICIAL DISTRICT
7 VS.)
8 CITY OF AUSTIN, TEXAS;)
9 ELAINE HART, IN HER)
10 OFFICIAL CAPACITY AS CITY)
11 MANAGER OF THE CITY OF)
12 AUSTIN,)
13 DEFENDANTS) TRAVIS COUNTY, TEXAS

12 *****

13 REPORTER'S CERTIFICATION
14 DEPOSITION OF RONNELLE PAULSEN
15 OCTOBER 29, 2018

16 *****

17 I, JUDY A. COUGHENOUR JOHNSON, a Certified
18 Shorthand Reporter in and for the State of Texas, do
19 hereby certify to the following:

20 THAT the Witness, RONNELLE PAULSEN, was duly sworn
21 by the officer, and that the transcript of the oral
22 deposition is a true record of the testimony given by the
23 Witness;

24 THAT the deposition transcript was submitted on
25 November 13, 2018 to the attorney for Defendants for

1 examination, signature, and return to JUDY A. COUGHENOUR &
2 ASSOCIATES, 8109 Asmara Drive, Austin, Texas, 78750, by
3 December 3, 2018.

4 THAT the amount of time used by each party at the
5 deposition is as follows:

6 JONATHAN RICHES - (22 minutes)

7 HALEY O'NEILL - (00:00 minutes)

8 SAMEER S. BIRRING - (00:00 minutes)

9 JOHN W. STEWART - (2 minutes)

10 THAT \$260.10 is the deposition officer's charges
11 for preparing the original deposition transcript and any
12 copies of exhibits, charged to Plaintiffs.

13 THAT pursuant to information given to the
14 deposition officer at the time said testimony was taken,
15 the following includes all parties of record:

16 For Plaintiffs:

17 SCHARF-NORTON CENTER FOR CONSTITUTIONAL
18 LITIGATION AT THE GOLDWATER INSTITUTE
19 BY: JONATHAN RICHES
500 East Coronado Road
Phoenix, AZ 85004

20 For Intervenor-Plaintiff:

21 OFFICE OF THE ATTORNEY GENERAL
22 BY: HALEY O'NEILL
23 P. O. Box 12548
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24 PH: (512) 475-4094
e-mail: Haley.oneill@oag.texas.gov
25

For Defendants:

CITY OF AUSTIN LAW DEPARTMENT
BY: SAMEER S. BIRRING
P. O. Box 1546
Austin, TX 78767-1546

For Intervenor Austin Fire Fighters Assoc., Local 975:

WOODLEY & MCGILLIVARY
BY: JOHN W. STEWART
1101 Vermont Avenue, N.W., Suite 1000
Washington, D.C. 20005

I further certify that I am neither Counsel for,
related to, nor employed by any of the parties in the
action in which this proceeding was taken, and further,
that I am not financially or otherwise interested in the
outcome of the action.

Further Certification requirements, pursuant to
Rule 203 of TRCP, will be certified to after they have
occurred.

SWORN TO by me this 12th of November, 2018.



JUDY A. COUGHENOUR JOHNSON
TEXAS CSR NO. 1198
EXPIRATION DATE: 12/31/18
8109 Asmara Drive
Austin, Texas 78750
PH: (512) 346-4707

EXHIBIT 5

CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; JAY WILEY,	)	IN THE DISTRICT COURT
	)	
PLAINTIFFS	)	
	)	
AND	)	
	)	
TEXAS,	)	
	)	
INTERVENOR-PLAINTIFF,	)	419TH JUDICIAL DISTRICT
	)	
VS.	)	
	)	
CITY OF AUSTIN, TEXAS;	)	
ELAINE HART, IN HER	)	
OFFICIAL CAPACITY AS CITY	)	
MANAGER OF THE CITY OF	)	
AUSTIN,	)	
	)	
DEFENDANTS	)	TRAVIS COUNTY, TEXAS

ORAL DEPOSITION

OF

BOB NICKS

OCTOBER 30, 2018

ORAL DEPOSITION OF BOB NICKS, produced as a Witness at the instance of Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 30th day of October, 2018, from 9:38 a.m. to 1:16 p.m., before JUDY A. COUGHENOUR JOHNSON, Certified Shorthand Reporter No. 1198, in and for the State of Texas, reported by machine

shorthand at DEATS, DURST & OWEN, PLLC, 707 West 34th
Street, Austin, Texas, pursuant to the Texas Rules of
Civil Procedure and the provisions stated on the record or
attached herein.

* * * * *

APPEARANCES

For Plaintiffs:

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- AND -

TEXAS PUBLIC POLICY FOUNDATION
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For Intervenor-Plaintiff:

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- AND -
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APPEARANCES (CONTINUED)

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For Intervenor Austin Fire Fighters Assoc., Local 975:

WOODLEY & MCGILLIVARY
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- AND -
JOHN W. STEWART
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Washington, D.C. 20005
PH: (202) 833-8855
e-mail: Djn@wmlaborlaw.com

Reported By:

JUDY A. COUGHENOUR & ASSOCIATES
BY: JUDY A. COUGHENOUR JOHNSON
8109 Asmara Drive
Austin, TX 78750
PH: (512) 346-4707
e-mail: Jude@prodigy.net

* * * * *

STIPULATIONS

The attorneys for all parties present stipulate and agree to the following items:

THAT the deposition of BOB NICKS is taken pursuant to Notice;

THAT all objections will be made pursuant to the Texas Rules of Civil Procedure;

AND THAT the original transcript will be submitted

for signature to the Witness' attorney, DIANA J. NOBILE,
and that the Witness or the Witness' attorney will return
the signed transcript to JUDY A. COUGHENOUR & ASSOCIATES
within 20 days of the date the transcript is provided to
the Witness' attorney. If not returned, the Witness may
be deemed to have waived the right to make the changes,
and an unsigned copy may be used as though signed.

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EXHIBITS			
EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED	PAGE REF'D
1	Being a copy of the Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	N/A	23
2	Being the original booklet entitled Collective Bargaining Agreement Between City of Austin and Austin Firefighters Association Local 975 effective October 1, 2017	N/A	23
4	Being a document entitled Association Business Leave - 2012, Quarterly Report, Q4 - Oct. thru Dec.	N/A	57
5	Being spread sheets, the first page entitled 2018-08-08 Formsite ABL Data Dump (ABL)	N/A	70
7	Being articles of news reports, the first page being entitled "Critics blast loophole that forces taxpayers to fund public sector union work"	119	119
8	Being a document with the first page entitled Media Tweets by Austin Firefighters (@AFA975) / Twitter	134	134
9	Being a document with the first page entitled Austin Firefighters (@AFA975) / Twitter	134	134

1 And there may be times when your attorneys,
2 or the attorney for the City, objects to a particular
3 question that I ask. They may be doing so to preserve to
4 record, so unless they instruct you not to answer a
5 question, please free to answer it, even if your attorneys
6 object.

7 A Okay.

8 Q Does that all sound agreeable to you?

9 A I understand.

10 Q Okay. If you wouldn't mind please stating your
11 name and spelling your last name?

12 A Bob Nicks, N-I-C-K-S.

13 Q Are you currently employed by the City of
14 Austin?

15 A I am.

16 Q And what is your position with the City?

17 A I am a Battalion Chief in the Austin Fire
18 Department.

19 Q Could you help me understand where, in the chain
20 of command or organizational structure, a Battalion Chief
21 is?

22 A Battalion Chief will usually report to either a
23 Division Chief or an Assistant Chief, depending on what
24 part of the organizational chart they're in.

25 So in Operations, they'd report to what we

1 together and talk about, you know, what's going on within
2 the Department, as far as, you know, fire safety, and fire
3 fighting, and what needed - you know, what new directives
4 would come down from management, what we needed to know.

5 If that doesn't happen, then there's
6 training to do.

7 There's - your - your - one of your
8 responsibilities would be to go to the different stations,
9 under your jurisdiction. So the Battalion Chief is
10 basically in charge of five to seven stations, and that
11 could be, you know, six to maybe nine units, different
12 type of apparatus, and so they would be going around to
13 those stations, and supervising activities, checking out
14 progress of programs. Things like that.

15 And there might be other activities
16 assigned to the Battalion Chief directly from the Shift
17 Commander, some of them from above, to work on a
18 particular program or project.

19 Q Got it.

20 Do you also hold a position with the Austin
21 Fire Fighters Association?

22 A I do.

23 Q And what's that position?

24 A I'm the President.

25 Q How long have you been the President of the AFA?

1 elected to the Bargaining Team in 2008. At that time I
2 was Chief of Training.

3 The next year I ran for the
4 Secretary/Treasurer position, so that was, I think, 2009,
5 and accepted that position - or was elected in that
6 position.

7 And I was in that position about a year -
8 maybe a little less than a year - and then I ran for
9 President of the Association, and was sworn in as
10 President January of 2010.

11 Q Very good.

12 Fast rise.

13 Can you tell me, just in general terms,
14 what the AFA is?

15 A What the AFA is?

16 It's a association of fire fighters that we
17 promote and establish the common interest.

18 We are the chief - we represent the
19 bargaining unit for the City, under Chapter 174, so we
20 actually are the negotiating agent for that.

21 Because of that, there's a variety of
22 activities that are under the contract that we are
23 responsible for. Administering grievances, you know,
24 meeting with management to try to work out different
25 issues harmoniously.

1 You know, I can give you a for instance, if
2 you want, or you can ask me later.

3 But, I mean, we spend a great deal of time
4 with that.

5 But a good deal of our time is spent
6 meeting together, and trying to promote and establish our
7 common interests, so a lot of time is spent, because we do
8 want to represent the fire fighters - not just our own
9 interests - a lot of time is spent going out to do
10 surveys, to do face-to-face contacts, and - and - and
11 educating and receiving feedback from the members so we
12 can basically promote their interests.

13 Q How long has the AFA been in existence?

14 A I don't know, exactly. You asked me this
15 question last time.

16 I - I think around 1950, or a little bit
17 before, but I'm not absolutely sure.

18 And I only say that because I've - I've
19 been told they're very active - Austin fire fighters were
20 active, at the time, in the writing and the promoting of
21 Civil Service law, and I think it was voted in the State
22 Legislature around that time.

23 Q You indicated that the AFA is the negotiating
24 agent for Austin fire fighters.

25 When you say negotiating agent, do you mean

1 now.

2 But I - I - I believe our numbers are close
3 to 11- - or excuse me - 1050.

4 Q And how many of those 1050 are members of the
5 AFA?

6 A All but - we recently took - took a look at
7 that - which I don't really pay much attention to - but I
8 think we have twenty-one nonmembers within our - within
9 our universe of fire fighters at the Austin Fire
10 Department.

11 Q Twenty-one?

12 A Yes.

13 Q Okay.

14 A And I think that's around two percent.

15 So about ninety-eight percent people
16 participate voluntarily, with the Association.

17 Q Got it. Got it.

18 When the AFA reaches a tentative agreement
19 with the City on a contract, does it submit the proposed
20 contract to its membership for a ratification vote?

21 A Yes.

22 We go through an extensive education period
23 with the members, where we conduct public meetings,
24 meetings where they come to us. We have PPs go out and
25 talk about the issues. We have a - we do a lot of stuff

1 on line, so we have an on-line education page where we
2 give - if there's any dissension on the bargaining team -
3 which there usually is some. We have pro and cons - we do
4 a video usually talking about the issues. We usually have
5 a Power Point talking about the contract before, and this
6 one, and we - we do a lot of educational membership before
7 the - a - a member vote occurs.

8 Q And then there - there actually is an up or down
9 member vote?

10 A There is. Yes.

11 Q What's required of the member vote to ratify a
12 contract?

13 A Fifty percent. Over fifty percent of the
14 members voting. (Witness nodded head up and down.)

15 Q When you say members, do you mean AFA members?

16 A Well, any member could vote.

17 Now to be - to be clear, I've never had a
18 nonmember ask to vote, but we certainly have provisions to
19 allow them to vote.

20 Q So nonAFA members can vote to ratify a contract
21 between the AFA and the City?

22 A That's my understanding. Yes. (Witness nodded
23 head up and down.)

24 Q You indicated that there's provisions to allow
25 that. Do you know where those exist?

1 MR. BIRRING: Objection. Form.

2 A (The Witness) I'm sorry. What's the question?

3 Q (Mr. Riches) Why is it that you wouldn't be
4 represented by the City, as a City employee?

5 MS. NOBILE: Objection. Form.

6 A (The Witness) Why is it that I wouldn't want to
7 be?

8 Q (Mr. Riches) That - that you aren't.

9 A I've never been asked to, and I've never
10 requested that I am - that - that I be represented by
11 them.

12 Q Okay. If you wouldn't mind taking a look at
13 what has previously been marked as Exhibit 1? Can you
14 identify that document?

15 A Yes.

16 Q And what is that?

17 A This is a - the latest Collective Bargaining
18 Agreement between the City of Austin and the Austin Fire
19 Fighters Association.

20 Q Were you familiar with that document prior to
21 coming in this --

22 A I --

23 Q -- morning?

24 A -- I am familiar with it. Yes.

25 Q Were you part of the negotiation team that was

1 part of the negotiating process, prior to ratification of
2 this --

3 A That's --

4 Q -- agreement?

5 A -- correct.

6 Q What was your role, on the negotiating team?

7 A On this contract, I was the lead negotiator.

8 Q How many negotiators are there?

9 A Pardon me?

10 Q How many negotiators are there for AFA?

11 A I think - I believe our - our team is nine. And
12 it's five elected and four appointed by the President.

13 And then we usually hire outside Counsel to sit in at
14 least some of the sessions, if not all the sessions.

15 Q When you say five are elected, by whom are they
16 elected?

17 A They're elected by the membership.

18 Q For the exclusive task of negotiating?

19 A Yes.

20 So we have a - we have a bargaining team,
21 that's laid out in our Constitution and Bylaws, and it
22 talks about how members are selected, and five are
23 selected through a - an on-line voting system, basically,
24 and then four are appointed by the President.

25 Q If you wouldn't mind turning to Article 10 of

1 Q I'll rephrase it.

2 Who funds Association Business Leave?

3 A Association Business Leave is established
4 through arms-length negotiations between the City of
5 Austin and the Austin Fire Association - Fire Fighters
6 Association.

7 A lot of items and discussions go in to to
8 create the equilibrium of that bargain.

9 But I think what you're probably getting in
10 to, who actually funds it, ultimately? Because I think
11 that was the question from the Court case that I was in -
12 or the Court date that I - I attended. And that would be
13 the citizens - citizens of Austin ultimately fund it.

14 Q Is any portion of Association Business Leave, or
15 ABL, paid out of the AFA's budget?

16 A Again, I think you could make the case that the
17 negotiation - arm-length negotiation is where you
18 determine all the issues in the contract, and so you could
19 say that there were some allowances made for benefits or
20 working conditions to get that leave.

21 But when you're looking - if you're asking,
22 directly, do any funds come out of the general fund of AFA
23 from the money dues we collect to fund ABL, the answer
24 would be no.

25 Q Okay. Would you mind looking at Section 1B,

1 generally work in a - in a year.

2 Of course, if you're taking any sick, or
3 vacation, or other types of leave, it would - it would
4 subtract from that - that number.

5 But yeah. That - a - a person, a forty
6 hour workweek is generally considered to work 2040.

7 Q Are all of your working hours done on ABL?

8 MS. NOBILE: Objection to the form.

9 You can answer.

10 A (The Witness) No.

11 Q (Mr. Riches) Okay. Do you perform other -
12 well, how are your other working hours performed?

13 A Voluntary leave.

14 My - my work - my work requirements require
15 me to work way past forty hours a week, so a lot of it is
16 voluntary.

17 Occasionally - although I'm not very good
18 about this - when the City asks me to do something, like
19 go to a quarterly Battalion Chief meeting, I actually
20 could not charge ABL for that, but just charge regular
21 leave, which would allieve - allow me more balance to use
22 for other purposes, if I wanted, in the ABL balance.

23 I generally don't remember to do that, and
24 so I'm usually there on ABL, even though I'm on behalf of
25 the City. I'm in uniform and - and acting as an employee,

1 at that time, with the City. A - a regular Battalion
2 Chief.

3 But I would say the far majority of the
4 time that I use that's not ABL is - is me volunteering my
5 time to the - to the duties of the job.

6 Q When you do that, when you volunteer your time,
7 do you record that, in some fashion? Do you put in for
8 voluntary leave?

9 A No. The agreement I have with the City - first
10 of all, the - this ABL article says I cannot - I cannot
11 work overtime. So I don't show the other times that I
12 work as voluntary.

13 What we've done is - because they're -
14 they're aware that I'm doing more than forty hours a
15 week - is we just decided to - when I - when I record my
16 time on my time sheet, I record ten hours on Monday,
17 Tuesday, Wednesday, and Thursday.

18 And at one point I thought I might actually
19 do some overtime in Operations on Friday and Saturday, but
20 I've never had the bandwidth to do that, with - with my
21 duties and my family requirements.

22 Q If you wouldn't mind looking at Section 1A of
23 Exhibit 1?

24 A Section 1A?

25 Q I'm sorry. Section 1B.

1 opinion.

2 And then we talked about lots of other
3 things, like going to a Council meeting - office and
4 talking about advocating for fire fighter issues, and
5 safety principles - principles, and things like this, and
6 those are - those are prohibited - those are not
7 prohibited. Those would - those are - those would be
8 fine.

9 And so really, the only two that I can
10 think of that they said I couldn't do, for lawful
11 purposes, is deliver checks, or deliver - or do something
12 in - in uniform.

13 Of course I am subject to the Code of
14 Conduct. Regardless of whether I'm - I'm working as
15 Battalion Chief or Union President, I'm still a City of -
16 employee. I'm still employed by the City of Austin, and I
17 am subject to those sort of personnel policies, too.

18 Q When you say "in uniform soliciting," what do
19 you mean? What are you soliciting?

20 A Well, I - nobody does this in the City of
21 Austin, because we're pretty - I think we're a pretty
22 ethical department - but Chapter 143 talks about you can't
23 lobby in a - in a - in a uniform, if I'm - if I'm not
24 mistaken.

25 Q When you say "lobby," do you mean advocate for

1 I have to do in order to - to maintain a good standing as
2 an employee.

3 There are a lot of common, mutual projects
4 we work on together, where we're coordinating our time,
5 and ideas, and resources to accomplish.

6 But if you're asking is there somebody that
7 directs my day-to-day activities, from the City, then the
8 answer is no.

9 Q (Mr. Riches) Do you provide any accounting as
10 to how you spend your time, while using ABL, on a daily
11 basis, to anyone at the City?

12 MS. NOBILE: Objection to the form.

13 You can answer.

14 A (The Witness) To some extent, yes.

15 I mean, but it's mostly for the purposes of
16 accurate pay, and by abiding by the contract.

17 So there's a time sheet that needs to be
18 filled out weekly, but the time - but, by agreement, the
19 time sheet is filled out, much like I told you. It's
20 filed - it's filled out Monday, Tuesday, Wednesday, and
21 Thursday, with ten hours a day of ABL.

22 As a practice, what I do is if I have
23 vacation or sick, during that time, even though I have
24 worked more than that time, I usually take the - I usually
25 record that on my time sheet, just because I think it

1 A I think, technically, the supervisor is the Fire
2 Chief, but I - but, for all practical purposes, I
3 generally report to the Chief of Staff, which is Tom
4 Dodds.

5 Well, actually, he's the Interim Chief now,
6 but he was the Chief of Staff.

7 Q Does he provide any performance reviews for you?

8 A No.

9 Q How often do you report to him?

10 A Whenever he asks me to.

11 Generally we - you know, one of the I
12 think important parts of the Association is - is trying to
13 create harmonious relationships.

14 So it's - this week - I want to say Tuesday
15 of last week, he wanted to meet for several hours on
16 overtime practices.

17 There were different Chiefs that were
18 interpreting it in different ways. He wanted the
19 Association's point of view.

20 I - I did a conference call with my Board.
21 I talked about the issues. We came up with our position.
22 I went and talked to the Fire Chief for several hours
23 about it, and reached a lot of common interest on - on how
24 we should interpret it.

25 And so that's just an example of - of when

1 he would direct me to come in and - and - and meet.

2 And that happens fairly frequently.

3 Q How would you characterize "fairly - fairly
4 frequently"?

5 A Well, in - you could - in some weeks, like that
6 particular day - I'm just reviewing my - my calendar,
7 because I thought you might ask some questions like this.

8 That particular day, I met with him twice
9 that day. One was for an over three-hour meeting with the
10 female fire fighters in the afternoon, and the other one
11 was a - a meeting earlier in the day, at about two hours,
12 on overtime - which ended up being two and a half hours on
13 overtime practices, and went in to some other issues.

14 Some days we wouldn't meet, at all.

15 So it would really just depend on, you
16 know, what's the issue of the day, and what needs to be
17 discussed.

18 Q So he'll - the Chief of Staff will request
19 meetings with you and expect you to attend them? Is that
20 a fair characterization of what you --

21 A Yeah.

22 Q -- described?

23 A I mean, but it - I don't feel like - yes and no.

24 I mean, he - he will request it, just like
25 I would request a meeting with him. He probably doesn't

1 study under - that the Mayor kind of commissioned, with
2 the Budget office, to determine the exact impact of the
3 crisis, because I thought it was a little bit - I thought
4 there were some offsetting costs that were going to be
5 taking place.

6 And while I was doing that, I was working
7 hand-in-glove with the Fire Chief and civilian budget
8 analysts to try to come up with a myriad of solutions,
9 and - and we did.

10 And I think the fact that we engaged the
11 membership and stakeholders in doing that, we saved three
12 to four million dollars, and morale issues were - negative
13 morale issues were minimized.

14 So the Chief didn't direct me to do that,
15 but we certainly worked many, many hours together on
16 accomplishing that task.

17 Q Could you be removed as - could you be removed
18 from your position as the AFA President by the City?

19 A No.

20 Q And I'm certainly not suggesting that this is
21 the case, but if the City wasn't satisfied with your
22 performance as the AFA President, could they take
23 disciplinary action against you for poor performance as
24 the AFA President?

25 MS. NOBILE: Objection to the form.

1 You can answer.

2 A (The Witness) Well, I guess it depends on how
3 they would define poor performance as the AFA President.

4 They could certainly discipline me.

5 Now whether the purpose was because they
6 didn't like the performance of AFA Presidents is - would
7 be speculation, I guess, but they certainly have the
8 ability to discipline me, under the Code of Conduct
9 policies.

10 Q (Mr. Riches) If they weren't satisfied - if
11 someone at the City was not satisfied with your job
12 performance, could they ask you to step aside or remove
13 you from your position as the AFA President?

14 A No.

15 They could punish me for policy violations,
16 but they couldn't just - if you want to isolate just the
17 fact they didn't like - I wasn't violating any policies,
18 but they didn't like the way I was doing as President,
19 they could not - they could not compel me to step aside.
20 No.

21 Q And when you say policies, do you mean City
22 policies that are generally applicable to all City
23 employees?

24 A That - City and - so there's - there's City
25 policies that are applicable to me. There are Fire

1 A Yes.

2 Q And is the - is the number of hours the specific
3 activity that the Authorized Association Representative
4 was performing, while using ABL?

5 MS. NOBILE: Objection to the form.

6 You can answer.

7 A (The Witness) When they fill out the ABL
8 request form, there are some choices, and if they're doing
9 it - using it for that purpose, they would select that
10 choice.

11 As you can see, Other Association Business
12 Leave is another choice, and they can choose. That does
13 not describe, in any great detail, of what they will be
14 doing.

15 Q (Mr. Riches) But what does the Other
16 Association Business category reflect?

17 A For the most part, without going through the
18 forms and - and giving you a more accurate portrayal, I
19 know the business of the Association pretty good.

20 Mostly - mostly that's going to be VPs
21 going to station visits. Basically - and which takes it -
22 a good deal of our time is going out and - and educating
23 our members, and then soliciting feedback from our members
24 on - on what they would like us to advocate for. So a
25 great deal of time is spent doing that.

1 That's the biggest thing that comes to
2 mind.

3 Of course, there's some charity - there's
4 some charities that we do that are kind of in the
5 interests of the public, and the Fire Department, and the
6 Association that we do. I think - I think some of those
7 hours could - could be attributed to that.

8 There is - make sure that's not on there.

9 There's conferences. Oh, yes. It says
10 Union conference. Excuse me. Conference meeting.

11 It's probably mostly outreach to the
12 members, going out and - and visiting with them. (Witness
13 nodded head up and down.)

14 I'm sure there's some other uses, but I'm
15 kind of going blank right now.

16 Q No problem.

17 So as we sit here today, the uses of Other
18 Association Business that you can recollect are
19 outreach to members, and certain charitable activities?

20 A Yes.

21 Q Are there any others, that you can recall?

22 A I'm not doing a very good job of recollecting it
23 right now.

24 So I - I don't - I think conferences are
25 probably under Meeting Conferences, but if conferences are

1 MR. BIRRING: Objection.

2 MS. NOBILE: -- the form.

3 MR. BIRRING: Form.

4 MS. NOBILE: You can answer.

5 A (The Witness) Yeah. It's the cost - it's kind
6 of the cost of doing business.

7 I mean, you - there's - it's - it's not
8 possible to get everybody perfectly fitted in the
9 positions to have - have a hundred percent utility, so
10 it's somewhat the cost of doing business.

11 But to answer your question, more
12 specifically, yes.

13 When you have to pay overtime, you're
14 paying the person's, you know, regular benefits and
15 salary, but then you're also paying one and a half times
16 the regular rate, as calculated through federal law.

17 Q (Mr. Riches) Okay. You indicated - going back
18 to Exhibit 5 - that this ATX Combat Challenge was a
19 separate 501(c)(3).

20 Is it a charitable activity? Do you know
21 what their purpose is?

22 A Their purpose is to promote, to be able to
23 compete, to be able to, you know, promote the goodwill of
24 the Department and the Association, and to meet with other
25 people, across the nation, and learn, and - and exchange

1 information.

2 And I think they - you know, I say they're
3 a 501(c)(3), and I believe they are, but now that you ask
4 that question, I'm not a hundred percent sure. I
5 think they would have to be to be on our deduction form,
6 but I would have to check on that further.

7 But if they were, what they would - what
8 they would be doing is they would be - they would - they
9 would probably be trying to establish a - a nonprofit
10 status for - for public good.

11 So I'm - I'm - now that you mention that,
12 I'm not exactly sure they are.

13 I do know our SPOTA (ph.), our relief and
14 outreach fund, and - and some of the other organizations
15 we have are 501(c)(3)s. I'm not a hundred percent sure
16 they are, now that you mention that.

17 Q Do you know what the mission of the ATX Combat
18 Challenge Team is?

19 A It's to promote - promote goodwill for the Fire
20 Department, and, in this case, the Association to compete
21 nationally, and to exchange information on fire fighting,
22 other activities, with the members of the other teams.

23 Q Do you know where the proceeds of contributions
24 to the ATX Combat Challenge Team go to?

25 A They go - well, they don't have a lot of

1 closely connected.

2 Q What are the activities of the relief and
3 outreach fund?

4 A What's the purpose?

5 Q Yeah.

6 A Relief and outreach fund was set up right at
7 9-11 to collect money for the surviving families of 9-11
8 fatality - fire fighter fatalities.

9 What we realized - and this was before my
10 time, but - so I'm going from history, as it's been told
11 me - we didn't have a 501(c)(3). We had collected over a
12 hundred thousand dollars, and we didn't really have a
13 right way to do it. So they quickly formed a 501(c)(3) so
14 they could be legal, and doing everything the right way,
15 and have it, you know, a nonprofit.

16 And so it actually started, at that point.

17 What it turned into from there, through the
18 Board - some Board decisions, before I came on, is it
19 became a relief and outreach fund for citizens that - so
20 particularly around the Austin area that suffer from
21 floods or natural disasters, like fires. Fires or natural
22 disasters.

23 It also supports Austin fire fighters, area
24 fight fighters, and even Statewide fire fighters.

25 More recently, we added a cancer component

1 to it.

2 We have a golf tournament we're doing now
3 at Onion Creek. We're raising about the same amount of
4 money, around fifteen to thirty thousand dollars a year,
5 and that is dedicated just to fire fighter cancer help.

6 We had a fire fighter with brain cancer who
7 was supposed to die - and that's how we started that
8 thing - and - and we - he realized, with our insurance,
9 there were certain tests he would like to have, but
10 couldn't get through his insurance, so we ran this
11 fundraiser for him through the relief and outreach fund.

12 Turned into a - another piece for our
13 relief and outreach fund, this cancer component.

14 (The Reporter asked for a repeat of the
15 last part of the Witness' answer.)

16 A (The Witness) It - it turned into a - another
17 part of the fund that was related exclusively to - to
18 funding cancer - cancer medical expenses, primarily.

19 And he's cancer free now. And so he was
20 able to do extra testing and treatments that he wasn't
21 able to do under regular insurance.

22 I'm not sure you're aware, but fire
23 fighting, it's becoming an emerging fact that we have a
24 higher instance of cancer, so this is how we were able -
25 able to respond to some of those new studies and facts.

1 I think there's a lot of mutual benefit
2 between the Association and the City, in general, and our
3 evidence - as evidenced by management acknowledging the
4 cancer risk, and also participating in these fundraisers.

5 Q (Mr. Riches) And so I understand it correctly,
6 then, the relief and outreach fund is a separate entity
7 from the AFA. Is that correct?

8 A I would say as a legal entity, yes, but because
9 the Constitution has me in the Board by virtue of my
10 position, that we share a lot of icons and signage, you
11 know, where our logo - logo will show up with theirs, and
12 the fact that I appoint four of the nine members, that
13 there is a strong connection. But if you - if you look it
14 up, legally, it is a separate entity. Yes.

15 Q And then the purpose of the relief and outreach
16 fund, today, is to provide financial relief to citizens or
17 fire fighters that have been struck by tragedy or illness?
18 Is that correct?

19 A Yes. And then - that is correct.

20 And then from fire fighters, we - we might
21 expand that to - to - to even further.

22 For instance, we - because our - our fund
23 became better funded than it had in - in previous years,
24 we started opening up to other areas, like - for instance,
25 there was a fire fighter who was coming over a hill late

1 I'm trying to think if we had an
2 arbitration, or we were trying to adjust a grievance
3 on the - on contract, but I - no.

4 I think - I think bargaining would be
5 exclusively for bargaining, and not for adjusting
6 grievances.

7 Q So that would --

8 A Yeah. I think that would be for bargaining.

9 Q So that would refer to collective bargaining
10 with the City of Austin?

11 A Yes. I believe so.

12 Q And the AFA members utilizing ABL would be
13 negotiating, or otherwise participating on behalf of the
14 AFA, during those negotiations?

15 A Yes.

16 Q For the dispute resolution proceedings, does
17 that refer - what does that refer to?

18 A Huh. Well, I don't know. I've never really
19 thought about this category that much, honestly.

20 I guess it could include - so you have the
21 grievance committee - which isn't actually working on
22 grievances and trying to resolve them.

23 So I guess that category could include
24 items that you're trying to resolve. That could be a
25 grievance, in nature, maybe even an investigation of a

1 policy violation.

2 I - I never really put much thought in that
3 category. I'm sorry.

4 Q That's okay.

5 On grievance committee, do you know what
6 that refers to?

7 A Grievance committee, it refers to a committee
8 that's delineated in our contract to review grievances
9 that were received, to decide whether they have merit.

10 And it's - it's kind of a - a little bit of
11 an outdated term, because we don't have that many
12 grievances that are contractual, in nature. So rather
13 than impaneling a separate group of people to be a
14 grievance committee, I have kind of designated that the E
15 Board will be the grievance committee, because we are a -
16 a lot more knowledgeable, because we go out and advocate
17 with people of what - what the issues are.

18 And so you probably won't see many in
19 that - in that category, because we don't really impanel a
20 grievance committee, other than the E Board is the
21 grievance committee.

22 Q And that grievance committee is - do they
23 receive grievances from AFA members - against whom do they
24 receive the grievance against?

25 A They - they - well, a grievance, a - a - is

1 contractual, so they would - if a member looked at the
2 contract and thought that something was violated in the
3 contract, then they would usually e-mail us, or they'll
4 call us and we'll ask them to e-mail their - or articulate
5 their complaint in writing. And then the - then that
6 complaint would - would go through - we have a certain
7 amount of timeline, based on the contract, with some steps
8 in the grievance process.

9 So if we have a meeting coming up, we'd
10 probably wait for the meeting, and make some sort of
11 determination.

12 If we didn't have a meeting coming up very
13 soon, we would probably e-mail the issue to all the
14 members of the E Board, and then have a conference call,
15 or some sort of other - you know, sometimes we do a
16 on-line discussion Board, that's protected, to discuss,
17 and then we make some sort of decision on what should - we
18 should do with it.

19 Q And what would the - what would - what would the
20 decision be? What's the options for the range of
21 decisions that could be --

22 A Oh --

23 Q -- made in a grievance?

24 A -- the options?

25 So the grievance procedure is in the

1 contract, and what you're supposed to do, is you receive a
2 grievance. I believe within three days, you send it to
3 the Fire Chief - even if you haven't had a chance to
4 determine the validity of it, so she's at least aware that
5 it has occurred.

6 We're supposed to start a process of
7 informal resolution. So trying to reach out and see if we
8 can, you know, agree that something needs to be done to
9 solve this grievance before it comes forward formal -
10 formally.

11 And, quite frankly, a lot of times we're
12 able to do that.

13 At the meeting I talked about earlier,
14 where we met about overtime, a few Mondays ago, we worked
15 out all the issues that could have gone to a grievance, if
16 we didn't work it out informally.

17 If we can't work it out informally, then
18 there's a certain amount of days, under the contract, we
19 have to file a formal grievance.

20 And so now that I have laid the context
21 out, to answer your question, it could be anything from
22 they resolve it informally; we decide it's not a contract
23 violation, at all, so we're not going to do anything with
24 it, and we inform the member why.

25 It could be that we - there's another type

1 of grievance. The City does call that policy grievance.
2 We could direct them that route, if it's not a contract
3 grievance.

4 Or we could actually file a formal
5 grievance with the City to start the arbitration process.

6 Q If the grievance committee, or the Executive
7 Board of the AFA determines that a formal grievance does
8 exist and you file a grievance with the City, do you then
9 provide representation for the fire fighter who made the
10 original grievance with the AFA?

11 A If they request it. Yes. (Witness nodded head
12 up and down.)

13 Q And then in that situation, the AFA would be
14 representing that fire fighter through the grievance
15 process with the City?

16 A Yes.

17 Q And then the last category is Union conference
18 meetings. What are those?

19 A Oh, I mean, what I think that means is meetings
20 or conferences.

21 So a meeting I would think would be like we
22 have our E Board meeting, or general membership meeting,
23 where our - where our E Board members need to attend.

24 A conference would be - I guess the most
25 classic example is we are - we are affiliated with the

1 International Association of Fire Fighters, and every two
2 years, they have a national conference.

3 And in those national conferences, people
4 bring forward motions, and changes to the Constitution,
5 and basically business is conducted.

6 And so we are a fairly large local, so we
7 would - and - well, I think we have six representatives
8 underneath their Bylaws.

9 So we would attend that conference. We
10 would attend preconferences to discuss and caucus about
11 the events and business that's going to come up in the
12 national convention. We participate on the floor and
13 debate on these items, and ultimately vote, and that
14 determines the - that - that determines basically the
15 business and - and what the - directs the International
16 Association of Fire Fighter (ph.) what they'll be doing in
17 the future.

18 So that would be an example of what that
19 category would be used for.

20 And so this year, we had our conference, so
21 you might see that number a little higher for that quarter
22 than normally would be.

23 Q So the meetings, that refers to internal AFA
24 meetings? Is that correct?

25 A It could be internal AFA meetings, or it could

1 be some sort of joint committee meeting with management.

2 Q Okay. And the conferences refers to IAFF
3 conferences?

4 A It could be other conferences.

5 Like, for instance, I attended - we've had
6 a lot of issues with - and I'm trying to understand the
7 issues better - on females in the fire service, and the
8 culture, and how we can make it more inclusive.

9 So I went to an HR committee meeting this
10 year, and I formed a H- - a Human Relations committee
11 within AFA to try to understand these issues better. We -
12 we sent five or six members of that committee, in January.
13 And then there's a - but that is an IFF - IAFF event.

14 But then there's another event called
15 I-Women, which is a - not associated with any national
16 group, but they are - they just advocate for female fire
17 fighter issues.

18 I attended that conference. I attended all
19 the work sessions on that, again, trying to - and - and -
20 actually, the Department supported the rest of the members
21 that went to that, with time off and travel. But - but
22 I - I, myself, went on ABL and through dues money for my
23 travel, again to try to understand those issues better.

24 So it wouldn't be just for IAFF events. It
25 could be for any event that's within the general purpose,

1 and adds value to what we try to accomplish, as an
2 Association.

3 Q Is AFA a member of the IAFF?

4 A It is.

5 Q As the AFA President, do you have a duty to
6 advance the interests of AFA members?

7 A Do I have what?

8 Q Do you have a duty to advance the interest of
9 AFA members?

10 A I have a duty to - I - I feel that my duty is to
11 try to advocate for the will of the membership.

12 I think the will of the membership has a
13 tremendous amount of overlap with the public interest, and
14 what's - and what's best - best for citizens, and for
15 their safety, and - and - and emergency services, so
16 that's honestly why I'm President.

17 I wouldn't just advocate for bread and
18 butter wages and benefit issues. I believe when you
19 conduct an Association like we do, there's a lot of
20 overlap between what is in - in the interests of the
21 members, and the interest of the public good.

22 So - so yes, but I think the way I run it,
23 and the way fire fighters like me to run it, expands
24 beyond just their own self-interest.

25 Q Does the AFA have any Bylaws that describe what

1 forty hours on ABL, so it depends on how you would want to
2 categorize that.

3 But - but I would say, of my total time I
4 spend, probably twenty-five, thirty percent of the time is
5 lobbying.

6 Q And you also had indicated that you spend a
7 portion of your time on ABL for political activities,
8 including the support and opposition of political
9 candidates? Is that correct?

10 A I don't do any sort of thing, like show up in
11 uniform, and - and promote a candidate, or an issue, or I
12 don't deliver a check while on the - on ABL.

13 But other activities, like going to
14 Council, and advocating. If I was doing like - anything
15 like block walking, I wouldn't do that on ABL. I would do
16 that on my own time.

17 Even if it was - even if it was okay to do
18 it, I - there's just certain things I try to keep on the
19 other side of the line, just to be a little more careful.

20 Q If I were to define --

21 A Perceptions, I guess, you know.

22 Q I understand.

23 If we were to define political activities
24 as support or opposition to a candidate for public office,
25 no matter how that time is spent, how would you - what

1 Is there anything that requires you to
2 perform specific activities, for the City, while using
3 ABL?

4 A Specific activities? No.

5 MS. NOBILE: And objection to the form.

6 MR. BIRRING: The same objection.

7 Q (Mr. Riches) Is there any other agreement,
8 outside of the CBA, that requires you to perform specific
9 activities for the City?

10 A (The Witness) I guess what it means, specific
11 activities?

12 I am subject to the Code of Conduct,
13 policies, and any other policy the City has. So there's
14 certain activities delineated in those policies that I am
15 regulated by.

16 But if you're talking about a particular
17 task, then the answer - the specific task that's required
18 me to do in the CBA or outside the CBA?

19 Inside the CBA, no.

20 Outside the CBA, the Chief can direct me to
21 do certain tasks, but like I explained earlier, it's
22 usually not a unilateral thing where the Chief would say,
23 "Bob, I need you to do this." It's usually us meeting and
24 deciding things we need to do for the common good of our
25 organizations, and really more for the Fire Department and

1 the City, and then us endeavoring to do it together.

2 I hope that answered your question.

3 Q That does.

4 Does the AFA charge member dues to its
5 members?

6 A Do we do what?

7 Q Do you charge member dues for membership in the
8 AFA?

9 A We do.

10 Q And what are those?

11 A It is - we have twenty-four pay periods a year
12 that we collect dues, and it is \$26.25 for each one of
13 those twenty-four pay periods.

14 Q What do those dues pay for?

15 A Those dues pay for our affiliation with the
16 International Association of Fire Fighters. It pays for
17 some - I don't know if I'd call them salaries, but at
18 least I'd call them something like an honorarium for
19 myself and my - my E Board members. There's a little bit
20 of money that's - I - you could call a salary, if you want
21 to, but it's not very much.

22 And then some of our - my committees that
23 are a little more active, we pay a little bit of money -
24 like a hundred dollars a month, or something like this -
25 to the Chair and the Secretary as - it's not really even

1 there's a - there's another post on September 2nd, 2014,
2 with another gentleman at a door. Is that correct?

3 A It is.

4 Q Okay.

5 A That's correct.

6 Q Can - can - do you recall what you were doing
7 there?

8 A We were block walking. We were taking - I think
9 it was District 9. We were taking around, you know, some
10 sort of political information, and supporting a
11 candidate - a particular candidate for that race.

12 Q Okay. And when you - and so you - you're
13 conducting block walking. Correct?

14 A (Witness nodded head up and down.)

15 Q When you do that, are you ever using ABL time?

16 A No.

17 Q So you're always using your not - your - I guess
18 that would be your - I think you called it volunteer time
19 earlier?

20 A Sometimes I actually - and I - I can't recall
21 exactly what I did on that day, but I know I didn't use
22 ABL time. I mean, I'm really careful about that sort of
23 thing.

24 So I either - sometimes I purposely put
25 down vacation, just to demonstrate that I didn't take ABL.

1 But if I didn't do that, I - I was not on
2 ABL. I promise you.

3 I mean, I - I don't do that sort of
4 activities on ABL.

5 Q Even if you're not acting on ABL time, when
6 you're conducting these activities, well, are you still
7 going out there and participating in your capacity as an
8 AFA President?

9 A When I'm not on ABL time?

10 Q Um hum.

11 A Yes.

12 Q Okay. Let's see if I can find --.

13 Looking at - let's see if we can find a
14 more recent one.

15 Well, just going - staying on that Exhibit,
16 Exhibit 8, just flipping to the second page, just to --

17 A The second page --

18 Q So --

19 A -- of 8?

20 Q The second page of 8.

21 Looking at that, there's several photos.

22 The first Tweet, that has a date, is the
23 29th of April, 2016. Austin Firefighters@AFA975.

24 There's a post of "Firefighters support Susan King."

25 Correct?

1 you knew whether or not you were on ABL time, you said
2 that you worked - you have a - you have your - your
3 schedule, and - and from Monday through Thursday, you have
4 ten hour blocks that are blocked off on your - on your
5 calendar.

6 How do you know when you're - like, for
7 instance, looking at Page 12, when you're supporting
8 candidates. You say you're not on ABL time doing these,
9 but you're also acting in your capacity as an AFA
10 President.

11 How do you differentiate that? If - it
12 sounds, to me, like - I mean, how would you - how would
13 you be able to verify that?

14 MS. NOBILE: Objection to the form.

15 You can answer.

16 A (The Witness) I don't know that I could verify
17 it. Just how I differentiate it?

18 Oh. I mean, I - like I said earlier, I
19 work a lot more hours than forty hours a week, and so
20 I - and the time - the way I describe it on my time sheet
21 isn't an accurate portrayal of exactly what I'm working on
22 a particular - any particular day. And it's not meant to
23 be, and that's not the agreement I have with the City.
24 It's more to record the time.

25 And so the voluntary time I - I give, up

1 and beyond my forty hours, is - is what I would say I use
2 for any political activity I do.

3 And sometimes I even throw up another fire
4 wall, like when I'm doing things like testifying at the
5 Capitol and the - the - while that issue comes up as a -
6 as a - as a bill we were trying to pass, and we were in
7 opposition with the City.

8 Well, in that case, just to be abundantly
9 clear, just so there was no discussion like this and
10 someone asks me how I differentiate my time, I would take
11 vacation, during the time I was testifying, because even
12 though I don't think I'm under this provision, in the
13 contract, it says, "Other people, under ABL, should -
14 can't testify against a City issue at the State leg," or
15 something to that effect, so I would take vacation time,
16 during that time, just to be abundantly clear that I
17 wasn't doing it.

18 Q (Ms. O'Neill) Just to kind of follow up on
19 this.

20 If - if you aren't having a way - if you're
21 not - if there is not a way that you're - basically
22 calculating how much time you're spending not on ABL, but
23 you know that you're working more than your forty hours a
24 week of ABL, how do you determine that you're working the
25 forty hours of ABL, versus working what hours outside of

1 Could we just take two minutes? And I want
2 to go over my notes.

3 (Recess from 1:01 p.m. to 1:12 p.m.)
4

5 EXAMINATION

6 QUESTIONS BY MS. NOBILE:

7 Q I just have a few follow-up questions.

8 Are you, as the Association President,
9 bound by the Collective Bargaining Agreement, when you're
10 on ABL?

11 A I am.

12 Q Okay. Currently, does the Fire Department give
13 any Fire Department employees performance reviews -
14 reviews?

15 A Currently they don't.

16 Q Okay. And do you work more than forty hours a
17 week, in your capacity as Association President, on
18 activities other than lobbying, Tweeting, political
19 activities?

20 A Yes.

21 Q Okay. What does the Union present - what does
22 the Association present at cadet training?

23 A I'm sorry. What?

24 Q What does the Association present? There were
25 some questions about the cadet training.

1 A Oh.

2 Q What does the Union present at those - at those
3 trainings?

4 A In the contract, we have four hours to address
5 the cadets, and so we address - we present to them - I
6 usually do this presentation - what the Union offers.

7 We explain it's a right-to-work State.
8 They don't have to join.

9 We explain the whole - what Civil Service
10 law is. They understand that they're working under that,
11 whether they're a member or not. They understand what the
12 contract is, and - and how it operates, and how you can -
13 you know, we go through the grievance process to - very,
14 very briefly, but they have an understanding, then, of -
15 of how they interact with the contract and the grievance
16 process, whether they're a member or not.

17 They are told about the various
18 501(c)(3)s that are not part of the Association we
19 support, so they'd have the ability to join those, whether
20 they are a member - become a member or not.

21 So I'm - I'm not going to mislead. I mean,
22 the focus of it is to explain the benefits of being a
23 member, but there's lots of information they receive that
24 goes beyond just becoming a member.

25 Q Okay. If you could take a look at - I believe

1 it's Exhibit 5, the spreadsheets of ABL, I believe?

2 A Okay. Is this 5? (Indicating)

3 Q And it's specifically COA867u?

4 A Okay.

5 Q You were --

6 A Yes.

7 Q -- you were also questioned about entries from
8 1-16-16. Do you see those four entries that are
9 highlighted?

10 A Yes.

11 Q Looking at that document, were those ABL
12 requests related to the Badges Boxing Charity Event
13 approved by the City?

14 A They were not approved.

15 I - I didn't realize that. No. They were
16 not approved.

17 Q Okay.

18 Okay. I don't have anything further from
19 you - for you, at this time.

20 (Witness passed at 1:14 p.m.)

21 MS. NOBILE: Anything else?

22 MR. RICHES: We have no Redirect, in light
23 of --

24 MS. NOBILE: Okay.

25 MR. BIRRING: Well, I only have a few

1 CAUSE NO. D-1-GN-16-004307
2 MARK PULLIAM; JAY WILEY,) IN THE DISTRICT COURT
3 PLAINTIFFS)
4 AND)
5 TEXAS,)
6 INTERVENOR-PLAINTIFF,) 419TH JUDICIAL DISTRICT
7 VS.)
8 CITY OF AUSTIN, TEXAS;)
9 ELAINE HART, IN HER)
10 OFFICIAL CAPACITY AS CITY)
11 MANAGER OF THE CITY OF)
12 AUSTIN,)
13 DEFENDANTS) TRAVIS COUNTY, TEXAS

12 *****

13 REPORTER'S CERTIFICATION

14 DEPOSITION OF BOB NICKS

15 OCTOBER 30, 2018

16 *****

17 I, JUDY A. COUGHENOUR JOHNSON, a Certified
18 Shorthand Reporter in and for the State of Texas, do
19 hereby certify to the following:

20 THAT the Witness, BOB NICKS, was duly sworn by the
21 officer, and that the transcript of the oral deposition is
22 a true record of the testimony given by the Witness;

23 THAT the deposition transcript was submitted on
24 November 15, 2018 to the attorney for Intervenor Austin
25 Fire Fighters Assoc., Local 975 for examination,

Judy A. Coughenour & Associates

1 signature, and return to JUDY A. COUGHENOUR & ASSOCIATES,
2 8109 Asmara Drive, Austin, Texas, 78750, by December 5,
3 2018.

4 THAT the amount of time used by each party at the
5 deposition is as follows:

6 JONATHAN RICHES - (2 hour 17 minutes)

7 HALEY O'NEILL - (23 minutes)

8 SAMEER S. BIRRING - (1 minute)

9 DIANA J. NOBILE - (2 minutes)

10 THAT \$805.93 is the deposition officer's charges
11 for preparing the original deposition transcript and any
12 copies of exhibits, charged to Plaintiffs.

13 THAT pursuant to information given to the
14 deposition officer at the time said testimony was taken,
15 the following includes all parties of record:

16 For Plaintiffs:

17 SCHARF-NORTON CENTER FOR CONSTITUTIONAL
18 LITIGATION AT THE GOLDWATER INSTITUTE
19 BY: JONATHAN RICHES
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Phoenix, AZ 85004

20 For Intervenor-Plaintiff:

21 OFFICE OF THE ATTORNEY GENERL
22 BY: HALEY O'NEILL
23 P. O. Box 12548
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25

For Defendants:

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P. O. Box 1546
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For Intervenor Austin Fire Fighters Assoc., Local 975:

WOODLEY & MCGILLIVARY
BY: DIANA J. NOBILE
1101 Vermont Avenue, N.W., Suite 1000
Washington, D.C. 20005

I further certify that I am neither Counsel for,
related to, nor employed by any of the parties in the
action in which this proceeding was taken, and further,
that I am not financially or otherwise interested in the
outcome of the action.

Further Certification requirements, pursuant to
Rule 203 of TRCP, will be certified to after they have
occurred.

SWORN TO by me this 14th day of November, 2018.



JUDY A. COUGHENOUR JOHNSON
TEXAS CSR NO. 1198
EXPIRATION DATE: 12/31/18
8109 Asmara Drive
Austin, Texas 78750
PH: (512) 346-4707

EXHIBIT 6

REPORTER'S RECORD
 VOLUME 4 OF 5 VOLUMES
 TRIAL COURT CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; JAY WILEY, Plaintiff	)	IN THE 419TH DISTRICT
And	)	
TEXAS, Intervenor-Plaintiff	)	
VS.	)	COURT OF
CITY OF AUSTIN; MARC A. OTT, in his official capacity as City Manager of the City of Austin; and	)	
AUSTIN FIREFIGHTERS ASSOCIATION, LOCAL 975	)	TRAVIS COUNTY, TEXAS

 MOTION TO DISMISS
 PLEA TO THE JURISDICTION
 HEARING ON SPECIAL EXCEPTIONS

On January 17, 2017, the following proceedings came
 on to be heard in the above-entitled and numbered cause
 before the Honorable Orlinda Naranjo, Judge presiding,
 held in Travis County, Texas;

Proceedings reported by machine shorthand.

1 A P P E A R A N C E S

2
3 FOR THE PLAINTIFF:

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Pro Hac Vice
5 **AND**
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17 FOR THE DEFENDANT; AUSTIN FIREFIGHTERS ASSOCIATION:

18 **MR. JOHN STEWART**
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19 **AND**
20 **MS. DIANA J. NOBILE**
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25

1 **MR. MATT BACHOP**

SBOT 24055127

2 AND

3 **MR. B. CRAIG DEATS**

SBN 05703700

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6 FOR THE DEFENDANT; CITY OF AUSTIN:

7 **MR. MICHAEL SIEGEL**

SBOT 24093148

City of Austin Law Department

PO Box 1546

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VOLUME 4

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EXHIBITS

<u>FOR THE PLAINTIFF:</u>				
<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL.</u>
1	CBA Article 10	68	68	4
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4	Affidavit of Mark Pulliam	68	68	4
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3

4 FOR THE INTERVENOR:

5	<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL.</u>
6	3	ABL	92	92	4
7	4	ABL Quarterly Report	92	92	4
8	5	Media Tweets	92	94	4

9

10 Reporter's Certificate. 117

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P R O C E E D I N G S

THE COURT: The Court will call Cause No. D-1-GN-16-004307. Mark Pulliam and Jay Wiley Versus the City of Austin, Marc Ott in his official capacity as City Manager for the City of Austin, and Austin Firefighters Association Local 975.

Counsel, make your announcement for the record, please.

MS. NOBILE: Diana Nobile on behalf of the Austin Firefighters Association, along with John Stewart and Matt Bachop and Craig Deats.

MR. SIEGEL: Good afternoon, Your Honor, Michael Siegel for the City of Austin.

MR. RICHES: Good afternoon, Your Honor. John Riches on behalf of Mark Pulliam and Jay Wiley. And Aditya Dynar, co-counsel.

MR. HENNEKE: Your Honor, Robert Henneke.

THE COURT: And you represent the Plaintiffs. Is that correct?

MR. HENNEKE: That's correct, your Honor.

MR. NIMOCKS: Your Honor, I'm Austin Nimocks on behalf of the Intervenor; Texas.

THE COURT: I know you spelled your last

1 name last time. Could you spell it again, please.

2 MR. NIMOCKS: Yes, ma'am. I wouldn't
3 presume that you would memorize it between Thursday and
4 today. N-I-M-O-C-K-S.

5 THE COURT: You represent?

6 MR. NIMOCKS: Texas. I'm with the AG's
7 office.

8 THE COURT: So, if I -- it hasn't been that
9 long ago. Let's go ahead and give a summary, Counsel.

10 MR. RICHES: Thank you, Your Honor. In
11 this case, plaintiffs challenge what's known as
12 Association Business Leave or release time. These
13 provisions appear in a Collective Bargaining Agreement
14 between the City of Austin and the Austin Firefighters
15 Association. It's plaintiffs' position that these
16 provisions take Government resources and place them under
17 the exclusive direction and control of a private labor
18 organization to advance its own mission and pursue its
19 own objective. There are very few limits, controls or
20 accountability measures that are placed on the
21 organization's use of those public resources. We contend
22 that violates the Texas Constitution and, specifically,
23 the Texas Constitution's gift clause, which is a series
24 of provisions that prohibit the use of public resources
25 for the private benefit of any individual association or

1 corporation.

2 So, in other words, your Honor, this is a
3 public interest taxpayer action that challenges the
4 constitutionality of Government activity and Government
5 expenditures. When we brought this case following --
6 filing, the AFA filed a motion under the Texas Citizens
7 Participation Act which is put in place to protect an
8 organization's constitutional right to association.
9 Following the filing of that motion, we moved for some
10 limited discovery. The way that statute is written
11 requires us to demonstrate a few things. It first
12 requires the AFA to demonstrate this case does, in fact,
13 relate to their constitutional right to association. If
14 they are able to meet their burden and make that showing,
15 then requires plaintiffs to establish a prima facie case
16 supported by evidence for a gift clause violation. The
17 gift clause --

18 THE COURT: I don't necessarily want to go
19 into the substance. That will be their motion and your
20 response, but I just wanted to get a summary of the
21 facts. Anything else?

22 MR. RICHES: One other report, in fact,
23 Your Honor, so we had moved for some limited discovery
24 after the AFA filed their TCPA Motion. Judge Krump
25 granted that motion in part. And part of that order was

1 to have Mr. Robert Nicks, who is the President of the
2 AFA, first provide some oral testimony in court today.
3 It would seem that -- and, of course, it's entirely
4 within the discretion of the Court; but it would seem
5 procedurally it might make sense to receive that evidence
6 first because it will be part of the response to the TCPA
7 Motion and may even be part of the TCPA Motion itself.
8 So, that's one matter to consider at the outset.

9 THE COURT: Okay. Interesting. So Judge
10 Krump allowed you to take his deposition?

11 MR. RICHES: No, Your Honor. We had
12 requested to take his deposition. We requested some
13 documents and some other items, but we also requested to
14 take Mr. Nicks' deposition and Judge Krump denied request
15 to take deposition; but ordered that he appear today to
16 provide evidence on the record that's relevant to the
17 motion.

18 THE COURT: The last time I looked it
19 doesn't seem like it was -- that's only one case that I
20 think allowed oral testimony or oral evidence and it was
21 all based on the evidence provided would be an affidavit,
22 et cetera. So, I know on the last case I didn't allow
23 the evidence, but other than -- you know, not oral
24 testimony at the time of trial; but I guess Judge Krump
25 has allowed it. So, okay.

1 MS. NOBILE: Good afternoon, Your Honor.
2 As I mentioned earlier, I'm here today on behalf of the
3 AFA. Just a few additional facts I wanted to point out
4 related to the case generally. The Collective Bargaining
5 Agreement which contains the release time provision at
6 issue, importantly for our purposes is the result of
7 arm's-length bargaining between the Austin Firefighters
8 Association as well as the City of Austin. And the
9 specific ABL provision at issue was actually the result
10 of an exchange between the City of Austin and the Union
11 in which the City -- or excuse me -- the Union agreed to
12 forego certain hours that were counted towards the hourly
13 overtime threshold in the form of sick leave in exchange
14 for about 5,600 hours per year of this Association
15 Business Leave. And that will certainly be relevant to
16 the inquiry of whether there was sufficient consideration
17 with respect to the merits of the case.

18 With respect to our TCPA Motion, the reason
19 that we're here today, the AFA's position is that because
20 this case so directly relates to communications related
21 to association, both communications among the members
22 related to the AFA purpose, as well as communications and
23 advocacy of its members' interest that the TCPA is
24 implicated; and we believe that we can make our initial
25 showing which then shifts the burden to the plaintiffs to

1 demonstrate that they have met their prima facie burden
2 by clear and sufficient evidence. It's our position that
3 they will be unable to do that for the very simple reason
4 that this Collective Bargaining Agreement and the release
5 time provision that contain within it are the result of
6 arm's-lengths negotiations for which there was adequate
7 consideration under Texas State Law. And this nearly
8 identical lawsuit brought by taxpayers in Arizona with
9 the same counsel representing the plaintiffs here, the
10 Court found, just as I described, that because the CBA
11 contains sufficient consideration under Arizona state
12 law, a standard that which we would argue is more
13 stringent than the standard for a gift clause violation
14 in Texas, this Arizona Supreme Court found that the
15 provision at issue, the Collective Bargaining Agreement,
16 which contained the provision regarding release time or
17 Association Business Leave here was constitutional. And
18 so, the -- we believe that the TCPA Motion should be
19 granted and that this suit should be dismissed.

20 THE COURT: Okay. Anybody else want to add
21 anything? Okay.

22 MR. NIMOCKS: No, Your Honor.

23 THE COURT: All right. Counsel, you have
24 been allowed to offer evidence and I'll allow that. Will
25 you call your first witness?

1 MS. NOBILE: We would call Bob Nicks.

2 THE COURT: Mr. Nicks.

3 MR. RICHES: Your Honor, the plaintiffs
4 were afforded the opportunity to examine Mr. Nicks. It
5 was our understanding that he was our witness and it
6 would be direct examination followed by cross from the
7 AFA and that's pursuant to Judge Krump's order.

8 MS. NOBILE: Well, I think Judge Krump's
9 order is --

10 THE COURT: Just allow him to testify at
11 trial, not necessarily that he would be your witness; but
12 let me do this: Is everybody that's in the courtroom are
13 you-all associated or have an interest in this case? I
14 just want to make sure that -- so many times some people
15 are in here because they think they need to be in here
16 and not have looked at the screen to make sure their case
17 is not assigned to this Court.

18 BOB NICKS,
19 having been duly sworn, testified as follows:

20 THE COURT: Please have a seat. It would
21 seem to me, Counsel, that if his deposition were being
22 taken that you probably would be asking the first
23 question; but since we're here at a hearing and they have
24 the initial burden I think that I will allow them to
25 first ask the first questions.

1 MR. STEWART: Thank you, Your Honor. John
2 Stewart for AFA.

3 DIRECT EXAMINATION

4 BY MR. STEWART:

5 Q. Mr. Nicks, would you please introduce yourself
6 for the Court.

7 A. My name is Bob Nicks.

8 Q. And where are you employed, Mr. Nicks?

9 A. I'm employed at The City of Austin; Austin Fire
10 Department.

11 Q. What's your position at the Austin City Fire
12 Department?

13 A. I hold the rank of battalion chief.

14 THE COURT: Before I forget, and you had
15 announced three hours for three matters. And how long
16 are you announcing for one matter?

17 MR. STEWART: I believe our announcement
18 was three hours for the TCPA Motion alone, Your Honor.

19 THE COURT: Motion to dismiss, plea to the
20 jurisdiction and special exceptions. Since we have
21 eliminated two of those, then I'm trying to find out how
22 much so I can hold you to that time.

23 MR. STEWART: Your Honor, we anticipate
24 using the full three hours if it's available to us.

25 THE COURT: Probably not. Again, because

1 you announced three hours for three matters. I'm trying
2 to figure out how you -- since we only have one matter to
3 hear. I understand that this is the matter that's going
4 to take the longest of those three, but I don't
5 anticipate it will take three hours.

6 MR. NIMOCKS: Your Honor, one of those
7 announcements was by Texas as to the plea to the
8 jurisdiction that we filed to the TCPA Motion. The TCPA
9 statute provides the exception for enforcement actions by
10 the Attorney General's office. So, as to the motion
11 before the Court, the Intervenor does have a plea to the
12 jurisdiction that we did notice for today and that's not
13 something that was dealt with in last Thursday's hearing.

14 THE COURT: So, how long are you asking for
15 that motion?

16 MR. NIMOCKS: We announced on the notice of
17 hearing one hour, but in terms of arguing the merits of
18 that, your Honor, I'll confess it should take far less
19 time than that.

20 THE COURT: How much?

21 MR. NIMOCKS: I'll say 30 minutes.

22 THE COURT: All right. So, the entire
23 motion so that would -- all right, then the special
24 exceptions was dealt with and that was the City of Austin
25 special exceptions, correct?

1 MR. SIEGEL: Yes, Your Honor. Although I
2 believe the Union filed their own special exceptions.

3 THE COURT: The whole point was today to
4 hear the Texas Citizens Participation Act matter and I
5 did not understand the plea and your plea to the
6 jurisdiction was not addressed on Thursday is what you
7 are telling the Court?

8 MR. NIMOCKS: Yes, ma'am. That's correct
9 because the plea specifically as to the TCPA Motion.

10 THE COURT: So, as it relates to the plea
11 to the jurisdiction, I am assuming that the special
12 exceptions, so the most you are going to get is two and a
13 half hours, 30 minutes to two hours for this matter. So,
14 just keep that in mind as you are asking questions. I
15 would assume I will divide it maybe an hour each side,
16 okay.

17 MR. STEWART: Thank you, Your Honor.

18 BY MR. STEWART:

19 Q. Mr. Nicks, how long have you been a battalion
20 chief?

21 A. About 12 years.

22 Q. I would like to talk a little bit about the
23 Austin Firefighters Association. What is your position
24 with the AFA?

25 A. I am the President of the Association.

1 Q. How long have you been the President?

2 A. Since January of 2010.

3 Q. What is the mission of the AFA as you
4 understand it?

5 A. We do a variety of things. We uphold and
6 further professional standards for firefighters. We
7 promote firefighter and public safety through advocacy,
8 education, policy and sometimes legislation. We work
9 towards more harmonious management labor relations
10 through discussion on important issues, and we also have
11 shared interest with management on certain charities and
12 we promote those and most of those in some way or another
13 give back to the community.

14 Q. How are those purposes determined?

15 A. The purposes are determined by the membership
16 to a large degree. There are certain statutes that
17 regulate our activities, but we look to our membership
18 for guidance on the issues that we should be promoting.

19 Q. And how does serving those purposes work in
20 practice?

21 A. I don't quite understand your question, sir.

22 Q. What kinds of acts does the AFA undertake, if
23 any, to serve those purposes you mentioned?

24 A. I think I understand your question. We believe
25 in educating our membership and through surveys and

1 online voting systems provide feedback from them to
2 develop our mission, our policy positions and how we
3 would initiate those positions.

4 Q. You mentioned charity in your answer earlier.
5 What types of charities is the AFA involved in?

6 A. We have one charity what we call Firefighters
7 Outreach Fund. It is a charity in which we raise money
8 for firefighters, Austin firefighters, also central Texas
9 firefighters and public safety and even Statewide; and
10 also we give money to the community to include the
11 uninsured and poor that suffer from natural disasters
12 such as floods or fires.

13 Q. And what work does AFA do, if any, related to
14 improving fire and firefighter safety?

15 A. We are very concerned with professional
16 standards, including our own standards, attorney
17 standards and cadet academy. We meet and -- with the
18 membership and get ideas what's going on in the work
19 place that might lead to discussions that enhance safety.
20 For instance, there's fatigue issues in the fire service
21 right now because of -- we're about 150 people short.
22 So, there's mandatory overtime that's necessary and
23 there's certainly ways to do it that's easier or harder
24 on the members. So, that's an example, or we meet to try
25 to come up with solutions that meet management's interest

1 of trying to put bodies in seats, but meet our interest
2 to make sure fatigue and safety issues are addressed.

3 Q. Thank you. And what is your typical day as the
4 president look like?

5 A. I don't really have a typical day, but there
6 are typical elements to a day. I usually start off with
7 an hour or two of some sort of e-mail and communications,
8 planning my day. There could be anything from meeting
9 with management, particular issues, meeting management,
10 management labor committees, coordinating the activities
11 of my vice-presidents who go out and actually meet and
12 converse with members to try to educate and find out what
13 the issues are. Also, there is activities where I meet
14 with counsel and educate them on issues, maybe advocate
15 for certain positions. I meet with state legislators
16 occasionally for -- to pension issues and wild fire
17 issues and a host of issues; cancer prevention issues,
18 and, you know, not any day would look the same, but every
19 day would contain elements such as those.

20 Q. You mentioned committee meetings. What types
21 of committee meetings do you attend?

22 A. They fall mainly into two categories: One
23 would be committees that we assemble, the association
24 committees, like workers' comp committee would be an
25 example of that. We try to develop solutions, management

1 is invited to some of those meetings and we try to come
2 up with a more equitable system to make sure firefighters
3 are treated fairly when they are injured.

4 Other committee meetings would be committee
5 meetings that the chief would institute and we might be a
6 part of and some of them are in the contract actually,
7 contractual meetings that we attend.

8 Q. Who attends workers' comp meeting?

9 A. We have -- in that particular group we have one
10 of my VP's attends and chairs the committee, and then we
11 have other members at large that are not part of the
12 leadership of the Association. Well, in that case they
13 are actually injured firefighters who felt like maybe
14 they weren't treated fairly in their treatment in the way
15 it was administered. So, they're giving back to develop
16 firefighters and advocating for better systems.

17 Q. I would like to talk to you a bit about
18 Association Business Leave, ABL. Can you tell the Court
19 what ABL is?

20 A. Yeah, it's an acronym for Association Business
21 Leave and ABL is a benefit that we negotiated through our
22 collective bargaining process and the collective party
23 agreement where a pool of hours is credited. There's
24 certain criteria which can be used contractual and
25 through city policy and then we can apply to use that

1 leave and the City would have to approve it and what it's
2 used for, association business and activities related to
3 our Association.

4 Q. When did ABL first appear?

5 A. Before my time I was a member in the day, but
6 before I was active with the Union I think it was in the
7 late 90's when it first appeared in some form.

8 Q. When did it in its current form first appear?

9 A. In its current form, I would say 2009.

10 Q. What happened in 2009?

11 A. In 2009 we came up with a different funding
12 mechanism, in my opinion, of how we funded it. And also,
13 there was some extensive arm's-length conversation in
14 2009 about the appropriate use of it.

15 Q. How was it funded in 2009?

16 A. In 2009 it was stipulated that rather than
17 going back to 2005 contract which is two hours were
18 credited per member, there was just 5,600 hours credited
19 altogether; and the president's time was incorporated
20 into that 5,600, which would be roughly half of that
21 time.

22 Q. Was this part of the collective bargaining
23 process?

24 A. Yes, it was.

25 Q. Could you describe the process of a Collective

1 Bargaining Agreement sort of from start to finish?

2 A. Describe what? I'm sorry.

3 Q. Excuse me. The process of bargaining an
4 agreement from negotiations.

5 A. Just in general how it's done?

6 Q. 2009 contract, please?

7 A. Yeah, well, it was -- the Association has nine
8 members and a bargaining team. Five are elected by the
9 membership. Four appointed by the president. I was not
10 the president at that time. I think I was secretary
11 treasurer. And the City also has a team. It's under --
12 the whole process or many parts of the process is under
13 Chapter 174 of the Texas Local Code. But essentially
14 what we're doing is meeting and negotiating a labor
15 agreement and there's a lot of give and take. There's a
16 lot of trying to reach equilibrium with nonmonetary
17 issues, but in the end the goal is to get an agreement
18 where everybody -- both sides ratify and that's what we
19 live under for the term of that agreement.

20 Q. What was the give and take over ABL, if there
21 was one?

22 A. There was one. In 2009 there was an interest
23 the City had to try to change sick leave to
24 nonproductive, previous to that it was a productive
25 leave. And what that basically means, if you don't know,

1 is that if you have overtime in your same pay cycle you
2 used to get the full overtime rate, even if you had sick
3 leave within that same work cycle. The City's interest
4 was to change that leave to nonproductive leave. So, if
5 you have overtime and it also included sick leave that
6 some of the overtime be based on a straight time rate.
7 So, it saved the City a considerable amount of money.

8 Q. How much money did it save the City, if you
9 know?

10 A. I estimated in my review 5 to \$600,000
11 depending on what assumptions you use per year.

12 Q. Per year?

13 A. And I don't know I fully answered your
14 question. And so that was their interest, and they also
15 had interest of funding ABL a different way; and there
16 was some discussion at the table early on in
17 negotiations. We proffered the notion that we would
18 agree to the nonproductive sick leave saving 5 to
19 \$600,000 a year in exchange for crediting our ABL each
20 year the \$5,600. So, in my assessment the ABL responded
21 broadly within the whole negotiations trying to seek
22 financial equilibrium on all the items, but more
23 specifically on the trade we did between making sick
24 leave nonproductive and funding the ABL.

25 Q. How many of those 5,600 hours that you

1 mentioned are actually used, say, last year; how many
2 were used last year?

3 A. I reviewed some of the reports that are some of
4 the exhibits from the court and in 2015 by my estimate we
5 used about -- we turned back about 40 percent of the ABL
6 that was credited at the beginning of the year. And then
7 in 2016, the year we just completed, we turned back about
8 30 percent period of time ABL we were accredited. So, we
9 don't use it all and we don't endeavor to.

10 Q. How much does ABL cost the City in 2016?

11 A. If you are talking about the salaries of the
12 people that were off ABL, including my salary which is on
13 the high end because I am a battalion chief rank, looking
14 at a 40-hour work week I estimate it to be around
15 \$200,000, maybe a little more if you -- which I didn't
16 have the ability to do take into account some of the
17 backfill overtime that may occur sometimes when ABL was
18 utilized.

19 Q. About \$200,000. Is that right?

20 A. I would say 200,000 is a good estimate and
21 probably lower than that; higher than that if you were
22 able to go back and identify all the times where backfill
23 overtime was used during those periods.

24 Q. So, I would like to ask you a few more
25 questions about the CBA in a more broad way. How many

1 firefighters are covered by the Collective Bargaining
2 Agreement?

3 A. We have a current authorized strength of 1,147,
4 but we are short on personnel by about 150. So, you
5 know, right around 1,000, a little less right now.

6 Q. How many staff hours annually does that the
7 amount to?

8 A. Staff hours? So, if you said all the people
9 that work in a staff position, all the people in a work
10 position, add up all those hours, I did review that
11 calculation and with my assumptions I put it at about
12 2.8 million staff hours per year.

13 Q. How many total vacation leave hours are accrued
14 annually?

15 A. We accrue in vacation a minimum of 7.5 per pay
16 period. As you get more senior you accumulate more. So,
17 figuring out 7.5 it's around \$188,000 that are accrued
18 each year by the firefighters.

19 Q. And how many total sick leave hours are accrued
20 annually?

21 A. It's the same. It would be -- whereas the
22 188,000 for vacations alone number because there's some
23 hired accruals I'm not taking account on. The sick leave
24 does accrue at 7.5 hours per pay period. So, in annual
25 it's about 188k hours that are accrued by the membership,

1 by all firefighters actually.

2 Q. Thank you. How much does the Collective
3 Bargaining Agreement compensation package cost the City
4 annually, if you know?

5 A. The City budget for 2017 was \$187 million and
6 in the presentation before counsel they said 93 percent
7 of the budget is salary and benefits and the other
8 payroll cost like overtime. And so, that would put the
9 -- if you are looking at the salary and benefits as the
10 cost of the contract, which I think is a good way to look
11 at it, it would be about \$174 million is what is at play
12 when we are negotiating the contract.

13 Q. Thank you. I would like to turn briefly back
14 to ABL specifically. By membership other than you use
15 ABL, what do they use it for?

16 A. They use it to communicate between other
17 members and between members to establish and promote our
18 common interest.

19 Q. What specifically might a member do with an
20 hour of ABL?

21 A. You know, it would depend. There's a lot of
22 different purposes. It could be they are part of a
23 collective bargaining team or doing work for us in the
24 back offices, collective bargaining. It could be that we
25 are monitoring the collective bargaining environment or

1 violations or something that we can do to enhance the
2 work place. It could be attending association meetings,
3 like we mentioned the workers' comp meeting; but there is
4 an E board meeting, there's a constitution of bylaw
5 meetings, kind of our laws. And so, a variety of
6 different association purposes.

7 Q. I would like to talk about the process of
8 requesting ABL from the City. What controls are you
9 subject to when you use ABL? What controls are you
10 subject to when you are on ABL time?

11 A. Well, there's extensive discussions at the
12 bargaining table about what the president can do and
13 there's a differentiation of what other members in ABL
14 can do. So, the way that the contract negotiation
15 occurred in the discussion and the way it was written in
16 the contract, the association president can use ABL for
17 all lawful purposes there within the mission, basically,
18 of the fire association.

19 Q. Are you subject to the code of conduct of
20 Austin firefighters when you are using ABL?

21 A. I feel that I am, yes.

22 Q. When a member request ABL, would you please
23 describe the process to the Court?

24 A. Sure. There's a process that's broadly
25 detailed in the CBA but more finally detailed in our

1 policy. And what we would do is we would have to put in
2 a request form and that request form has several fields
3 you have to fill in. You have to submit that at least
4 three business days in advance and then fire department
5 management would decide whether that request satisfies
6 the bounds of the contract and approve it if it is.

7 Q. What happens if it were not approved?

8 A. If it's not approved we'll get some
9 notification that it's not approved and either the member
10 won't be able to attend that function or sometimes we can
11 figure out a way to get on a trade or take off vacation
12 or something else and sometimes you just won't be able to
13 attend.

14 MR. STEWART: Thank you. Your Honor,
15 that's all we have for now. We reserve the rest of our
16 time for redirect, please.

17 THE COURT: Counsel.

18 MR. RICHES: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. RICHES:

21 Q. Good afternoon, Mr. Nicks.

22 A. Afternoon.

23 THE COURT: And I am -- we've got the
24 Firefighters Association and the City of Austin. Would
25 you have any questions?

1 MR. SIEGEL: No, Your Honor. Thank you.

2 THE COURT: Go ahead, counsel.

3 MR. RICHES: Thank you, Your Honor.

4 BY MR. RICHES:

5 Q. Mr. Nicks, you indicated that you've been a
6 battalion chief for the Austin Fire Department about 12
7 years. Is that correct?

8 A. Yeah. Might have been a little more, but
9 pretty close.

10 Q. What are the ordinary duties in that position?

11 A. Usually a person in battalion chief position
12 really depends on whether they are staffed and depend on
13 the area of staff they are in or if they're in
14 operations, in other words, making fires and directing
15 fires. But generally, in staff they are running programs
16 and usually have other officers reporting to them. In
17 operations they are managing a battalion on a particular
18 shift. So, there's personnel issues. There's also
19 insuring that training is upheld and standards are met,
20 expectations are met on emergency scenes.

21 Q. Who would you report to in your position as
22 battalion chief?

23 A. Who do I report to now?

24 Q. In your position as battalion chief for the
25 fire department?

1 A. I report -- well, I am the association
2 president. That's my primary role right now. I hold
3 rank of battalion chief. I report primarily to chief of
4 staff Tom Dodds.

5 Q. If you were acting as battalion chief and not
6 AFA president, would chief of staff direct your
7 activities on a daily basis?

8 A. No, be more likely I would be in operations and
9 it would be a shift commander, which is a division chief
10 rank.

11 Q. Would you report to the fire house?

12 A. Pardon me?

13 Q. Would you report to the fire house on a daily
14 basis?

15 A. When my shift came up, yes, about every third
16 day.

17 Q. You indicated that you have been AFA president
18 since January 2010. Did you hold a position with AFA
19 prior to being AFA president?

20 A. Yeah. The year before -- I don't know if it
21 was quite a full year, but I was secretary treasurer and
22 before that I was a member of the bargaining team in
23 2008.

24 Q. How long has the AFA been in existence?

25 A. I think it's been in existence over 50 years,

1 but I am not certain. I know that the association -- or
2 I believe they were pretty instrumental in self service
3 law development in the late Forties, early Fifties; but I
4 don't know exactly.

5 Q. Approximately 50 years this year?

6 A. I believe so, yeah, maybe longer.

7 Q. Are all Austin firefighters eligible to join
8 the AFA?

9 A. They are.

10 Q. And roughly --

11 A. Yeah, except for the fire chief. The
12 Constitution does not allow the fire chief to be a
13 member, but every other member can be.

14 Q. Roughly, how many end up joining the AFA of the
15 eligible membership?

16 A. It's a high percentage and we don't keep track
17 of nonmembers that closely just because it's not that
18 important to us, I guess. They have the right to be a
19 nonmember, but I would say that we are 95 percent members
20 or higher.

21 Q. So, approximately, 95 percent of the 1,000 or
22 so firefighters indicated are part of the Austin
23 Firefighters Association; they are also members of the
24 AFA?

25 A. That would be my guess, yes.

1 Q. You described for us a little bit what some of
2 the activities of the AFA are. I would like to ask you
3 about some of those and see if there's others. Does the
4 AFA advocate for increased salaries and benefits for AFA
5 members and for Austin firefighters?

6 A. Yeah. There's kind of a traditional thing of
7 union, but not something we do very actively; but yes,
8 that is part of our function certainly would be wages
9 benefits and working condition enhancement and
10 maintenance.

11 Q. Is that something you also do as the AFA
12 president?

13 A. That is something I do, yes, especially I would
14 say when you're -- it's mostly kept to negotiations and
15 you don't really do that in between periods, you don't
16 bargain around people and things like that; but it is
17 part of my function, absolutely.

18 Q. Who would the AFA be negotiating against if it
19 was advocating for the things like higher salaries and
20 increased benefits?

21 A. I don't think it's -- I wouldn't look at it as
22 some sort of zero, some game or somebody wins, somebody
23 loses. I think a lot of times our bargains are interest
24 based and we find equilibrium on issues that helps both
25 parties, in my opinion.

1 Q. When you say "both parties" who would that
2 other party be?

3 A. The party would be the Steve Austin leadership
4 that's -- the City of Austin leadership.

5 Q. So, there's a negotiation between AFA
6 representatives and the City of Austin as it pertains to
7 salaries benefits and some of these other issues?

8 A. Yeah. I think technically the city manager,
9 but he is rarely at the table but his representatives
10 are.

11 Q. Do AFA members also file grievances against the
12 City of Austin?

13 A. Yes, they do.

14 Q. Does AFA assist with the filing and
15 adjudication with those grievances?

16 A. A grievance is usually it's contractual in
17 nature, most always, and we have a duty to represent.
18 So, we would look at the four corners of the Collective
19 Bargaining Agreement and see if the grievance was
20 legitimate and if it is we would forward it to the fire
21 chief using the procedures outlined in the CBA.

22 Q. Is the party against whom you filed that
23 grievance is the City of Austin?

24 A. I still didn't hear the question.

25 Q. Is the party against whom you filed the

1 grievance is that the City of Austin, the responding
2 party when you filed the grievance?

3 A. Yes, I guess the fire chief would be the
4 representative for the City of Austin in that case. It's
5 addressed to the fire chief and we usually CC the chief
6 of staff and the labor of relations office so they are
7 aware.

8 Q. Do you also help AFA members in disciplinary
9 cases that are brought against AFA members by the City of
10 Austin?

11 A. Yes.

12 Q. And as AFA president do you assist in those
13 disciplinary proceedings?

14 A. Yes. I sit in most of them.

15 Q. Would you characterize that as an adversarial
16 process if the City is bringing a disciplinary action
17 against an AFA member, Austin firefighter?

18 A. I wouldn't characterize it that way, no. We
19 may have difference of opinions and we may think that we
20 need to be a part of it to make sure due process is
21 upheld; but I wouldn't characterize it being adversarial.
22 It can be at times, but that's not the nature of that
23 system.

24 Q. What's the nature of that system?

25 A. Make sure we get to the truth and somebody has

1 a just punishment if it's needed, but also to make sure
2 that if there is exculpatory evidence the person is
3 brought forward and if the person is not guilty is not
4 charged with something.

5 Q. And AFA would be representing AFA members or
6 Austin firefighters during one of those disciplinary
7 proceedings?

8 A. Yes.

9 Q. Does AFA also advocate for public policies that
10 might benefit the AFA?

11 A. We really look for opportunities to affect
12 policy in a way that benefits our member's safety as well
13 as the public; but, yes, we generally find there's a lot
14 of crossover and overlap between the public good and
15 what's good for the firefighters as far as safety and
16 efficiency.

17 Q. Does the AFA engage in lobbying activities?

18 A. Yes.

19 Q. And do you as AFA president engage in lobbying
20 activities?

21 A. I am. I'm engaged. I also have a retired
22 firefighter who is our legislature director and we hire
23 -- I don't know if you say full-time, but we have on
24 retainer a paid lobbyist. So, we're pretty active at the
25 State level, yes.

1 Q. Does the AFA also engage in other political
2 activities of supporting or opposing candidates for
3 election?

4 A. Yes.

5 Q. Do you personally as AFA president participate
6 in political activities supporting or opposing candidates
7 for election?

8 A. Certain political activities I do, yes.

9 Q. Does AFA perform recruiting functions for new
10 membership?

11 A. We do.

12 Q. And how do you do that?

13 A. In the contract we're allowed four hours of
14 access to cadets and during that time we explain to them
15 what an association is, our philosophies and we invite
16 them to join.

17 Q. So, in addition to those activities that you
18 have identified, collective bargaining, adjudicating
19 grievances, assistance with disciplinary representation,
20 lobbying and other political activities and recruiting,
21 are there any other activities that the AFA engages in?

22 A. We do. Like I mentioned earlier, there is a
23 big overlap between interested firefighters, interested
24 public. There are some projects that seem fairly large
25 projects we have done in the public interest over the

1 years. Last year we were very involved in not only
2 financially but in efforts to research the reasons for
3 inadequate response times across the City, developing
4 utility models that helped place fire stations based on
5 certain criteria, time them appropriately so we're not
6 getting behind like we're getting. Identifying critical
7 stations, identifying other methods to reduce response
8 times. Right now we're meeting our response time goals
9 of 8 percent, which isn't very well robust, only in about
10 20 percent in the City.

11 So, it was -- that was an initiative by the
12 association management entered into later on with us, but
13 it turned out to be a great project that helped, not only
14 the firefighters and our safety, but it actually very
15 much helped the citizens' safety once we can get all the
16 tenants of that project satisfied.

17 Q. You are familiar with the Article 10 of the
18 Collective Bargaining Agreement, that provision that
19 governs the Association Business Leave between the City
20 of Austin and the AFA?

21 A. Yes, sir.

22 Q. You indicated that earlier that -- I'm sorry --
23 who funds ABL? How are those hours paid for?

24 A. Going back to my comments of 2009 bargaining
25 cycle it's credited at the beginning of the year, and I

1 believe that crediting came about by arm's-length
2 negotiations where the entire agreement was in financial
3 equilibrium with several give and takes on both sides.
4 More specifically, I feel it was funded by the concession
5 we made on making sick leave nonproductive leave.

6 Q. I think my question was simpler: Who pays for
7 ABL at the end of the year?

8 A. Oh, the citizens of Austin do.

9 Q. Does the AFA pay any portion of ABL or release
10 time?

11 A. It's part of a negotiated labor agreement. So
12 in that sense we do. We could -- you could say that
13 we're giving up possibly wages, benefits or working
14 conditions in order to achieve that benefit.

15 Q. Does the AFA pay out of its general fund for
16 any hours of release time or ABL?

17 A. Out of our general fund?

18 Q. That's correct?

19 A. So, the dues money we collect, do we pay for
20 ABL, no.

21 Q. Okay. You referenced a provision Section 1-B
22 of the ABL and that discusses permanent uses of ABL and
23 identifies your position in Subsection 1. It says the
24 association president may use ABL for quote, "Any lawful
25 association business activities consistent with the

1 Association's purposes."

2 How would you define "any lawful
3 association business activities"?

4 THE COURT: Counsel, before you go any
5 further, is a copy of -- is that it in your notebook,
6 Counsel?

7 MR. RICHES: Your Honor, it's appended to
8 our response, Exhibit 1, and we have copies for all
9 parties, if that would be helpful.

10 BY MR. RICHES:

11 Q. Mr. Nicks, how would you define any lawful
12 association business activities that appear in
13 Section 1-B-1?

14 A. We would define it as how it was described to
15 us at the bargain table by the chief negotiating
16 management team, and there was extensive discussions
17 about that. And like I said earlier, differentiating
18 from regular ABL and presence ABL and it was very -- the
19 lawful purposes what they said was basically I couldn't
20 deliver a contribution to a candidate while I was on ABL
21 and they didn't -- there really wasn't a lot more lawful
22 purposes limitations on the president than that.

23 Q. So, it was your understanding that the only
24 limitation of your use of ABL was that you could not give
25 a monetary contribution to a political candidate while on

1 ABL?

2 A. That would be the limitations under lawful
3 purposes. You also have to use the time within the
4 purpose of association. I was working for the
5 Association's mission.

6 Q. You can use it for any purpose that was within
7 the AFA's mission. Is that correct?

8 A. You could use it for any purpose within AFA's
9 mission as long as it was lawful. That's correct.

10 Q. Any other limitation apart from not providing a
11 monetary contribution to a political candidate while
12 using ABL?

13 A. Not to my understanding, no.

14 Q. Section 2 C of Article 10 discusses use of ABL
15 by year and it allows 2,080 hours of ABL each year, which
16 would represent 40-hour work weeks for 52 weeks. So,
17 since this provision was enacted, have you been on
18 full-time release?

19 A. Since June 1st of 2015 I have, yes.

20 Q. What's your hourly wage?

21 A. I think it's close to \$50 an hour.

22 Q. Do you need permission from anyone in the City
23 prior to using any of those 2,080 hours of ABL?

24 A. Permission outside the agreement and the
25 Collective Bargaining Agreement?

1 Q. Correct.

2 A. I collect so, without a commission, no. Once
3 the agreement is signed the tendance of my leave are laid
4 out in that article.

5 Q. And at that point you don't need any additional
6 permissions from anyone within the City to engage in any
7 particular activities?

8 A. I have to follow a code of conduct. I have to
9 follow the tendance of the CBA, but I don't have to ask
10 special permissions day to day or week to week on what I
11 can and cannot do. That would be an accurate way of
12 saying it.

13 Q. Are you required to physically report to the
14 Austin Fire Department?

15 A. There are times I am, but it's rare. Battalion
16 chief meetings are quarterly and I am required to attend
17 when I can. There are some reasons why you might not be
18 able to. That's really one of the big ones. The chief
19 has ability to direct my activities towards projects, but
20 it's rarely done.

21 Q. Do you drive to the AFA offices on a daily
22 basis?

23 A. Usually, not always, but usually. A lot of
24 times my activities -- when I became president I hired an
25 office manager with the goal of taking care of the

1 routine logistical functions of the Association so I
2 could be more mobile, but I would say far majority of the
3 days I check in at one time or another.

4 Q. At AFA offices?

5 A. Yes, sir.

6 Q. Are you required to provide any written details
7 about how you spend your time while on ABL?

8 A. No, sir.

9 Q. We've attached as an Exhibit 3 to our response
10 an accounting of your hours used in the third quarter up
11 to the third quarter of 2016. And that indicates that
12 you have used 1,503 hours of ABL up through the third
13 quarter. Any other accounting as to how that time was
14 used?

15 A. I fill out a timesheet weekly and it's on a
16 shared drive I can access and what I normally do is I
17 guess I look at my calendar and I have heard this term
18 before in the fire department as kind of a professional
19 calendar and to get paid I need to make sure I put time
20 on my timesheet. So, I count for my time ten hours
21 Monday through Thursday. And what I have done as a
22 policy is if I am sick or on vacation or personal leave
23 in that four hour day of time, I will usually credit that
24 time to sick or vacation so it would reduce the ABL usage
25 to some degree.

1 Q. So, you either note that you are using ABL and
2 the number of hours you are using it or that you were
3 sick or on vacation?

4 A. Yes. But I want to be clear, I work far more
5 than 40 hours a week and that's just how it's accounted
6 for. I'm just trying to be responsible.

7 Q. Do you provide any other details about how you
8 use the ABL time on those timesheet's?

9 A. No. It's a category on the timesheet that I
10 select and put in the hours of ABL used during that
11 block.

12 Q. I would like to ask you to estimate the amount
13 of time you spend on the following purposes that you
14 discussed as the activities of the AFA. So, if you could
15 give me your best estimate. Obviously, if you are not
16 able to.

17 A. How much time I spent in a week doing
18 Association business. That's your question?

19 Q. Or over the course of a year might be helpful.
20 I'll ask what the activity is then maybe you can provide
21 best estimate of how much time you spent conducting that
22 activity?

23 A. How much time I spent conducting the activity
24 annually or, I mean, I guess I think in terms of weeks.
25 I guess I imagine I put in close to average 60 hours a

1 week. It's the kind of job where even if you are not
2 performing direct activities, you are always thinking
3 about it.

4 This last week I worked seven days. I was
5 doing work on Saturday and Sunday. I had the notion of
6 putting my time Monday through Thursday thinking that
7 it's possible I could apply for an overtime shift during
8 the weekend and most of my Fridays are filled up on my
9 calendar and I have not been able to put in for overtime
10 shift at all since that became available to me. So, I
11 would say a good estimate is 60 hours a week on the
12 average.

13 Q. How much of the time that you spend while on
14 ABL would you say is dedicated to collective bargaining
15 to negotiating with the City?

16 A. It depends on if we're in a bargaining cycle,
17 the far majority of my time. That can last 60 days plus.
18 Monitoring the contracts, those are issues that we are
19 doing every week, especially when we have meetings with
20 the VP's when they are coming back to the meeting and
21 telling me some of the conversation they had during
22 inside visits and things like that; but the monitoring --
23 the negotiated collective bargaining and the monitoring
24 of the collective bargaining environment is very
25 important. Week to week it's hard to estimate exactly

1 how many hours, but it's not majority of the time.

2 Q. What would you estimate the amount of time?

3 A. Oh, again, it would depend on what you're --

4 Q. Let's say in 20 --

5 A. -- it could be as little as a couple of hours.

6 THE COURT: Hold on. You are talking on
7 top of each other. You don't let him finish and you
8 don't let him finish and you are talking on top of each
9 other. It makes it very difficult on the court reporter.
10 Just make sure he is finished with his question before
11 you start responding, sir.

12 THE WITNESS: Sorry. Your Honor.

13 BY MR. RICHES:

14 Q. In 2016 how much time would you estimate you
15 spent using ABL on collective bargaining?

16 A. I don't know. That would be hard to -- I mean,
17 you are just looking for a wag, I guess, or some sort of
18 general impression of how much I think I did? Related to
19 collective bargaining in any way, I'm estimating 15 or
20 20 percent of my time. I just don't have a lot of
21 confidence in that number because it's just some notion.

22 Q. What about adjusting grievances against the
23 City. How much of your time in 2016 would you say you
24 spent doing that?

25 A. I don't know. Again, it would be speculations.

1 I don't control those sort of measures.

2 MS. STEWART: We would object to these
3 questions to the extent that it calls for speculation for
4 Mr. Nicks. He has made it very clear he doesn't know
5 these numbers and he is simply guessing.

6 MR. RICHES: Your Honor, we are asking the
7 witness how he spends his time every day at work and what
8 sort of percentage of that time is dedicated to certain
9 activities. We would think that's within the witness's
10 reasonable understanding of how they divide their time.

11 THE COURT: I would agree. I overrule. I
12 understand you don't keep a timesheet like many employees
13 might or attorneys do, but I think you can estimate what
14 percentage of your day you spent or month or year. So, I
15 will allow it. Overruled.

16 A. Yeah, and for grievances if there is a
17 grievance that's complex and the facts are in dispute and
18 there is a lot of witnesses, it could be a great deal of
19 time that particular week. And then we don't really --
20 we actually don't file a tremendous number of grievances
21 so some weeks it could be almost zero time. I've spent
22 well over 70 hours in a week working on certain
23 grievances. So, again, for percentage, again, it's hard
24 to derive. I don't know. 5 percent, maybe a little
25 more.

1

2 BY MR. RICHES:

3 Q. How about assisting with disciplinary
4 proceedings against AFA members brought by the City. In
5 2016 how much time would you estimate you were involved
6 in disciplinary proceedings or how much of your time was
7 spent?

8 A. A significant amount of time in 2016 because we
9 had a couple more complicated cases than normal. So,
10 hundreds of hours, you know, I don't know exactly; but a
11 significant amount of time.

12 Q. What percentage of your time would you estimate
13 you spend lobbying, either supporting or opposing
14 legislation while on release time?

15 A. I would say that could occupy -- again, I'm
16 just speculating, trying to get my best, educated guess,
17 maybe 30 percent of my time, maybe a little more than
18 that.

19 Q. Approximately 30 percent or more of your time
20 is spent in lobbying activities?

21 A. That would be my guess.

22 Q. Who decides what position AFA is going to take
23 on particular legislation?

24 A. Usually the members do to some degree on items
25 of importance. Again, like I spoke of earlier, we

1 usually try to -- other than dictate to them what our
2 policy should be we try to educate them either through
3 site visits, more through a educational website we put
4 together. And then we try to get guidance from them
5 through surveys or online votes or something along those
6 lines.

7 Q. Does the City have any influence over the
8 decision of what position you might take on a piece of
9 legislation?

10 A. They could. Some legislation is -- there's a
11 lot of common interest and they would certainly meet with
12 them and stakeholders and they could have great influence
13 on some of our lobbying efforts.

14 Q. What percentage of your time would you say is
15 dedicated towards other political activities? So
16 supporting or opposing candidates for elected office?

17 A. Again, that varies a lot on the season and if
18 there's elections that are occurring at the moment. I
19 was kind of thinking of lobbying and campaign together
20 when I said about 30 percent, but like I said, it could
21 be a little more than that.

22 Q. Do all firefighters regardless of if they have
23 belong to AFA or not, affirmatively assent to you using
24 release time hours for political activities?

25 A. Could you rephrase the question, please.

1 Q. Do firefighters agree to your use of release
2 time for political activities? Do they affirmatively
3 assent in some way? Do they give you written assent to
4 using ABL for release time for political activities?

5 A. I'm not exactly sure how to answer that
6 question. I believe they do. I believe that the way we
7 advocate their will and the way we try to institute what
8 they want to do. When you have 1,000 people you don't
9 get everybody in total agreement. I think as aggregate
10 whole I think positions we take are supported by the
11 membership, yes.

12 Q. I think I am asking more direct questions. Do
13 you receive written permission for all firefighters who
14 use ABL for political activities that you engage in?

15 A. No.

16 Q. What percentage of your time would you say is
17 dedicated towards recruiting activities for the AFA?

18 A. Recruiting members?

19 Q. Recruiting new members?

20 A. A very small percentage. Contractually we have
21 four hours we can visit with the cadets sometime during
22 the academy and we'll explain our programs and the
23 service we offer. And there was a period not too long
24 ago where we had an open period where nonmembers could
25 join. We had about 64 nonmembers come back in, I guess,

1 approving of some of our policy changes; but, generally
2 speaking, that would be the extent of our recruiting
3 time.

4 Q. Are there other -- any other major areas where
5 you spend ABL? We have identified collective bargaining
6 grievances, disciplinary lobbying and political
7 activities and recruiting, any other areas that take up
8 an average day for your use of ABL?

9 A. A lot of the time the ABL is directing -- for
10 me -- if we are talking about me, which I think we are --

11 Q. Yes.

12 A. -- is directing activities of the Association,
13 directing my office manager to the logistical and office
14 level functions needs to do, make sure proper oversight
15 on financial matters, coordinating and communicating with
16 my VP's who, in turn, coordinate with other members on
17 their site visits. Many times I spent -- I mean, I got
18 the call at 9 o'clock last night that somebody -- a VP
19 that had a question, a further question on some positions
20 we may be advocating for on mandatory overtime. So, that
21 sort of coordination and feedback is ongoing and that
22 takes up a great deal of my time.

23 Q. Section 2 C of the Article 10 indicates that
24 you can be assigned special projects by the fire chief.
25 During your term as AFA president, have you ever been

1 assigned to special projects by the fire chief?

2 A. No, not in, I think, the classic sense. We
3 worked on some projects together that I think we had a
4 lot of commonality and was very valuable to us,
5 management and the citizens at large; but specifically
6 assigning me to a special project, I would say that does
7 not happen, no.

8 Q. Has the fire chief ever directed any of your
9 activities during your term as AFA president under the
10 CBA?

11 A. She directs my activities to the extent that
12 they are detailed in the CBA and the policy, but she
13 doesn't -- I mean, just to be truthful, she doesn't
14 direct my day-to-day activities. I don't meet with her
15 on a weekly basis and talk about the activities I'll be
16 performing that week.

17 Q. Have you ever requested to be put back to work
18 at the fire department rather than remain on full-time
19 release?

20 A. Not exactly. I requested to have flexibility
21 to perform my job as battalion chief and operations and
22 perform my job as AFA president.

23 Q. Do you recall in the summer of 2015 speaking
24 with a reporter and indicating that you had to fight with
25 the fire department in order to do activities outside of

1 release time?

2 A. I remember that article very well. I reviewed
3 it recently, yes.

4 Q. And why was it you were fighting with the fire
5 department to do other things besides release time?

6 A. I was advocating for what I thought was a very
7 reasonable position with the fire chief that there should
8 be flexibility where I could continue to work to some
9 level, not full-time, but some level my previous
10 assignment as operation battalion chief. And -- but
11 still have ability when I need to to take some ABL time
12 to do my functions as union president.

13 Q. And the City wouldn't allow you to do that?

14 A. My quote is pretty clear in the article. They
15 fought it pretty hard and I never fully understood their
16 reasons for that.

17 Q. You also indicated that you believed you could
18 handle union business in one weekly shift and spend the
19 rest of your time as a battalion operations chief?

20 A. Yeah. I think the time when I said that work
21 loads have changed, but I do think that there is a
22 portion of time I could spend on-the-job and I think it's
23 important to keep my perishable skills up and reconnect
24 to the membership in a real way. As hard as you try to,
25 when you are dissociated and separated from operations

1 firefighters you tend to become more disconnected. So, I
2 felt being connected back to the job in a way I was
3 advocating would actually help me as union president and
4 would also have the benefit of offsetting some of our
5 personnel cost and it would be a better benefit to the
6 City of Austin in that regard.

7 Q. That request was denied by the City?

8 A. Yeah, it was made several times over multiple
9 years and denied.

10 Q. Section 1.B.2. of the Article 10 discusses
11 other authorized association representatives that can use
12 ABL. And it says that association business act, they can
13 use ABL for association business activities that directly
14 support the mission of the association. Who determines
15 what those activities will be?

16 A. I think who determines those activities -- the
17 mission -- you are not talking about the mission but the
18 activities?

19 Q. That's correct.

20 A. By and large would be myself. I am -- I
21 perceive myself to be somewhat the overseer of ABL, this
22 nonpresidential ABL and try to make sure it's used
23 appropriately.

24 Q. So, you direct the activities of other members
25 on ABL?

1 A. I, at least, coordinate it. If I am not in a
2 room on a particular meeting they are at, I generally
3 know about it, not always. I can't recall every single
4 one, perhaps, but I perceive myself as somebody that
5 tries to oversee it and make sure it's done
6 appropriately.

7 Q. How do you determine what those activities are?

8 A. How would I determine what the activities are
9 that we are requesting ABL for?

10 Q. How do you determine what activities other
11 members may use ABL for?

12 A. Well, we have to use the CBA for guidance
13 because we have to be within those terms, although I
14 don't think that's a totally nonexclusive list of
15 activities. We have to give deference to that. It has
16 to be within our mission of our association, and it has
17 to satisfy some value for our organization. So, for
18 instance, we talked about the workers' comp committee
19 earlier, there be a VP on that and if that VP happened to
20 be on duty that day we would request Association Business
21 Leave. There are other members on that committee that
22 are not part of the AFA leadership and if they were on
23 duty that day and they wanted to attend they would apply
24 for ABL. And so, the purpose of that activity would be
25 to try to develop procedures and ways in which

1 firefighters are treated more fairly when it comes to
2 on-the-job injuries.

3 Q. Apart from the provisions outlined in
4 Article 10, are there any limitations to what ABL by
5 other authorized representatives may be used for?

6 A. There was, again, extended discussion on that
7 and there is some guidance in the CBA article itself.
8 General speaking, there is a firewall -- and I'll take
9 that back. Not generally speaking. The way I perceive
10 it there is a firewall between political activities and
11 nonpresidential people on ABL. So they would never be --
12 I guess, kind of talking the negative here because they
13 would never be canvassing. They would never be showing
14 up at city hall and promoting a candidate. If they were
15 going to do that they would be off duty or on vacation or
16 something like that.

17 Q. We received some information from the City
18 that, again, in 2016 through the third quarter and it
19 shows how many hours of ABL was used by other association
20 representatives. It looks like about 1,730 hours?

21 A. What year was that?

22 Q. Through the third quarter of 2016.

23 A. 2016, yeah, I mean, I guess. I would have to
24 look at the report and I can probably tell you better,
25 but that doesn't sound outrageous.

1 Q. So, it looks like about six hours used for
2 cadet classes, 20 hours for collective bargaining, 15 and
3 a half for dispute resolution and zero for grievance
4 adjustments, which represents about 2 percent of that
5 1,730 hours. It also looks like 1,256 hours or about
6 73 percent of release time was you had for what's noted
7 as "other association business." What is other
8 association business that represents 73 hours of the ABL
9 that's used by -- 73 percent used by authorized
10 representatives other than yourself?

11 A. The predominant activities we do, which is
12 communicating to members, allowing members to communicate
13 with each other to meet and discuss issues, discuss
14 common interest; but more specifically, the VPs perhaps
15 going up doing station visits, members coming in and
16 doing committee work for the Association, usually has a
17 scope of work delivered from the E board. It's a lot of
18 activities like that.

19 Q. Who determines when and where those employees
20 will be while they are using that ABL?

21 A. Who determines where they will be when they put
22 in for ABL request and satisfied?

23 Q. When you're conducting other association
24 business, who is directing them?

25 A. In the case of committee it's usually the

1 committee chair, many times I'll be present too. If it's
2 a normal sort of activity like a standing committee that
3 meets regularly, I may not be as involved; but if it's a
4 new function, like today we have ABL granted. We're
5 talking about mandatory overtime. It's kind of a complex
6 issue. I'm very aware of everybody on the committee and
7 the scope of work. So, routine matters I won't --

8 MR. SIEGEL: I wanted to get a brief time
9 check. I was keeping track of when the cross-examination
10 started. It started at 40 minutes ago. You gave an hour
11 for each side.

12 THE COURT: I'm going to let him use his
13 hour any way he wants. If he wants to use it all, I
14 guess, he's not going to save any time for argument. I
15 am assuming he is keeping track of his own time.

16 MR. RICHES: Your Honor, does that also
17 include the State of Texas?

18 THE COURT: I gave a whole hour to each
19 side, that includes the State as well.

20 BY MR. RICHES:

21 Q. Do you approve ABL request for other authorized
22 representatives that want to use it?

23 A. The routine standing committees I may not see
24 the request. My office manager understands my direction
25 will help get those approved and submit it to management

1 for approval. The less routine ABL, like the example I
2 used today, there's a meeting for the first time on
3 mandatory edit time. How do we compel it? How do we do
4 it without harming the morale. I assembled that
5 committee. I am aware of the people and what they are
6 doing and I was active in part of the approval process in
7 that it provided work we needed to get done, but then all
8 the ABL requests aren't approved by me, no. They are
9 sent to management and the management has a prerogative
10 to look at the contract and decide whether it satisfies
11 the direction of the contract.

12 Q. And is it also true that policy says if it's
13 submitted at least three days prior to the ABL then it's
14 automatically approved by the City?

15 A. Automatically approved, yes; but that's more
16 than to do with making sure they have advance notice. It
17 wouldn't be automatically approved if it didn't satisfy
18 what ABL -- if management felt like it was inappropriate
19 use of ABL they could still deny it and they have before.

20 Q. You are aware that going back to 2015 only four
21 of the 356 requests for ABL have been denied by the City?

22 A. Yeah. I couldn't even tell you which four. I
23 am aware of a couple of them.

24 MR. RICHES: That's all for now, Your
25 Honor.

1 THE COURT: Does the State have any
2 questions?

3 MR. NIMOCKS: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MR. NIMOCKS:

6 Q. Good afternoon, Mr. Nicks. My name is Austin
7 Nimocks. I'm with the Attorney General's Office.

8 A. Good afternoon.

9 Q. Earlier you testified about your understanding
10 of approximately 73 percent of the ABL use for year 2016
11 or the third quarter thereof. Do you recall that
12 testimony?

13 A. What was it? 72 percent? I'm sorry.

14 Q. So, you were being asked by plaintiffs' counsel
15 about what the 73 percent of ABL use that was documented
16 or qualified as general use?

17 A. I do recall that, yes.

18 Q. Beyond the testimony we have from you here
19 today, is the quantification of how that ABL was used
20 exist in any form of record to your knowledge?

21 A. The quantification of how the ABL was used.
22 So, I want to make sure I understand the question. So,
23 you are saying do we have a record of specifically how
24 that ABL was used in that particular day of that
25 particular request other than what's already on the form

1 itself?

2 Q. Yes, sir. That is my question.

3 A. No.

4 Q. And you answered that as "we" presumably
5 talking about AFA, but to your knowledge does the City
6 retain any record of how the ABL was used beyond the ABL
7 request form?

8 MS. STEWART: Your Honor, we object.
9 Mr. Nicks does not have knowledge of what the City has or
10 doesn't have.

11 MR. NIMOCKS: I asked him based on his
12 personal knowledge.

13 THE COURT: I will allow it.

14 A. I don't believe they would, but I am not
15 certain.

16 BY MR. NIMOCKS:

17 Q. So, if I wanted to find out how ABL was used a
18 particular hour on a particular day by a particular
19 member, the only way would be to ask that member what
20 they did on a particular day at a particular time, right?

21 A. There may be some other ways to ascertain that
22 if you are wanting to, like, for instance, I was thinking
23 more after your question, ABL is approved for certain
24 labor management committees. There's documentation of
25 those committees. The meeting notices are sent out.

1 There's ways you can back into some of those numbers and
2 maybe the City keeps track of some of that. I wouldn't
3 think they would, but it's possible.

4 So, there is some documentation of certain
5 events of ABL, and then others that would be harder to
6 recreate.

7 Q. You would agree with me that the ABL request
8 forms in terms of documenting what a particular member
9 intends to do are pretty vague and general. Is that a
10 fair statement?

11 A. I would say particularly for recurring sort of
12 functions, as I reviewed some of the exhibits they tend
13 to be more vague. When it said newer program they
14 sometimes are more detailed, but yes.

15 Q. Earlier, Mr. Nicks, you testified about your
16 understanding of what lawful association business is as
17 defined by Article 10 Section 1.B.1. of the CBA. Do you
18 recall that?

19 A. I recall commenting on what the City's
20 interpretation of what that meant at the bargaining
21 table, yes, sir.

22 Q. And you testified that the chief negotiator
23 said that you can't contribute to candidates, right?

24 A. That's correct. There is a discussion back and
25 forth with our attorney and the City and it's my

1 recollection that's that was the result of that
2 conversation that would not be a lawful purpose.

3 Q. And if I understand your testimony, Mr. Nicks,
4 that was the full extent of the conversation in terms of
5 what you cannot do, correct?

6 A. The extent -- the conversation was much more
7 extensive than that, but my take-away was that was
8 definitely something I shouldn't be doing when I'm on
9 ABL.

10 Q. Do you recall the Texas Constitution and any
11 limits it might provide being mentioned during that
12 conversation?

13 A. I don't recall that, no.

14 Q. Okay. But you would acknowledge that the Texas
15 Constitution is a law document that would provide
16 limitations on activity, correct?

17 MS. STEWART: Your Honor, we object. These
18 are legal conclusions that Mr. Nicks is not here to
19 answer.

20 MR. NIMOCKS: This goes directly to the
21 witness's state of mind as to what he believes his lawful
22 limitations are.

23 THE COURT: When you address the Court,
24 please, rise.

25 MR. NIMOCKS: I'm sorry, Your Honor.

1 THE COURT: What was your response to the
2 objection?

3 MR. NIMOCKS: Your Honor, the question goes
4 over the interpretation of the contract and Mr. Nicks as
5 the chief negotiator for the union as pertains to this
6 contract. What his understanding of what the provisions
7 of the contract meant is very germane to these
8 proceedings.

9 THE COURT: I would agree with you as it
10 relates to that question, but that wasn't your question.
11 Your question related to the Constitution -- Texas
12 Constitution.

13 MR. NIMOCKS: Okay, Your Honor. I will
14 rephrase my question.

15 THE COURT: Rephrase your question.

16 MR. NIMOCKS: Yes, ma'am. Your Honor, one
17 moment, please. Can you give us a time check as we're
18 managing minutes now?

19 THE COURT: You started at 3:20.

20 BY MR. NIMOCKS:

21 Q. Mr. Nicks, your time sheets that you testified
22 about earlier, are those kept in a particular location?

23 A. Yes.

24 Q. Where?

25 A. Kept on a shared drive on the City of Austin

1 server.

2 Q. So, you submit time sheets to the City on a
3 regular basis?

4 A. I do.

5 Q. If I understood your testimony to be clear, you
6 report time in blocks?

7 A. I do.

8 Q. And when you account for the time, do you
9 describe what you are doing or just account for your
10 time?

11 A. I just account for my time. So, a typical week
12 might look like one of the categories would be
13 Association Business Leave and I would put ten hours
14 Monday through Thursday. If -- as a policy what I've
15 done is if I am sick or have significant personal matters
16 during that time, like, for instance, yesterday I did
17 work in preparation of this hearing; but I also took a
18 personal lunch and met with somebody. And so, if you
19 would look -- it's not done yet -- but when I fill out my
20 time sheet later on you would see that for the personal
21 lunch period I'm taking a three-hour vacation period.

22 Q. So, as far as the time that you spend on ABL,
23 if we wanted to know what you were doing on a specific
24 day at a specific hour, we would rely upon your memory
25 because there's no record -- written record. Is that a

1 fair statement?

2 A. There's no written record that I turn into the
3 City, no. And I want to be clear, the hours that I work
4 on ABL extend well beyond that four hour block. That's
5 mostly done for pay accounting purposes that way.

6 Q. I understand that. Because there's no record
7 you turn into the City, are you saying that there is a
8 more specific record that you keep that AFA maintains
9 about how you use ABL?

10 A. I keep a personal calendar on Outlook and I
11 wouldn't say that it's -- sometimes I'm more diligent
12 about filling out every entry, like a lot of times things
13 I might leave off is things like preparing for a meeting;
14 I may not put that on there, but reviewing that gives you
15 an idea of what I would do in a particular work week. My
16 time on the weekend are rarely recorded because it's
17 usually catching up or working on a project or getting a
18 membership communication but -- so, it's not
19 all-inclusive by any means, but it is a way I can look
20 back and figure out to some degree what occurred that
21 week.

22 Q. And to be very clear, so your calendar would
23 provide more detail than the time sheets you submit to
24 the City, correct?

25 A. Yes, it would.

1 MR. NIMOCKS: No further questions at this
2 time, Your Honor.

3 THE COURT: All right. Any --

4 MR. STEWART: Your Honor, we have very
5 brief redirect.

6 FURTHER DIRECT EXAMINATION

7 BY MR. STEWART:

8 Q. Mr. Nicks, you represented the AFA's obligation
9 to adjust grievances in your cross-examination. Is that
10 obligation to adjust grievances that was bargained for in
11 the Collective Bargaining Agreement?

12 A. Yes.

13 Q. I wanted to clarify something regarding whether
14 the chief of the Austin Fire Department may call you back
15 at any time. If the Austin Fire Department's operational
16 needs require your service, are they capable of calling
17 you back to service?

18 A. They are.

19 Q. You mentioned cadet classes. You were asked
20 about cadet classes and attending them. You attend those
21 as well as general membership. Is that correct?

22 A. I'm sorry. What's the question?

23 Q. Do you attend cadet class briefings as well as
24 general membership?

25 A. Cadet class briefings as well as general

1 membership?

2 Q. I'm sorry. I'm being unclear. Let me rephrase
3 that. Do you attend the cadet class briefings?

4 A. Yes, I do. There's a -- per the contract the
5 way we can tell there's compliance with certain training
6 standards, there is a cadet oversight committee. I think
7 that's what you might be referring to. That I do attend,
8 generally, weekly.

9 Q. Thank you. You were asked about the four ABL
10 requests that were denied by the City. If the City wants
11 more detail about overtime or -- excuse me -- ABL
12 requests, are they capable of asking for more detail?

13 A. Yeah, and many times they will.

14 Q. Do you provide that detail?

15 A. Yes.

16 MS. STEWART: That's all we have, Your
17 Honor. Thank you.

18 THE COURT: Counsel, anything else?

19 MR. RICHES: No, Your Honor.

20 MR. NIMOCKS: No, Judge.

21 THE COURT: All right. You can have a
22 seat, sir.

23 Any further evidence?

24 MS. NOBILE: No further evidence at this
25 time, Your Honor; but we would like to present some

1 argument related to our TCPA Motion. I believe --

2 THE COURT: Let me just ask if there is any
3 other further evidence?

4 MR. RICHES: No, Your Honor, apart from
5 those exhibits that are attached to our response.

6 THE COURT: Why don't you identify them for
7 the record since -- did you put his response in your
8 notebook, counsel?

9 MR. DEATS: Your Honor, I put the response.
10 I did not put all of the exhibits, specifically,
11 Exhibit 6 in their motion was very voluminous, about 200
12 pages. I did not include it, likewise with the Attorney
13 General's motion they had an Exhibit 6 about 200 pages.
14 I did not include that but everything -- all of their
15 other exhibits are included.

16 THE COURT: All right, counsel. What are
17 your exhibits?

18 MR. RICHES: That's correct, Your Honor.
19 So --

20 THE COURT: You want to just identify them?

21 MR. RICHES: So, Exhibit 1 is Article 10 to
22 the Collective Bargaining Agreement. Exhibit 2 are AFA's
23 response to our requests for admissions. And Exhibit 3
24 is -- I'm sorry --

25 THE COURT: Maybe I should take them one at

1 a time. Are there any objections to Exhibit 1, which
2 obviously is the request I am looking at that was the
3 Collective Bargaining. Any objection?

4 MS. NOBILE: No objection, Your Honor.

5 THE COURT: Then 2 is the response to
6 defendant's -- no -- the disclosures or admissions.

7 MR. RICHES: That's correct.

8 THE COURT: Any objection?

9 MS. NOBILE: No objection, Your Honor.

10 THE COURT: And then Exhibit 3 is -- what
11 was it? You were just going to identify what it is.

12 MR. RICHES: That was an hourly accounting
13 from the City about how Association Business Leave was
14 used up through the third quarter of 2016.

15 THE COURT: Any objection?

16 MS. NOBILE: No objection, Your Honor.

17 THE COURT: Exhibit 4.

18 MR. RICHES: Exhibit 4 is an affidavit from
19 taxpayer plaintiff Mark Pulliam.

20 THE COURT: Any objection?

21 MS. NOBILE: No objection, Your Honor.

22 Although for purposes of this motion we would reserve any
23 rights if this case should proceed to trial to object to
24 these exhibits coming into the record.

25 THE COURT: Well, for our purposes they are

1 admitted for this hearing only. Okay. Exhibit 5.

2 MR. RICHES: Exhibit 5 is from taxpayer
3 plaintiff, Jay Wiley.

4 MS. NOBILE: Same position, Your Honor.

5 THE COURT: And I don't have 6, then No. 7.
6 No. 7 is what -- oh, this is some newspaper article or
7 something regarding Mr. Nicks.

8 MR. RICHES: That's correct, Your Honor,
9 and the battalion fire chief as well.

10 THE COURT: Any objection?

11 MS. NOBILE: Not for purposes of this
12 motion, Your Honor.

13 THE COURT: Admit.

14 MR. RICHES: Exhibit 6 would be ABL request
15 records. Those were the voluminous records. We have
16 provided the Court with a smaller sampling of those. We
17 request that they all be admitted. They are provided to
18 us by the City, Bates-Stamped AFA -- provided to us by
19 the AFA Bates-Stamped 1397.

20 THE COURT: So, this is the Association
21 Business Leave forms that you provided a sample of them.

22 MR. RICHES: That's correct, Your Honor.
23 We would request they all be admitted as they were
24 appended to our response and they demonstrate the volume
25 of the requests that were submitted and the small number

1 that were actually denied.

2 THE COURT: That would be the ones like
3 Reunion House and Battle of the Badges and the fishing
4 trip, fishing fundraiser?

5 MR. RICHES: That's correct, Your Honor.

6 THE COURT: Counsel, any objection?

7 MS. NOBILE: We don't have any objection,
8 Your Honor.

9 THE COURT: All right. Okay.

10 MS. NOBILE: And, Your Honor, one note, I
11 just also move, we have attached to our TCPA Motion one
12 exhibit which is the affidavit of Bob Nicks to the
13 extent --

14 THE COURT: An affidavit by who?

15 MS. NOBILE: By Robert Nicks, and we would
16 move for admission of that as well.

17 MR. RICHES: No objection.

18 THE COURT: Admit. How does that differ
19 from his -- what he has sworn to in his testimony?

20 MS. NOBILE: I think much of it overlaps,
21 but just for the sake the record is clear it is
22 consistent with his testimony today; however, since it
23 was appended to our motion we wanted to move that into
24 evidence as well.

25 THE COURT: All right. Okay. So, let's

1 have closing argument. So, if I understand correctly --
2 just so I'm clear, what the ABL it allows them to do a
3 lot of -- for Chief Nicks to do all the union work as
4 long as it's related to the Union and get paid by this
5 fund, correct?

6 MS. NOBILE: Correct.

7 THE COURT: And is it by that fund or does
8 he still get salary or how does -- I mean, it's my
9 understanding trying to look at basically some -- based
10 on the case on the questions asked by counsel.

11 MS. NOBILE: Sure, Your Honor. The ABL
12 that President Nicks receives is in lieu of a salary that
13 he would receive if he were working on a shift as a
14 battalion chief. So that is his salary for his services
15 from the City of Austin.

16 So, Your Honor, I just have some arguments
17 related -- and I want to make sure -- I believe I have
18 just under 30 minutes based on division of the hearing.
19 Is that correct?

20 THE COURT: Yes.

21 MS. NOBILE: I don't think I will need all
22 of it. So, essentially, Your Honor, in the motion that
23 the AFA has presented, it's based on the Texas Citizens
24 Participation Act. And essentially that act safeguards
25 the rights of citizens, such as the firefighter employees

1 who make up the AFA, to petition, speak freely and
2 associate and otherwise participate in Government. And
3 it also safeguards those rights by providing an expedited
4 motion to dismiss process where meritless lawsuits are
5 brought that implicate those rights.

6 Under our burden of proof with respect to
7 this motion, we will have to show that the AFA lawsuit
8 relates to the membership's communication in exercise of
9 protected rights. And I think that you heard today from
10 President Nicks that this is at the core of what ABL is
11 used for.

12 THE COURT: Let me just ask you this: Is
13 it -- does it prohibit? I mean, he could unionize and
14 work with his union members as much as he wants, but what
15 I understand is but not get paid for it by the
16 Government; but he could do whatever he is doing and they
17 are not trying to prohibit his activity. They are just
18 saying you can do that activity but not get paid by the
19 City for it is basically what they are saying.

20 MS. NOBILE: Right. And that's not the
21 standard under the TCPA that we will be looking for. The
22 standard under the TCPA is whether or not an action
23 relates to the exercise of a right. So, the plaintiffs
24 and the intervenor will not have to approve any kind of
25 -- we will only have to prove allegation as to the

1 specific constitutional violation, but instead our burden
2 under the TCPA is to show that their lawsuit challenging
3 the provision of ABL as part of the CBA simply relates to
4 communication among members about a protective right, in
5 this case, as President Nicks explained, the various
6 tasks union members undertake while on ABL which are
7 related to the association purpose. The TCPA at issue is
8 triggered essentially because these members have joined
9 together collectively to communicate over issues
10 regarding fair treatment at work, safety standards and
11 insuring that the community of Austin receives adequate
12 firefighting protection. And ABL is used primarily and
13 in a great extent to communicate among membership about
14 the specific issues. And under the TCPA, essentially, we
15 have to show that these members share a common interest.
16 I think President Nicks' testimony demonstrates that the
17 firefighters employed by the City of Austin who are
18 subject to the Collective Bargaining Agreement share
19 common interest, which is safe working conditions and
20 fair treatment at work, as well as advocacy on behalf of
21 the positions that the membership through meetings,
22 through the online surveys, deems to be part of the
23 organization professed. ABL is at the heart of that
24 common interest. The use of ABL is at the heart of that
25 common interest.

1 Essentially, while --

2 THE COURT: So, hold on. So, let me just
3 look at the plaintiffs. Counsel, wouldn't you agree that
4 -- well, maybe not, that the Movant's have established by
5 preponderance of the evidence that the action is based on
6 that?

7 MR. RICHES: No, Your Honor.

8 THE COURT: Okay. I was just thinking that
9 you might agree.

10 MS. NOBILE: And we disagree. We do
11 believe that we have met that initial burden. Another
12 piece of the puzzle, the TCPA puzzle we have to prove is
13 that the communications at issue that are performed while
14 on ABL relate that the lawsuit at issue relates to those
15 purposes. And that is clear based on the filing provided
16 and submitted by the petitioners, including their
17 opposition as well as the petition itself. Specifically,
18 Paragraphs 27 and 47 of the petition discuss the
19 communications that are at issue while on Association
20 Business Leave.

21 In addition, this type of case goes to the
22 very heart of what the TCPA was intended to protect. It
23 was intended to protect against meritless lawsuits that
24 infringe upon or relate to the rights protected by the
25 TCPA. This case is one that is going to waste judicial

1 resources as well as the AFA resources in defending
2 against it.

3 I will talk briefly about the burden once
4 you determine that we have met our initial burden that
5 the plaintiffs and intervenors will carry, but it is
6 clear based on the filings in this case the potential to
7 be one which waste significant resources, both the
8 Court's as well as the AFA. And I just wanted to address
9 one brief issue that was raised with respect to the
10 initial burden under the TCPA that was raised by the
11 plaintiff and intervenors in their filing. They seem to
12 suggest that the AFA is not able to argue that they have
13 engaged in communications related to rights beyond those
14 related to the right to associate, meaning speech on
15 matter of public concern or the exercise of the right to
16 petition.

17 We believe that President Nicks' testimony,
18 as well as his affidavit and the evidence that was put
19 in, demonstrate that those rights are also implicated.
20 Out of abundance of caution we would request that if the
21 Court feels that we've not met our burden with respect to
22 communication on right to associate, that the Court also
23 review communications related to the right to speak on
24 matters of public concern as well as petition which would
25 include some of the political activities which were

1 discussed today.

2 Your Honor, once we have met our initial
3 burden, the burden then shifts back to the plaintiff and
4 intervenors.

5 THE COURT: Let me break that up. That's
6 how I like to break it up is I would like you to respond
7 to that issue first whether, in fact, they have met their
8 initial burden and then I will make a ruling and come
9 back and listen to argument or not.

10 MR. RICHES: Thank you, Your Honor. We'll
11 be glad to. This case emphatically is outside the scope
12 of the TCPA and the TCPA says as much. Your Honor, if
13 you look at Section 27.002 of the TCPA statute --

14 THE COURT: Do you have a copy of it?

15 MR. RICHES: Your Honor, we have a copy.

16 Judge, 27.002, the statute says what its
17 purpose is and, that is, to encourage and safeguard the
18 constitutional rights of persons to petition and speak
19 freely and associate freely. The TCPA protects
20 constitutional right to association by its plain
21 language. Additionally, the chapter, Chapter 27, is
22 titled: Actions Involving the Exercise of Certain
23 Constitutional Rights. There is a section and this is at
24 27.007 where the Court is permitted to make factual
25 findings and the only factual findings that the statute

1 indicates should be made is whether the legal action was
2 brought to deter or prevent --

3 THE COURT: Which section?

4 MR. RICHES: I'm sorry, Your Honor.
5 Section 27.007. And those factual findings are whether
6 the legal action was brought to deter or prevent the
7 moving party from exercising constitutional rights, not
8 statutory defined ones.

9 In our briefing we also cited a case:
10 *Cheniere Energy*. And in that Justice Jennings
11 explained --

12 THE COURT: Do you have a copy of that for
13 the Court, of the case?

14 MR. RICHES: Your Honor, I do. (Tendering)
15 Justice Jennings explained that given a specific language
16 and expressly stated purpose, referring to 27.002, the
17 TCPA in it's quote to protect only the constitutional
18 right of free speech petition and association. This very
19 issue was raised in that case, Your Honor, and that
20 concurring opinion Justice Jennings explained to the
21 purpose of the TCPA as it says, which is to protect
22 constitutional, not statutory rights.

23 I would make one other point: If the TCPA
24 is, in fact, as broad as the AFA contends that it is,
25 then any lawsuit -- any lawsuit related to the AFA

1 communications would automatically be subject to a TCPA
2 Motion.

3 Now, under that reading of the statute, if
4 the AFA conspired to defraud some third party and that
5 third party brought an action against them, the AFA can
6 argue, well, this conspiracy was related to
7 communications among AFA members; therefore, the TCPA
8 applies and we have to litigate this Motion. And, of
9 course, that would not serve the purpose of the TCPA
10 which says that it should balance constitutional cases
11 which should be protected with meritorious lawsuits like
12 our own which should clearly be allowed to proceed.

13 Additionally, the AFA has conceded that
14 this does not relate to their constitutional activities.
15 They conceded it in the briefing. They conceded it at
16 oral argument on the Motion to Compel. They have further
17 admitted that even if taxpayers of the State of Texas
18 were to receive the relief that we requested, that is,
19 the cessation of taxpayer-funded private activities, the
20 AFA can still engage in any and all activities it was
21 engaging in prior to the implementation of release time
22 and if it's ever removed after release time is removed.
23 It's just that taxpayers won't be paying for it, AFA
24 members through membership dues would be paying for it.

25 Finally, Your Honor, this case is not about

1 the AFA. It's about the Government, the City of Austin,
2 subsidizing the activities of a private organization.
3 Now, whether the organization is the AFA, a relative of
4 the mayor or the Dallas Cowboys, it doesn't matter. The
5 Texas Constitution prohibits the use of public resources
6 for private activities. And as evidence by our
7 Exhibits 4 and 5, which are affidavits from taxpayers,
8 that's what this case is based on and that's what this
9 case relates to, it has nothing to do with AFA right to
10 associate. And for those reasons, they simply have not
11 met their burden as this case relates to their rights to
12 association.

13 MS. NOBILE: Your Honor, if I could respond
14 briefly. First, I want to point out just going over a
15 few of the things raised by counsel. If you look at
16 Section 27.007 they have engaged in quite the selective
17 reading of this provision. If you look at Sub Part A of
18 Section 27.007 it states that: At the request of a party
19 making a motion under Section 27.003, the Court shall
20 issue findings regarding whether the legal action was
21 brought to deter or prevent the moving party from
22 exercising constitutional rights and is brought for
23 improper purpose, including to harass or cause
24 unnecessary delay or increase the cost of litigation.

25 Your Honor, this section is not implicated in

1 this particular proceeding at all. What is relevant in
2 terms of the standard that the Court when looking at it
3 in deciding our motion is Section 27.003. On the face of
4 that section you will see, Your Honor, that it doesn't
5 require the AFA to allege a constitutional violation.
6 Instead it states if a legal action is based on, relates
7 to or is in response to a party's exercise of the rights
8 of free speech, right to petition or right of
9 association, that party may file a motion to dismiss the
10 legal action.

11 So, in this case what AFA has alleged and I
12 think what we have proven through both President Nicks'
13 testimony, as well as the pleadings themselves, that this
14 is an action that is based on, relates to, or is in
15 response to a party here, AFA, exercise through its
16 membership of the rights to associate to speak out on
17 matters, public concern and to petition.

18 In addition, Your Honor, the citation of
19 the decision provided by counsel, in that case the courts
20 specifically found there was no communication and they
21 didn't meet their initial burden. And I believe that
22 counsel is referring to a concurring opinion in that
23 matter. You know, instead I think it's clear based on
24 the plain language of the statute and the intent of the
25 statute to protect and safeguard the rights to associate

1 to speak out and to petition in light of actual standard
2 at issue here. I think we have plainly met our burden
3 under the TCPA.

4 THE COURT: The Court is going to rule that
5 you have met that burden by a preponderance of the
6 evidence and I will shift to you to show what you have
7 established an affirmative cause of action that leads to
8 specific evidence of the prima facie case.

9 MR. RICHES: Thank you, Your Honor. And I
10 would like to say at the outset that the clear and
11 specific evidence has been interpreted by the courts to
12 indicate a minimum quantitative of evidence necessary to
13 establish the claim. Your Honor, the Texas Constitution
14 is abundantly clear in this matter. A City cannot grant
15 public money in aid of any individual, association or
16 corporation whatsoever. The clear purpose of that
17 constitutional provision is to prevent the use of public
18 resources for private purposes. It's intended to prevent
19 government bodies from depleting the public treasury by
20 giving advantages to special interest. Now, this is an
21 important distinction: A Government expenditure violates
22 the gift clause if the payment is gratuitous, meaning
23 that sufficient consideration is not received, or if the
24 payment does not serve a public purpose and afford a
25 clear benefit in return. And the case law has

1 established a three-part test to determine whether or not
2 an expenditure accomplishes a public purpose. That
3 three-part test, Your Honor, is as follows: If
4 expenditures predominant purpose is to accomplish a
5 public purpose and not to benefit private parties, it
6 will satisfy the gift clause; and if the public retains
7 control over the funds to insure that a public purpose is
8 accomplished and protect the public's investment, then it
9 won't violate the gift clause. And then the third test
10 overlaps the first one, the consideration question which
11 is the political subdivision receives a return benefit.

12 So, Your Honor, a Government expenditure
13 will violate the gift clause if it fails any of those
14 tests. In other words, if a Government expenditure is
15 gratuitous, meaning the City does not receive adequate
16 consideration or if it fails any one of those three
17 prongs of public purpose, if its predominant use is for
18 private rather than public or the public doesn't exercise
19 sufficient control over the expenditure. And under the
20 TCPA the Court need only be convinced that we have
21 offered a minimum quantum of evidence on any one of those
22 three issues.

23 The AFA reads the gift clause case law
24 differently. They claim -- the AFA claims that a
25 Government expenditure is constitutional only if the

1 Government receives sufficient consideration, whether or
2 not it's for a private or public purpose, they claim they
3 only need to look at consideration; you never need to
4 examine public purpose. The case law does not say that.
5 The primary supreme court case on point of Texas
6 Municipal League, the Texas Workers' Compensation --

7 THE COURT: Counsel, I'm trying to see if I
8 can follow you. If you have -- did you say you put his
9 response in your notebook, counsel?

10 MR. SIEGEL: Yes, Your Honor. I believe
11 Tab 2 is his response to the Motion to Dismiss.

12 THE COURT: And your response?

13 MR. RICHES: We are at the gift clause
14 analysis and what they are required showing is under the
15 gift clause --

16 THE COURT: I'm saying over here on page 3,
17 4, where are you in your argument?

18 MR. RICHES: That would be page 8. Your
19 Honor, in Texas Municipal League, the Texas Workers'
20 Compensation Supreme Court case from 2002, the Court has
21 kind of set out what the current gift clause standard is.
22 In that case the first Court first looked at whether the
23 payment was gratuitous and found that it wasn't, then the
24 Court went on to examine whether a public purpose was
25 fulfilled. Under the AFA's reading, the AFA claims that

1 you only need to examine whether a payment is gratuitous
2 and then you need to go no further. So, the Court not
3 need look whether there is a public purpose. But, Your
4 Honor, in this case the Supreme Court, after concluding
5 that a payment was not gratuitous then went on as gift
6 clause requires to examine public purpose, that is, to
7 determine whether the predominant purpose of the
8 expenditure was benefitting a private or public party and
9 whether the public obtained significant control over it.
10 So, if the AFA's reading was correct, that analysis would
11 have never happened.

12 We also have Edgewood Independent School
13 District, which clearly says that a transfer of public
14 funds to a private entity must, quote, "Include a clear
15 public benefit in return."

16 Additionally, we have the Attorney General
17 opinion MW-1989, which I specifically looked at release
18 time provisions as they pertained to a school district
19 and the Attorney General doesn't even examine
20 consideration. The Attorney General says these release
21 times predominantly benefit the Union and no public
22 control over the use of these resources; therefore, it
23 violates the gift clause.

24 THE COURT: Do you have copies of both that
25 opinion as well as the Texas Municipal League case?

1 MR. RICHES: I do, Your Honor.

2 THE COURT: Let me have copies of those,
3 please.

4 MR. RICHES: All of this is to say the case
5 law is clear that these are all separate tests. There
6 has to be both consideration and there has to be public
7 purpose, and public purpose is determined as to who gets
8 the primary benefit, the private entity or the public and
9 does the public exercise sufficient control over the
10 expenditures which, of course, makes sense. The entire
11 purpose of the gift clause is to prevent public
12 expenditures for purely private purposes.

13 Now, if the AFA's reading is correct and
14 all is required is consideration, that means that the
15 Government could enter into a contract with a private
16 entity, receive sufficient consideration under the
17 contract; but if the contract purely benefited the
18 private entity, it would still be constitutional which
19 would not comport with the purpose of the Texas
20 Constitution. And I'll give you an analogy, if it's
21 helpful, Judge. If the City of Austin were to, for
22 example, give a \$10 million subsidy to a private
23 developer and say as part of this subsidy we are going to
24 enter into a contract and you got to build a road; but
25 you can use the road however you want. The road is going

1 to cost you \$10 million. So, sufficient consideration is
2 exchanged; but you can use it however you want. You can
3 block it off during certain hours. You can use it only
4 for your customers and clients. The City of Austin has
5 no control over it. According to the AFA that would
6 still be constitutional because you would never need to
7 reach public purpose which, of course, would render the
8 gift clause entirely meaningless.

9 I would point you to one other area of
10 authority, Your Honor, and I have a copy for you if
11 that's helpful. This is the case Key V Commissioner's
12 Court of Marion County is cited in some of the City's
13 briefing. And there the Court says what we are saying,
14 Your Honor, which is as follows, quote: "The unifying
15 theme of the cited cases shows that some form of
16 continuing public control is necessary to insure that the
17 State agency receives its consideration."

18 THE COURT: Let's talk about the evidence
19 in this case that we heard so far related to each of
20 those elements.

21 MR. RICHES: Yes, Your Honor. So, the
22 first question is whether the predominant use of release
23 time either serves the AFA's interest or the City of
24 Austin's interest, and we have several pieces of evidence
25 to establish that the predominant purpose of release time

1 is to support the AFA's interest. The first is
2 Exhibit 1, which is the Collective Bargaining Agreement
3 itself and that allows the AFA president specifically to
4 use release time for any lawful association business
5 activities that are consistent with the AFA's purposes.

6 THE COURT: So, sounded like the only
7 unlawful was political.

8 MR. RICHES: That's correct, Your Honor.

9 THE COURT: And it didn't even say
10 political. It says he just couldn't deliver a check.

11 MR. RICHES: That's correct, Your Honor.
12 So, we would contend that that on its face alone
13 establishes the predominant benefit applies to the AFA
14 and not to the City of Austin.

15 Additionally, with the records that we have
16 included in terms of the number of hours that are used
17 for different events. If you calculate them, 85 percent
18 of all release time by members other than the president
19 -- we know the president can do whatever the president
20 desires to do so long as it's supporting the AFA
21 commission -- 85 percent of any other release time
22 employee in 2016 was for other association business.
23 87 percent in 2015 is for other association business
24 which is, by definition, a benefit to the association,
25 not to the City.

1 We included a few examples of what that
2 might include. It included things like, quote, "Helping
3 out at Union Hall with some issues, Battle of the Badges,
4 Boxing Charity Event, Austin Firefighters Relief and
5 Outreach Fishing Fundraiser," among others.

6 Additionally, even the specific items that
7 are enumerated in the Collective Bargaining Agreement,
8 grievances, collective bargaining and helping officers
9 during disciplinary proceedings. I would note that all
10 of those activities are actually adverse to the City's
11 interest. If the City is going to bring a disciplinary
12 action against the officer, the City is on the other side
13 of that argument. That's an adverse activity. So, even
14 those activities, which are enumerated, clearly serve the
15 AFA's interest rather than that of the City of Austin.

16 Your Honor, we believe that that is more
17 than enough on that prong of who is the predominant
18 beneficiary, and if you find only that the AFA is a
19 predominant beneficiary, that's sufficient under the TCPA
20 that denied the motion. I can discuss, also, the other
21 elements of public control and consideration.

22 So, the second inquiry is public control.
23 Public control must be maintained over release time in
24 order for it to be constitutional. The City has said --
25 has, in fact, said in no uncertain terms -- and this is

1 included as Exhibit 7 in our response, which is a news
2 article. This is from the fire chief and I'm quoting.
3 Release time was, quote: "Designed that way so that the
4 union president wouldn't have a chain of command, per se,
5 and could focus and function unbiased in dealing with
6 members issues with the department."

7 MR. SIEGEL: Your Honor, the City would
8 object. A news article is not evidence of the City's
9 statement or admission. It's only evidence of what the
10 article says. So, the idea that this statement would be
11 evidence against the Union or City is contrary to law.

12 THE COURT: And isn't that what Mr. Nicks
13 said as president or am I wrong?

14 MR. RICHES: Your Honor, that is what the
15 fire chief said the purpose of release time is for and,
16 Your Honor, that has been admitted as evidence.

17 THE COURT: I am looking at the article
18 now. Okay. All right. I'll take that objection under
19 advisement and read, in fact, what the statement says.

20 MR. RICHES: Second, we know that the union
21 president is completely released based on his own
22 testimony and that the City doesn't monitor his time. He
23 doesn't report to City Headquarters. He doesn't even
24 inform the City as to what he does while on full-time
25 release. The City doesn't exercise any meaningful

1 control over the union president's activities.

2 We also know that for the other members,
3 those who aren't the AFA president, the AFA president
4 approves those requests for release times. The AFA
5 president says, yes, this is good or not, then that's
6 forwarded to the City. If it's forwarded within three
7 days or more than three days in advance of the request,
8 policy says -- the City's policy says it has to be
9 automatically approved by the City. And we have some
10 records from the City. Again, we were only allowed
11 limited discovery; but we know there were 335 requests
12 submitted from 2015 and '16, only four were denied. So,
13 a little over 1 percent; 36 were never even acted on by
14 the City. So, it's difficult to say that the City
15 exercises any meaningful control either over the
16 Association President or over other ABA or AFA members on
17 release time. And, again, Your Honor, all the Court may
18 find is that there is insufficient public control for
19 this motion to be dismissed.

20 The final expenditure will also violate the
21 gift clause if the City doesn't receive sufficient
22 consideration in return. Consideration, as the Court
23 knows, is an obligation under a contract. In order for
24 consideration to be valid a party has to be obligated to
25 perform something. We know that the plain language of

1 the Collective Bargaining Agreement obligates the AFA
2 President to do nothing. It obligates other association
3 members to do very little with very little constraints.
4 Because there is no obligatory language within the
5 Collective Bargaining Agreement, we believe that fails as
6 a matter of law for want of consideration. There's no
7 obligations imposed. There's no written requirements
8 imposed and we know the evidence shows that release time
9 isn't, in fact, being used to advance city business for
10 the reasons we have stated before.

11 Your Honor, we believe it fails every
12 single gift clause test. In order for this Court to deny
13 the Motion it need only fail one of those three; but it
14 quite clearly the evidence suggest that it fails all
15 three.

16 MR. NIMOCKS: Your Honor, may we be heard
17 briefly?

18 THE COURT: Yes.

19 MR. NIMOCKS: The Intervenor would not have
20 anything to add to the substantive argument made by
21 plaintiff. We concur on all of that. We did have
22 exhibits attached to our response and many are
23 duplicative, but there are three that are not and we
24 would ask that the Court also receive those particular
25 exhibits into evidence and they are Exhibits 3, 4 and 5

1 to our Intervenor's response. Exhibit 3, Your Honor, is
2 provided by the City of Austin. This is the Association
3 Business Leave policy.

4 THE COURT: Any objection?

5 MS. NOBILE: No objection.

6 THE COURT: Admit.

7 MR. NIMOCKS: Exhibit 4 looks like it is
8 duplicative of Plaintiff's Exhibit 3, but this is an
9 updated report that was provided by the Union and is
10 Bates-Stamped AFA 00398. And so, we would provide the
11 updated -- offer the updated quarterly report on
12 Association Business Leave as Exhibit 4.

13 THE COURT: You said that's 398?

14 MR. NIMOCKS: On the document itself, yes,
15 ma'am. It contains Bates Stamp 398.

16 THE COURT: Any objection?

17 MS. NOBILE: No objection, Your Honor.

18 THE COURT: Admit.

19 MR. NIMOCKS: And then Exhibit 5 is a
20 collection of prior statements of the witness, Mr. Nicks,
21 through his Twitter account and a collection of
22 statements that the witness himself made. So, we would
23 ask statements by the witness those be admitted into
24 evidence as well.

25 MS. NOBILE: We object to that. Mr. Nicks

1 was here testifying today. And in addition, there's a
2 lack of foundation regarding who made the Tweets, et
3 cetera. So, we would object to the admission and also
4 the -- based on my review of the evidence it's not
5 complete and also includes time where the witness was not
6 on ABL. So, we would object to the entry of that
7 exhibit.

8 THE COURT: So, I've got several objections
9 lodged against Exhibit 5 and, that is, I guess no proper
10 predicate when you had the witness on the stand related
11 to the documents and they are not complete.

12 MR. NIMOCKS: Well, Your Honor, let me take
13 those in order if I can or in reverse order. As to
14 completeness, Your Honor, the fact that we're not
15 offering every single prior statement of the witness I
16 don't think is germane. If they have other statements
17 they want to offer, they can. These are prior statements
18 of Mr. Nicks and by definition they are not hearsay. And
19 as to authentication, we can get him to authenticate
20 those quite easily if we are allowed a brief permission
21 to recall him to the stand if they are unwilling to
22 stipulate that these are, in fact, the statements of the
23 witness.

24 MS. NOBILE: Your Honor, I would also note
25 again that the State has not established that those

1 statements were made while on ABL. So, relevance is
2 extremely limited.

3 THE COURT: Well, I would probably allow
4 him to call him back for that limited purpose of laying
5 the predicate for both of those issues whether it's using
6 ABL or not and whether they are his twitter statements or
7 not.

8 MS. NOBILE: We will withdraw our objection
9 to Exhibit 5.

10 THE COURT: Okay. Admit.

11 MR. NIMOCKS: That's all the State has at
12 this time.

13 MR. SIEGEL: Before the Union goes, I would
14 like to have the City have a chance to speak. Obviously,
15 the City is being attacked by some of the arguments here,
16 so maybe before or after Ms. Nobile goes the City would
17 have a few minutes to respond.

18 THE COURT: Sure, because I have let the
19 State, I will allow the City too; but that will go into
20 your time. I look at it as two sides.

21 MR. SIEGEL: For the record I plead they
22 have exceeded their hour.

23 THE COURT: I am keeping track. I had
24 allowed for 30 minutes of closing because I knew I would
25 need at least that so -- and the Intervenor started at

1 4:08. So, No. 5 is admitted. Counsel, rebuttal?

2 MS. NOBILE: Yes, Your Honor. First, I
3 would just like to point out that the plaintiffs have, in
4 no uncertain terms, misstated the test that is at issue
5 here. And the decision which they handed you, the Texas
6 Municipal League Decision, the Court quoted, quote:

7 Because --

8 THE COURT: Let me find it.

9 MS. NOBILE: That's at page 383, Your
10 Honor. And the quote is that -- and I'm at the sentence
11 that begins, "Because the Risk Pool receives
12 consideration for its unclaimed death benefits payments
13 to the Fund, that consideration renders the provision of
14 constitutional because the payments are nongratuitous."
15 In addition, Your Honor --

16 THE COURT: I don't see that? Is it a
17 headnote?

18 MS. NOBILE: I believe I can, Your Honor --

19 THE COURT: Oh, I see.

20 MS. NOBILE: 385. I apologize. That was
21 my mistake, Your Honor. And the paragraph that begins
22 "however" and the second sentence, "Because the Risk Pool
23 receives consideration for its unclaimed death benefits
24 payments to the Fund, that consideration renders the
25 provisions constitutional because the payments are

1 nongratuitous."

2 In addition, Your Honor, a Texas Attorney
3 General provision opinion letter that I will hand to you
4 from January 2008 is also instructive on the issue of the
5 test that is actually at issue here.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 MS. NOBILE: That opinion letter, Your
9 Honor --

10 THE COURT: This says, "Risk Pool raises
11 enough consideration; however, here we conclude that the
12 risk pool receives enough consideration for its member
13 cities' paying unclaimed death benefits to the Fund.
14 Specifically, the Texas Workers' Compensation statutory
15 obligation to pay lifetime benefits from the Fund to any
16 Risk Pool member City's employee who suffers a subsequent
17 injury and qualifies for these benefits is te
18 consideration. Consequently, the Risk Pool members
19 cities' unclaimed death benefit payments to the Fund are
20 not gratuitous." That seems pretty different than what's
21 happening here.

22 MS. NOBILE: Well, it's not, Your Honor,
23 because we look at the contract, the CBA, as a whole.
24 There is the recent Arizona Supreme Court case I think is
25 instructive, while I recognize it's not binding by any

1 means in Texas, I do think it's persuasive on the issue
2 that when you're thinking about the unique nature of a
3 Collective Bargaining Agreement and a collective
4 bargaining relationship over the course of years, the
5 contract in itself provides consideration in that the
6 members, these association members will provide fire
7 services to the district to the City of Austin in
8 exchange for the compensation benefits outlined in the
9 contract to include ABL.

10 I would note, Your Honor, that under the
11 plaintiff's view items like leave if you look at vacation
12 leave and isolation would fail the plaintiffs' test, but
13 because we look at the consideration as a whole, we look
14 at the consideration given for the contract as a whole,
15 agrees to perform work on behalf of the citizens of
16 Austin in exchange for a package of compensation wages,
17 benefits, et cetera, which, you know, require both
18 parties -- all parties to the contract to perform tasks
19 in exchange for benefits.

20 So, when you look at the contract as a
21 whole there are certainly adequate consideration and we
22 believe that is the view the Court should take looking at
23 the contract as a whole; but even if the Court looks at
24 the consideration question in isolation, the evidence
25 presented here today is that even if you look just at ABL

1 there was consideration on both sides. The AFA on behalf
2 of its members agreed that they would give up the benefit
3 of having sick hours counted towards the overtime
4 threshold and that cost the City about \$600,000 annually
5 to pay that additional overtime. They gave that up in
6 exchange for the 5,600 hours of leave that's available
7 for its members to engage in association activities.

8 THE COURT: So, if I understand correctly
9 what they defer association, the fire and their members,
10 gave up the fact that the City would pay them if they
11 were sick during a week period and then they had to work
12 another 20 hours or 10 hours that they would give up that
13 overtime.

14 MS. NOBILE: Exactly.

15 THE COURT: That they would have gotten
16 paid. And that is a bargaining point and I understand
17 what you are saying. That is a bargaining point because
18 most non -- I mean, it would seem to me that a lot of
19 people would argue that if you didn't work a full week
20 and you use sick leave then why would you get paid
21 overtime if you had to work another 10 hours because you
22 didn't work your full 40 hours because you use eight
23 hours of sick leave. I understand that was a negotiated
24 point. That's what you are saying is the consideration.

25 MS. NOBILE: Exactly, Your Honor. If you

1 look at just that provision specifically but --

2 THE COURT: Let's look at the rest of the
3 issues and that is -- so let's just go on from
4 consideration, go on to the other issues. And does it
5 benefit the City, you know, the public?

6 MS. NOBILE: Absolutely, Your Honor.

7 THE COURT: Does it only benefit
8 association members?

9 MS. NOBILE: And it absolutely benefits the
10 City, the association members and the public because the
11 whole point of collective bargaining and association is
12 harmonious management relations so that services are not
13 interrupted. So that the Department and the Union can
14 work together to quell any labor unrest before they cause
15 any type of interruption in service, before they cause
16 any issues related -- you know, that may make it more
17 difficult for the City to protect its members.

18 In addition, President Nicks talked at
19 great length about many of the charitable purposes that
20 the AFA uses while on Association Business Leave. You
21 will see that in some of the exhibits that have been
22 entered into evidence. There is also charitable
23 purposes. It also -- uses of ABA is also in line with
24 the statutory bargaining rights.

25 THE COURT: Do nonunion employees get the

1 same benefits? Do nonunion employees if they want to go
2 work on a fishing or whatever private entity
3 organization, do they get the same benefit or do they
4 have to take off time to go work on that? I know there's
5 a difference between the union versus the nonunion
6 employee. Would that nonunion employee then have to use
7 his sick leave or his vacation to go work on a fishing
8 tournament? I would venture they would.

9 MS. NOBILE: My understanding -- and Bob
10 Nicks could correct me if I am wrong -- but I believe
11 that under the contract, union members and nonunion
12 members can use ABL. It's available under the --

13 THE COURT: There's only a place for
14 firefighters. If there's any other or besides
15 firefighter they would have to use sick leave. I am
16 looking at the City. I'm having -- you know, you-all
17 know I was a City employee and a City lawyer. So, I'm
18 going it would seem to me that's what they would have to
19 do, but that was 25 years ago.

20 MS. NOBILE: If there is not a Collective
21 Bargaining Agreement governing the City's and the Union's
22 relationship, if there's not a union covering those
23 employees. I would be speculating, but I would guess
24 that would be the case; but I would note that under the
25 City -- or under the Plaintiff and the Intervenor's

1 argument, that leave would also -- that vacation leave
2 would also be unconstitutional because vacation leave --
3 they haven't explained how vacation leave, which is also
4 a bargain for benefit, that's part of a larger
5 constitution, would pass any of their tests. And so, you
6 know, in this instance when you look at the purpose of
7 the Union as a whole and when you look at the harmonious
8 labor management relations that are available because of
9 the use of ABL, you know, I think it's clear that it does
10 serve a public purpose. It benefits the City. It
11 benefits the Union and it's members and it benefits the
12 public at large. And, again --

13 THE COURT: Let's address the control or
14 the lack thereof.

15 MS. NOBILE: With respect to the use of
16 ABL? There are if you look at article --

17 THE COURT: That's their position that
18 there's not control.

19 MS. NOBILE: If you look at Article 10
20 itself, the control that Article 10 provides is
21 sufficient to meet the control requirement under the
22 Public Purpose Analysis. The City has the ability to
23 deny request for official time. The City has ability to
24 call back President Nicks into his drag duties as a
25 battalion chief. The City has ability to deny request

1 for ABL. I think what is a little bit of a bait and
2 switch here, Your Honor, because the Association uses ABL
3 in a matter that's consistent with Article 10, the
4 bargain for control mechanisms that were put in as part
5 of the contract, there's no abuse of the Association
6 Business Leave, you know, that would require the City of
7 Austin to deny that request.

8 You also heard that in instances where
9 operational needs required it, ABL requests have been
10 denied. So, the control is certainly sufficient. It's
11 certainly still there and, again, it provides the City of
12 Austin the ability to say we can't grant ABL right now
13 because operational needs require you to be on duty. So,
14 the measure of control that is necessary is certainly
15 there.

16 THE COURT: The fact that there was only
17 1 percent of all of those is sufficient, you think? Is
18 that what you're saying? From their perspective they
19 said the evidence shows that 1 percent were denied and is
20 that showing really any control?

21 MS. NOBILE: Well, just I would argue, Your
22 Honor, that just because the City doesn't need to deny
23 official time doesn't mean that the mechanism for
24 controlling overtime is not there. It just means that
25 the union, the AFA and its members, are using Association

1 Business Leave in a responsible manner that's consistent
2 with the bargain for procedures and uses under the CBA.

3 THE COURT: You were addressing the
4 Attorney General opinion.

5 MS. NOBILE: Yes, Your Honor. Two notes:
6 First, on the Attorney General opinion that was cited by
7 the plaintiffs, I would first note that that situation
8 where it was found that release time, essentially, did
9 not meet a public purpose. That's in a completely
10 different context. That opinion letter dealt with a
11 situation where a teacher was granted, essentially, leave
12 for purposes of the association; but there was no
13 collective bargaining relationship there. Teachers in
14 Texas are not covered by the collective bargaining
15 provisions. There was no consideration, essentially, in
16 that case because there was no agreement. And so, the
17 Court didn't even look to the analysis with respect to
18 gratuity because the teachers -- the teacher at issue in
19 that case was not part of a collective bargaining
20 relationship, which is a much different situation than we
21 have here.

22 In addition, the Attorney General opinion
23 that I handed to you earlier from 2008, again, is a
24 situation where --

25 THE COURT: You gave it to me?

1 MS. NOBILE: Yes, Your Honor. In that
2 opinion, the Intervenor here described that the
3 constitutional provision at issue, one of them here,
4 prohibits only gratuitous grants of public money by
5 political subdivision. Again, the Attorney general did
6 not look to the Public Purpose Analysis. Instead, if
7 there was consideration, that was sufficient.

8 One other thing I would like to point out,
9 Your Honor, with respect to consideration, in the cases
10 discussing the adequacy of consideration for purposes of
11 a gift clause challenge, consideration merely needs to be
12 adequate. It doesn't need to be equal. And I will also
13 hand you a case, Your Honor, called City of Lubbock
14 versus Phillips Petroleum.

15 THE COURT: You need to start wrapping it
16 up. I don't know if we are going to have time for your
17 plea to the jurisdiction, counsel.

18 MS. NOBILE: In that case, Your Honor, the
19 Court discussed a situation in which a city had provided
20 a pipeline in 1955 for \$355 and the company had used that
21 pipeline for the course of 50 years. And in describing
22 the consideration finding that that was a nongratuious
23 transfer essentially that there was adequate
24 consideration. The Court, in essence, described the fact
25 that really the adequacy of consideration can be

1 inadequate. It can be disproportionate. And when you
2 are looking at the consideration that warrants a
3 nongratuitous transfer of public funds, so long as it's
4 not tantamount to fraud, the consideration will be deemed
5 to be adequate. Where the results of arm's-length
6 negotiations as they are here and where we have
7 demonstrated that the consideration is adequate both for
8 the contract as a whole as well as a specific ABL
9 provision, we believe that the Plaintiffs and Intervenor
10 cannot be ever again on this issue with respect to their
11 case.

12 THE COURT: And for the City.

13 MR. SIEGEL: Yes, Your Honor, just a few
14 brief points. First, the City would join in the argument
15 and this is made in our plea to the jurisdiction which is
16 not before you today, but just filed on December 8, that
17 under the gift clause it is a two-part analysis. Step
18 one, there is a gratuitous payment. Step two, if there
19 is a gratuitous payment does this public interest
20 exception apply. And I believe the case law bears out
21 that if there's not this prima facie showing of
22 gratuitous payment there is no further inquiry necessary
23 by the Court.

24 Then in regards to whether the Union's
25 activities are serving a city benefit or public purpose.

1 THE COURT: So, you are saying that first
2 under the gift for analysis you would say gratuitous, not
3 if it's gratuitous then you go to the public and make
4 that analysis and not as stated by the plaintiff is your
5 position?

6 MR. SIEGEL: That is correct, Your Honor.
7 Then next in terms of the public benefit served by the
8 Union's activities, Chapter 174 of the Texas Labor Code
9 is what authorizes the collective bargaining that is at
10 issue here, and that statute makes very clear that
11 collective bargaining serves a public interest. It
12 prevents strife. It prevents labor unrest. And in
13 addition, the Union is playing an essential role between
14 the City and the workers, between the firefighters, in
15 terms of mediating the workforce. We have 1,000
16 firefighters providing essential health and safety
17 functions. The Union is helping operate the grievance
18 machinery informing the members about contractual issues.
19 So, they are providing this mediating public service.

20 In addition to the control that's been
21 discussed in terms of each form, each hour gets submitted
22 to AFD management and approved or disapproved. There's
23 also control of this process that's exerted every time
24 there is a Collective Bargaining Agreement. And so, to
25 the extent that the City objects to President Nicks' use

1 of ABL time, we can bring that back to the table the next
2 time the contract is at issue. So, that's an additional
3 layer of control that hasn't been mentioned so far today.

4 Finally, I would just urge the Court to
5 find that this suit is frivolous as a matter of law. And
6 in particular, under basic contract law principles. A
7 contract is not severable unless the parties explicitly
8 agree to that. So, here the gift clause is aimed at
9 invalidating a city action that you know provides a gift
10 of public funds to private entity. The City action
11 that's at issue here is the City counsel's approval, an
12 ordinance accepting the Collective Bargaining Agreement.

13 So, that CBA is clearly a broad exchange of
14 consideration. So, we can't just analyze, for example --
15 this is not in evidence today; I go to see my wife's
16 family in two weeks. I take two weeks of vacation time.
17 The Plaintiff's can't sue the City for letting me go
18 pursue a private purpose on the City's dime because my
19 individual leave time is part of this grand bargain
20 between, on one hand, the City, on the other hand
21 representatives of the workers.

22 So, for example, here the ABL as the
23 evidence establishes is a miniscule portion of the
24 overall package of benefits the City is paying
25 firefighters, in exchange we get 1,000 firefighters who

1 every day are ready to protect the City.

2 So, the City would urge that the Court
3 grant the motion and find that not only there is no
4 gratuitous payment, that also public interest is served
5 by the Collective Bargaining Agreement.

6 THE COURT: Rebuttal, since it's your
7 burden, counsel.

8 MR. RICHES: Thank you, Your Honor. I
9 would point just at the outset the burden under the TCPA
10 is just a minimum quantum of evidence necessary. We're
11 not litigating any Summary Judgment the way we would on
12 all of these matters after an opportunity for full and
13 fair discovery. The fundamental misunderstanding is that
14 you can't -- you cannot agree to something that is
15 unconstitutional.

16 So, for example, if the AFA decided to give
17 up a half a million dollars in sick leave and convert
18 that to \$250 in cash, you know, and give that to one AFA
19 member, that would be a violation of the gift clause. If
20 both of the parties have agreed to severability in the
21 contract, Article 47 of the contract specifically is a
22 severability clause which says if any portion of the
23 contract is ruled unlawful the remainder will be kept in
24 place. And what we have here is a -- based on both fact
25 and then the plain language of the contract, is we have a

1 gift submitted, a very generous gift to the AFA,
2 submitted in a larger contract.

3 I would like to make two other points on
4 this argument that you have to look at the contract as a
5 whole. The first is that can't be true, as a matter of
6 law because then if that were the case, the City and any
7 private organization could agree to select whatever they
8 wanted in this contract. They could agree to slip a
9 sports car for the mayor to drive to and from work and
10 that provision itself would have to be tested for a
11 consideration in public purpose under the gift clause or
12 else it would render the gift clause meaningless, if you
13 could just agree to it as a smaller part of a much larger
14 contract.

15 In this specific case that would be
16 problematic for two additional reasons: If this is
17 treated as overall compensation for every firefighter,
18 that would violate the very plain language of Texas Labor
19 Law. And I'm going to cite the Texas Labor Code 101.004
20 and that says as follows: "A contract that permits or
21 requires the retention of part of an employee's
22 compensation to pay dues or assessments on the employee's
23 part to a labor union, is void unless the employee
24 delivers the employer the employee's written consent to
25 the retention of those sums."

1 So, if the AFA and the City are saying
2 every firefighter agreed to this, so it's just part of
3 their overall compensation; but if that were true then
4 nonunionized firefighters are now being forced to
5 subsidize as part of their overall compensation the
6 activities of the AFA and that would violate Texas Labor
7 Law by its plain language those individuals not providing
8 permanent consent in writing to the City to do so.

9 Additionally, Your Honor, to the extent
10 that we now know, as the evidence has established, that
11 the AFA -- the AFA president spends a significant portion
12 of his time and another ABL representative time doing
13 political activities, 30 percent or more, that would also
14 violate the first amendment rights of nonunionized
15 firefighters.

16 The Supreme Court has held directly -- and
17 this is an *Ellis V Railway Clerks*, that you cannot
18 collect from the employees any sums to support any
19 logical causes that aren't germane to collective
20 bargaining. In other words, you can't force the nonunion
21 members to subsidize the political activities of the
22 union. The Supreme Court has been abundantly clear on
23 that.

24 Whether or not release time is part of
25 overall compensation is almost beside the point because

1 every single clause has to be examined for consideration
2 for public purpose and the parties have agreed to that,
3 Article 48 establishes that. And additionally, adequacy
4 of consideration is a factual question as well.

5 And, Your Honor, I would state just one
6 last point. We know that all of these requests for
7 everyone other than the union president, who can
8 basically do what he pleases, have been approved and only
9 four were denied. At the same time the AFA president was
10 testifying that there are 150 firefighters short, you
11 know, why is the City only denying four of those requests
12 if there is obviously a need for more firefighters to
13 perform the basic firefighting functions of the City.

14 MS. NOBILE: Your Honor, if I may just
15 briefly respond?

16 THE COURT: He gets the last say though.

17 MS. NOBILE: I wanted to -- I mentioned
18 earlier that I would be giving you a case from Arizona
19 and I realize I did not provide you with that case, Your
20 Honor. Recognizing that he does receive the last say,
21 can I respond to one quick point?

22 THE COURT: Yes, counsel. This is
23 basically the same argument that he made.

24 MS. NOBILE: Yes, Your Honor.

25 THE COURT: To the extent that Arizona, is

1 their agreement any different than our agreement?

2 MR. RICHES: Your Honor, the gift clause
3 test, both the agreement is very different and the gift
4 clause test under the Texas Constitution and Arizona
5 Constitution are substantially different. Specifically,
6 the Texas Constitution requires public control and
7 requires analysis of who the predominant beneficiary of
8 the release time is whether it's the private entity or
9 the public, the Arizona Constitution requires neither of
10 those things.

11 MS. NOBILE: Your Honor, we disagree with
12 that characterization, but I would also point out the
13 Arizona Supreme Court did address many of those issues in
14 that decision. And finally, just on the point with
15 respect to the, essential dues check-off argument that
16 was just made. ABL is not a union possession. It's the
17 possession of the membership and it's available to all
18 membership. So that's arguing apples and oranges and I
19 would just respond to that -- wanted to respond to that
20 one point.

21 THE COURT: ABL is applicable to nonmembers
22 as well?

23 MS. NOBILE: Exactly, Your Honor.

24 THE COURT: Anything else?

25 MR. RICHES: No, Your Honor. In fact,

1 there's no evidence that ABL has ever been used by a
2 nonunion member that we have received or otherwise and it
3 certainly isn't contemplated by Article 10 of the
4 agreement which allows it for association representatives
5 which would by definition be union members.

6 THE COURT: Counsel, for our purposes here,
7 I am going to take this under advisement. I understand
8 that the Court has 30 days from the day of the hearing to
9 make a ruling and I will do that hopefully before that.
10 And I have Trent -- I believe that would be
11 February 16th. So, I'll make a ruling by then and if I
12 need any further briefing, I'll ask for it. Otherwise,
13 unless somebody -- new case law comes down the pipeline
14 between now and then, then you can let me have it.

15 Counsel, are you aware of any case law out
16 there, cases pending before the Court of Appeals -- the
17 Austin Court of Appeals?

18 MR. NIMOCKS: No, ma'am. I'm not.

19 MR. SIEGEL: No, Your Honor, but I will
20 check.

21 MR. NIMOCKS: I know we're running out of
22 time and I can give you an argument on the State's Plea
23 to the Jurisdiction in 60 Seconds if the Court would be
24 willing to receive it. Because it does impact directly
25 how this Court, in my opinion, will rule on the TCPA

1 Motion as it pertains to the Intervenor.

2 THE COURT: All right.

3 MR. NIMOCKS: I am going to do this in
4 60 seconds. Under the TCPA, Your Honor, there is a list
5 of exceptions at Section 27.010 and this is the Civil
6 Practice and Remedies Code. The first of those
7 exceptions is that the chapter does not apply -- and I am
8 quoting here -- "The chapter does not apply to an
9 enforcement action that is brought in the name of this
10 State or a political subdivision of this State by the
11 Attorney General."

12 Neither the City nor the Union has
13 responded to our plea to the jurisdiction. It's very
14 simple, Your Honor, a TCPA Motion cannot be filed against
15 the State when the Attorney General is acting on its
16 behalf. So, we ask the Court to grant the plea to the
17 jurisdiction as to the TCPA Motion. In other words, you
18 don't need to reach the merits as to Texas at any level
19 as far as this is concerned. And that's my 60 seconds.

20 MS. NOBILE: I will be just as brief. That
21 same provision states that the enforcement action brought
22 by the State of Texas, this is an enforcement action --
23 excuse me -- this is an action that was brought by the
24 Plaintiffs in which Texas intervened. For practical
25 purposes, Your Honor, if you make a finding that the

1 plaintiffs cannot meet their burden under the TCPA that
2 would operate as law of the case, and we don't see how if
3 the Plaintiffs can't meet their burden that Texas could
4 meet that burden if you find that ABL is nongratuitous
5 and is constitutional the motion would be denied and
6 would operate as law of the case.

7 MR. NIMOCKS: The statute is brought in the
8 name of. We are not required to be the initial filer of
9 the action, so the fact that the State is an intervenor
10 is not germane. I have copy of the statute for Your
11 Honor if I may approach.

12 THE COURT: Yes.

13 MR. NIMOCKS: Thank you for indulging us on
14 that, Judge. It's the Subsection A. And for the
15 convenience of the Court, the plea to the jurisdiction,
16 Your Honor, when we briefed this question was filed on
17 December 16th.

18 THE COURT: Did you file a response to the
19 plea?

20 MS. NOBILE: We have not filed a response.
21 We would be happy to do so within a quick time frame
22 since we know the Court only has 30 days to rule.

23 THE COURT: And I would prefer a written
24 response to the Plea to the Jurisdiction.

25 MS. NOBILE: Okay.

1 THE COURT: Why don't I have your response
2 back by the 30th -- January 30th. You are excused.

3 (CONCLUSION)
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1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)
3 COUNTY OF TRAVIS }

4 I, Leah Hayes, Official Court Reporter in and for
5 the 419th District Court of Travis County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all portions
8 of evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of
10 the Reporter's Record, in the above-styled and numbered
11 cause, all of which occurred in open court or in chambers
12 and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$585.00 and was
18 paid by Plaintiff.

19 WITNESS MY OFFICIAL HAND this the 5th day of March,
20 2017.

21 /s/ Leah Hayes
22 Leah Hayes, Texas CSR 3973
23 Expiration Date: 12/31/2018
24 Official Court Reporter
25 419th District Court
1000 Guadalupe Street, Room 325
Austin, Texas 78701
(512) 854-9329

EXHIBIT 7

NO. D-1-GN-16-004307

**MARK PULLIAM AND JAY WILEY,
Plaintiffs**

and

**TEXAS,
Intervenor,**

v.

CITY OF AUSTIN, TEXAS; MARC A. OTT, IN HIS OFFICIAL CAPACITY AS CITY MANAGER OF THE CITY OF AUSTIN, AND AUSTIN FIREFIGHTERS ASSOCIATION, LOCAL 975

~~~~~

**IN THE DISTRICT COURT**

**Filed in The District Court  
of Travis County, Texas**

FEB - 7 2017 NNR

At 4:09 M.  
Velva L. Price, District Clerk

**419<sup>th</sup> JUDICIAL DISTRICT**

**TRAVIS COUNTY, TEXAS**

**ORDER GRANTING DEFENDANT AUSTIN FIREFIGHTERS ASSOCIATION, LOCAL**  
**975'S TEXAS CITIZENS PARTICIPATION ACT MOTION TO DISMISS**

On January 17, 2017 came before the court Defendant Austin Firefighters Association, Local 975's (hereafter "Defendant") Texas Citizens Participation Act Motion to Dismiss.

The parties appeared through their attorneys of record. After careful consideration of the Motion and evidence, considering the pleadings, supporting and opposing affidavits, and the arguments of counsel, the Court finds that the Motion is well taken and should be, and hereby is, in all respects GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Texas Citizens Participation Act Motion to Dismiss is GRANTED in all respects.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all claims of Plaintiffs against Defendant are hereby DISMISSED with prejudice in their entirety. Plaintiffs shall take nothing from these claims.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in accordance with Texas Civil Practice & Remedies Code Section 27.009(1), Defendant is entitled to recover its attorneys' fees and costs in bringing its Motion to Dismiss and defending against these claims. The parties are therefore ORDERED to set this matter for a hearing before the Hon. Orlinda L. Naranjo to submit evidence of their fees and costs, and to do so within thirty (30) days of the date of this Order, unless otherwise agreed to by the parties.

SIGNED on this the 19 day of February, 2017.

July 2017.

  
Judge Orlinda L. Naranjo



# EXHIBIT 8

CAUSE NO. D-1-GN-16-004307

MARK PULLIAM; AND JAY WILEY, §

*Plaintiffs,* §

AND §

TEXAS, §

*Intervenor-Plaintiff,* §

v. §

CITY OF AUSTIN, TEXAS; MARC A. §  
OTT, IN HIS OFFICIAL CAPACITY §  
AS CITY MANAGER OF THE CITY §  
OF AUSTIN; §

*Defendant,* §

AND §

AUSTIN FIREFIGHTERS §  
ASSOCIATION, §  
LOCAL 975, §

*Intervenor-Defendant.* §

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

---

AFFIDAVIT OF ROBERT NICKS

STATE OF TEXAS §

COUNTY OF TRAVIS §

Affiant, ROBERT NICKS, states under oath as follows:

1. I am currently employed by the City of Austin Fire Department as a fire fighter. I am also the President of the Austin Firefighters Association, Local 975 ("AFA"), a party to this action.
2. I was elected President by a vote of the AFA membership in January 2010.
3. The AFA has 1065 active members. These members are all current fire fighters who are hired by the City for the purpose of providing fire protection services to citizens of the

City of Austin. The AFA also has 209 retired members, who are all former fire fighters for the City of Austin.

4. As President of the AFA, I am familiar with the Collective Bargaining Agreement (CBA) between the City of Austin and the AFA as well as its predecessor agreements. I participated in all contract negotiations between the AFA and the City of Austin from 2008 to the present, including the 2009, 2015, and 2017 contract negotiations which culminated in the 2009, 2015, and 2017 CBAs. In the most recent contract negotiations, I served as the lead negotiator for the AFA.
5. Association Business Leave ("ABL") in its present form, as set out in Article 10 of the current CBA, first became available as a result of the 2009 CBA negotiations between the AFA and the City of Austin. The 2009 CBA negotiations were conducted at arms' length. Obtaining the City of Austin's agreement to the desired ABL hours and provisions required concessions from the AFA.
6. My use of ABL is primarily devoted to contract negotiations, Department committee meetings, meetings with Department management on labor-management issues, meeting with AFA membership, attending trainings or conferences to better understand the issues facing AFA membership and the Department as a whole, and the day-to-day administrative work that supports these activities.
7. While on ABL under the CBA, I am subject to the Fire Department's code of conduct and personnel policies. I can and have been subjected to discipline from the Department for conduct during time I am on ABL.
8. On January 17, 2017, the Honorable Orlinda L. Naranjo heard oral argument from all parties and considered many of the foregoing facts, through sworn testimony, the operative CBA, and other evidence of ABL used by the City's fire fighters.

FURTHER AFFIANT SAYETH NOT.

*Robert Nicks*  
By: Robert Nicks  
President, AFA, Local 975

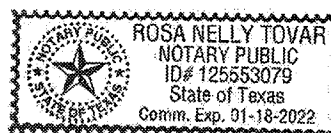
Date: 1-25-2019

Before me, the undersigned authority, on this day personally appeared Robert Nicks, known to me to be the person whose name is subscribed to the foregoing affidavit, who being by me first duly sworn, upon oath stated that the statements contained therein are true and correct.

SUBSCRIBED AND SWORN TO before me this 25<sup>th</sup> day of January, 2019. R.T.

*Rosa Nelly Tovar*  
Notary Signature

(Notary Seal)



# EXHIBIT 9

**RESOLUTION NO. 20170928-018**

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

**WHEREAS**, the Austin Firefighters Association, Local 975 of the International Association of Professional Fire Fighters, was properly designated and recognized as the sole and exclusive bargaining agent for all Austin firefighters covered by the collective bargaining statute; and

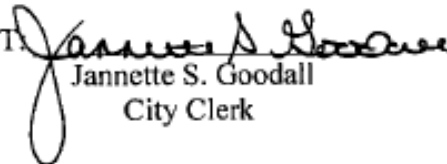
**WHEREAS**, negotiation teams for the City of Austin and the Austin Firefighters Association engaged in negotiations and reached an agreement which has been ratified by a majority of the members of the Austin Firefighters Association; **NOW, THEREFORE**,

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

The City Council ratifies the Agreement between the City of Austin and the Austin Firefighters Association in the form of attached Exhibit "A," said agreement to be effective beginning on October 1, 2017, and authorizes the City Manager to execute the Agreement.

ADOPTED: September 28. 2017

ATTEST

  
Jannette S. Goodall  
City Clerk

# EXHIBIT 10

|                                                                                   |                                                              |                                           |
|-----------------------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------------------|
|  | <b>AUSTIN FIRE DEPARTMENT</b><br><b>Policy and Procedure</b> | General Order Number<br><br><b>E111.2</b> |
| Subject:<br><br><b>Association Business Leave</b>                                 | Effective Date:<br><b>09-01-2011</b>                         | Rescinds:<br><b>1111.1</b>                |
|                                                                                   |                                                              | Page:<br><b>1 of 2</b>                    |
| Application:<br><br><b>Uniformed Personnel</b>                                    | Authorized by:<br><br>Rhoda Mae Kerr, Fire Chief             |                                           |

### I. Purpose

To define the administrative procedures for the implementation of Article 10, Section 2 of the Collective Bargaining Agreement (CBA). The Austin Association of Professional Firefighters shall herein after be referred to as the "Association".

### II. Background

The CBA states the Association Business Leave (ABL) pool shall be funded by the City of Austin contributing 5,600 hours during the first ten days of the calendar year. At the end of the calendar year, up to 1,000 hours may remain in the pool for use in the following year. However, at no time may the pool exceed 6,600 hours. The City and the Association shall track utilization of ABL.

### III. Policy

Requests for ABL shall comply with the provisions of the CBA.

### IV. Procedures

- A. Members must notify the Association President via email of their request for ABL. Request shall be made using the ABL Request form available on FireNet. Requests must include the member's name, TXFIR, assignment, dates of the request and the reason for the request.
- B. Once approved by the Association President, the request shall be forwarded via email to Fire Headquarters. The request shall be reviewed by a designee of the Fire Chief to verify the requested ABL is authorized by the CBA.



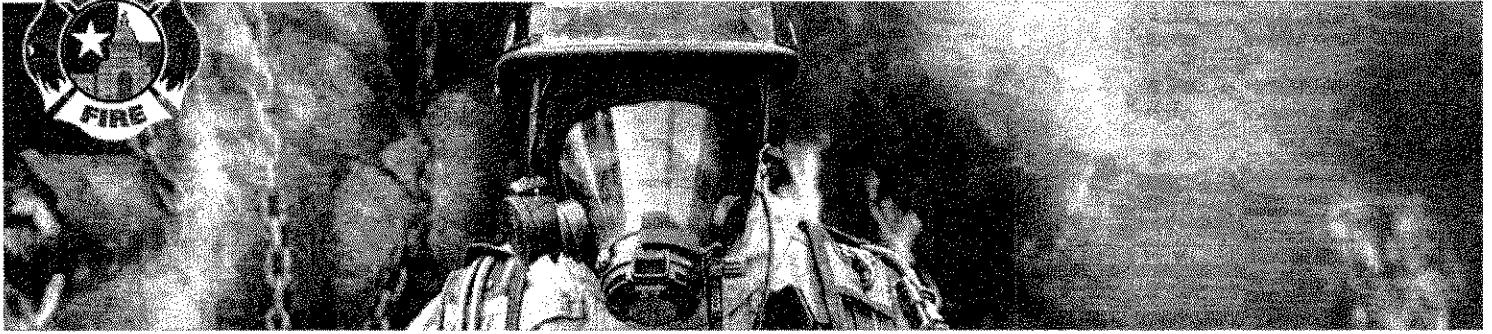
**Policy and Procedure**  
**E111.2 Association Business Leave**  
**Page 2 of 2**

- C. Requests for authorized ABL from the Association received by noon, three or more business days in advance of the requested time off are automatically approved, subject only to the operational needs of the Department. Fire HQ administrative staff will notify the appropriate chain of command, including Battalion Chief, Division Chief, and Assistant Chief.
- D. Requests from the Association received fewer than three business days in advance will be referred to the affected Assistant Chief/Division Chief, who will review staffing levels and determine whether or not the request can be approved.
- E. Members approved to use ABL should notify their BC or Section timekeeper when the ABL hours are to be used. When entering the time, timekeepers should select "Assoc. Bus. Leave", the corresponding reason code, and the amount of ABL used each day.
- F. Fire HQ Administrative Staff will maintain a record of all ABL requests and ABL time used.



# EXHIBIT 11

## MENU



## Purpose, Mission, Vision, Goals

### Purpose

The purpose of the Austin Fire Department is to protect and enhance the safety and well-being of those in our community.

### Mission

The Austin Fire Department is committed to creating safer communities through prevention, preparedness, and effective emergency response.

### Vision

We strive to be the best.

### Goals

- The Austin Fire Department will deliver comprehensive safety services of the highest quality.
- The Austin Fire Department will support and maintain a safe, healthy, well-trained, and high-performing workforce.
- The Austin Fire Department will provide high-quality first responder service as part of an integrated emergency medical care system.
- Austin firefighters will be community resources for life-safety knowledge and information about the Department's services.
- The Austin Fire Department will attract and retain a qualified and diverse workforce.

### Core Values

- Honor



- Respect
- Duty
- Loyalty
- Integrity
- Selfless Service
- Personal Courage

Our Core Values are fundamental to our individual and collective success.

## Austin Fire Department

4201 Ed Bluesstein  
Austin, Texas 78721  
P: 512.974.0292  
F: 512.974.0141

An Equal Opportunity Employer  
FireRecruiting@austintexas.gov

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# EXHIBIT 12

**COA880.001**



[illegible]

[illegible]



[illegible]











[illegible]

[illegible]





# EXHIBIT 13

MARK PULLIAM; JAY WILEY,

*Plaintiffs,*

And

TEXAS,

*Intervenor-Plaintiff,*

v.

CITY OF AUSTIN, TEXAS; MARC A.  
OTT, in his official capacity as City  
Manager of the City of Austin,

*Defendants,*

AUSTIN FIREFIGHTERS  
ASSOCIATION, LOCAL 975,

*Intervenor-Defendant.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419TH JUDICIAL DISTRICT

**PLAINTIFFS' JOINT OBJECTIONS AND RESPONSES  
TO DEFENDANT CITY OF AUSTIN'S FIRST SET OF INTERROGATORIES  
TO PLAINTIFFS MARK PULLIAM AND JAY WILEY**

**To:** Defendants City of Austin, Texas and Marc Ott, by and through their attorney of record, Sameer S. Birring and Hannah M. Vahl, City of Austin Law Department, P.O. Box 1546, Austin, Texas 78767-1546.

Pursuant to the Texas Rules of Civil procedure, Plaintiffs Mark Pulliam and Jay Wiley serve the following objections and responses to Defendant City of Austin's First Set of Interrogatories. Plaintiffs reserve the right to amend and/or supplement these responses.

**FIRST SET OF INTERROGATORIES TO PLAINTIFF**

**INTERROGATORY NO. 1:** What do You contend would be sufficient public control over ABL release time provisions to ensure that a public purpose is being accomplished?

**ANSWER:** Plaintiffs object to this interrogatory as calling for speculation, and as vague, overly broad, and not proportional to the needs of the case. Subject to this objection, Plaintiffs do not allege what would be sufficient public control. Public control must be maintained over the Association Business Leave ("ABL") expenditures to ensure

that a public purpose is accomplished and to protect taxpayers' investment. This includes reservations of control in the contract and policies governing ABL. Plaintiffs allege the current ABL lacks sufficient public control.

**INTERROGATORY NO. 2:** What do you contend would be sufficient consideration for the ABL Provision?

**ANSWER:** Plaintiffs object to this Interrogatory as calling for speculation and as vague, overly broad, and not proportional to the needs of the case. Subject to this objection, Plaintiffs do not allege what would be sufficient consideration. For a transfer of public funds to a private entity to be constitutional, there must be direct consideration. Moreover, there must be contractual obligations imposed on both parties for the ABL provisions at issue. Plaintiffs allege the current ABL lacks sufficient consideration.

**INTERROGATORY NO. 3:** If you contend that AFA members have misused ABL (that is, used ABL not in accordance with those uses which are contractually authorized under the CBA and collective bargaining agreement in place immediately prior to the CBA), identify each such use by the date of the alleged misuse, the individual or individuals who allegedly misused ABL, how ABL was allegedly misused, and which particular portion of the ABL Provision was allegedly violated.

**ANSWER:** Plaintiffs object to the term "misused" and provided definition as vague and ambiguous. Subject to this objection, Plaintiffs do not contend that ABL is misused under the terms of the CBA, but contend instead that Article 10 of the CBA itself violates the Texas Constitution because in exchange for ABL, the City of Austin ("City") receives inadequate consideration, exercises insufficient control, and the Austin Firefighters' Association ("AFA"), not the City, is the primary beneficiary of these expenditures.

**INTERROGATORY NO. 4:** If You contend that the performance of employee duties is not sufficient consideration for the CBA, state the full basis for such contention.

**ANSWER:** Plaintiffs object to this Interrogatory as vague and ambiguous. Subject to this objection, the extent the AFA, and not the City, receives the value of employees performing duties on ABL, then there is insufficient consideration.

**INTERROGATORY NO. 5:** State the full factual basis for Your contention at Paragraph 3 of Your Amended Original Petition in this Litigation that "taxpayers receive nothing in return" for the ABL Provision.

**ANSWER:** Plaintiffs object to this Interrogatory as improperly seeking they marshal their available evidence. Plaintiffs object to this Interrogatory as vague by misstating Plaintiffs' claims out of context. Under Article 10 of the CBA the AFA President and other City employees using ABL are not obligated to perform duties for the public, or give anything in return for the ABL hours that the AFA receives. Thus, absent contractual obligation, taxpayers receive no consideration for Gift Clause purposes for the City's ABL expenditures.

**INTERROGATORY NO. 6:** What is the dollar amount of taxes you have paid to the City of Austin since 2015?

**ANSWER:** Plaintiffs object to the Interrogatory as unduly burdensome and overly broad.

Subject to this objection, since 2015, Plaintiff Pulliam has paid \$28,915.14 in property taxes, a portion of which is directed to the City. Since 2015, Plaintiff Pulliam has also paid sales taxes on multiple transactions in the City, including the purchase of a vehicle in 2015 for which Plaintiff Pulliam paid \$835.84 in sales tax, a portion of which is directed to the City. However, Plaintiff Pulliam is unable to quantify a total amount of sales taxes paid to the City because he does not track the receipts of every purchase he has made within the City of Austin since 2015.

Subject to this objection, since 2015, Plaintiff Wiley has paid sales taxes on multiple transactions in the City, including the purchase of a vehicle in 2017 for which Plaintiff Wiley paid \$2,231.06 in sales tax, a portion of which is directed to the City. However, Plaintiff Wiley is unable to quantify a total amount of sales taxes paid to the City because he does not track the receipts of every purchase he has made within the City of Austin since 2015. For tax year 2018, Plaintiff Wiley will pay approximately \$15,409.53 in property tax, a portion of which is directed to the City.

Respectfully Submitted this 24th day of September, 2018,

/s/ Jonathan Riches  
JONATHAN RICHES  
Admitted *Pro Hac Vice*  
ADITYA DYNAR  
Admitted *Pro Hac Vice*  
litigation@goldwaterinstitute.org  
**Scharf-Norton Center for  
Constitutional Litigation at the  
GOLDWATER INSTITUTE**  
500 East Coronado Road  
Phoenix, Arizona 85004  
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*Attorneys for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has been served via email to all counsel of record listed below on this 24th day of September, 2018.

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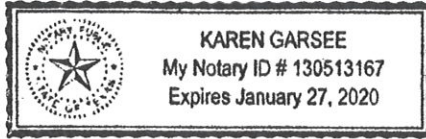
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/s/ Jonathan Riches  
JONATHAN RICHES

## VERIFICATION

STATE OF TEXAS     )  
                                  )  
COUNTY OF TRAVIS )



BEFORE ME, the undersigned notary public, on this day personally appeared JAY WILEY, who has proven to me to be the person whose name is subscribed to the foregoing instrument, and after being duly sworn by me, stated under oath that he has read the answers contained in Plaintiffs' Joint Objections and Responses to Defendant City of Austin's First Set of Interrogatories to Plaintiffs Mark Pulliam and Jay Wiley. He is familiar with the facts stated therein and knows the answers to those interrogatories, except for those setting forth legal contentions, to be true and correct based on his knowledge or information provided to him by other persons.

  
\_\_\_\_\_  
JAY WILEY

SWORN TO AND SUBSCRIBED BEFORE ME on this 22 day of Sept. 2018,  
to certify which witness my hand and seal of office.

  
\_\_\_\_\_  
Notary Public, State of Texas

## VERIFICATION

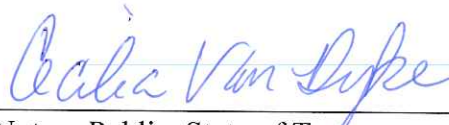
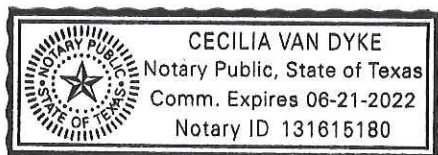
STATE OF TEXAS     )  
                                  )  
COUNTY OF TRAVIS )

BEFORE ME, the undersigned notary public, on this day personally appeared MARK PULLIAM, who has proven to me to be the person whose name is subscribed to the foregoing instrument, and after being duly sworn by me, stated under oath that he has read the answers contained in Plaintiffs' Joint Objections and Responses to Defendant City of Austin's First Set of Interrogatories to Plaintiffs Mark Pulliam and Jay Wiley. He is familiar with the facts stated therein and knows the answers to those interrogatories, except for those setting forth legal contentions, to be true and correct based on his knowledge or information provided to him by other persons.



MARK PULLIAM

SWORN TO AND SUBSCRIBED BEFORE ME on this 25 day of September 2018,  
to certify which witness my hand and seal of office.



Notary Public, State of Texas



# EXHIBIT 14

|                                |   |                                     |
|--------------------------------|---|-------------------------------------|
| MARK PULLIAM AND JAY WILEY,    | § | IN THE DISTRICT COURT               |
| Plaintiffs,                    | § |                                     |
|                                | § |                                     |
| &                              | § |                                     |
|                                | § |                                     |
| THE STATE OF TEXAS,            | § |                                     |
| Intervenor,                    | § |                                     |
|                                | § |                                     |
| v.                             | § | TRAVIS COUNTY, TEXAS                |
|                                | § |                                     |
| CITY OF AUSTIN, TEXAS;         | § |                                     |
| MARC A. OTT, IN HIS OFFICIAL   | § |                                     |
| CAPACITY AS CITY MANAGER OF    | § |                                     |
| THE CITY OF AUSTIN; AND AUSTIN | § |                                     |
| FIREFIGHTERS ASSOCIATION,      | § |                                     |
| LOCAL 975,                     | § |                                     |
| Defendants.                    | § | 419 <sup>TH</sup> JUDICIAL DISTRICT |

**DEFENDANTS CITY OF AUSTIN AND CITY MANAGER'S OBJECTIONS AND  
RESPONSES TO INTERVENOR- PLAINTIFF'S FIRST SET OF INTERROGATORIES**

To: Plaintiffs, by and through their attorneys of record, David Hacker, Office of Special Litigation, Attorney General of Texas, P.O. Box 12548, Mail Code 009. Austin, Texas 78711-2548

Pursuant to the Texas Rules of Civil Procedure, the City of Austin and City Manager Marc Ott (collectively, "City") serve the following objections and responses to Intervenor-Plaintiffs' ("Plaintiffs") First Set of Interrogatories. The City reserves the right to amend and/or supplement these responses.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY

MEGHAN RILEY, CHIEF OF LITIGATION

/s/ Hannah M. Vahl

Hannah M. Vahl

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**ATTORNEYS FOR DEFENDANTS CITY OF  
AUSTIN AND CITY MANAGER MARC OTT**

## **CERTIFICATE OF SERVICE**

I certify that on July 27, 2018, I served a copy of the foregoing document on the parties of record in compliance with the Texas Rules of Civil Procedure, as follows:

### **Via Email:**

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### **ATTORNEYS FOR INTERVENOR AUSTIN FIRE ASSOCIATION, LOCAL 975**

/s/ Hannah M. Vahl  
Hannah M. Vahl

**DEFENDANTS' REPSONSES TO  
PLAINTIFFS' FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify any person responding to or contributing to the responses to these Interrogatories.

**RESPONSE:** Assistant City Attorney Michael Cronig, Assistant Chief Aaron Woolverton, Public Safety Compliance Program Manager Carlyn Cheney.

**INTERROGATORY NO. 2:** Describe when the City first began giving association business leave to firefighters.

**RESPONSE:** The City objects to this interrogatory as argumentative, mischaracterizing facts or assuming facts not in evidence. The City does not “give” ABL to firefighters; it is part of a bargained-for exchange. Subject to and without waiver of the foregoing objections, ABL was a negotiated term of a duly negotiated and ratified meet and confer agreement with the Austin Firefighters Association Local 975 beginning with the 1997 meet and confer and continuing with the subsequent meet and confer and collective bargaining agreements.

**INTERROGATORY NO. 3:** Identify the City employee(s) who participated in the negotiation of the current CBA between the City and AFA.

**RESPONSE:** Fire Chief Tom Dodds, Assistant Chief Aaron Woolverton, Assistant City Attorney Michael Cronig, Labor Relations Officer Devin Desai, Deputy Labor Relations Office Sylvia Flores, Assistant Director Ronnelle Paulsen, Chris Jistel, the City’s lead negotiator Larry Watts, and outside counsel Denton Navarro Rocha Bernal & Zech, P.C., including partner Lowell Denton.

**INTERROGATORY NO. 4:** Describe the consideration exchanged between the City and AFA for association business leave.

**RESPONSE:** The consideration obtained by the City includes but is not limited to changes to Texas Local Government Code Chapter 143 in the areas of initial hiring, promotions, disciplinary investigations, disciplinary appeals, allowing for differences in base wages based upon seniority, longevity, certifications, education, specialized assignments, the designation of one Assistant Chief as a Chief of Staff whose pay and benefits may be different than other Assistant Chiefs, drug testing, and the ability to merge the Austin Fire Department with Travis County Emergency Services Districts. The consideration obtained by the Association includes but is not limited to changes to Chapter 143, including base wages, additional pays, benefits, promotions, discipline, ABL, a grievance procedure, leave, personnel deployment, overtime, and other terms and conditions of employment.

**INTERROGATORY NO. 5:** State the hourly rate(s) of pay used for association business leave hours.

**RESPONSE:** The City objects to this interrogatory as not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible evidence. The claim that

ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Additionally, the City objects to this interrogatory as overly broad, as the hourly rates of pay for each firefighter who was approved to use ABL will vary based upon the hourly rate of pay for each individual firefighter (rank and seniority) that was in effect at the time the leave was used.

**INTERROGATORY NO. 6:** State how much money the City has spent paying firefighters for association business leave from 2012 to the present day.

**RESPONSE:** The City objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Additionally, how the ABL release time provisions of the CBA were negotiated is not relevant to the issue of whether there was a bargained-for exchange for the CBA as a whole. The City further objects to this interrogatory as unduly burdensome as the City anticipates such calculation would require a calculation of what each firefighter who is approved for ABL earns, which differs by seniority and rank, metrics which may vary over time.

**INTERROGATORY NO. 7:** Identify the City employee(s) responsible for monitoring the use of association business leave by firefighters.

**RESPONSE:** The City objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Subject to and without waiver of the foregoing objections, ABL requests are currently routed through Assistant Chief Aaron Woolverton. Assistant Chief Woolverton reviews and approves the requests, routing them to the Association and through payroll. Public Safety Compliance Program Manager Carlyn Cheney then collects the monthly data and provides periodic reports to her chain of command and the Association as to leave balances and usage. In addition, each individual manager who has timekeeping responsibilities will have some responsibility in monitoring and reporting ABL usage.

**INTERROGATORY NO. 8:** Describe the mission of the City's Fire Department.

**RESPONSE:** The City's Fire Department has the following purpose, mission, vision, goals, and core values:

**Purpose**

The purpose of the Austin Fire Department is to protect and enhance the safety and well-being of those in our community.

**Mission**

The Austin Fire Department is committed to creating safer communities through prevention, preparedness, and effective emergency response.

## **Vision**

We strive to be the best.

## **Goals**

- The Austin Fire Department will deliver comprehensive safety services of the highest quality.
- The Austin Fire Department will support and maintain a safe, healthy, well-trained, and high-performing workforce.
- The Austin Fire Department will provide high-quality first responder service as part of an integrated emergency medical care system.
- Austin firefighters will be community resources for life-safety knowledge and information about the Department's services.
- The Austin Fire Department will attract and retain a qualified and diverse workforce.

## **Core Values**

- Honor
- Respect
- Duty
- Loyalty
- Integrity
- Selfless Service
- Personal Courage

Our Core Values are fundamental to our individual and collective success.

**INTERROGATORY NO. 9:** State the AFA business activities that directly support the mission of the City's Fire Department.

**RESPONSE:** The AFA is an organization that represents firefighters to deal with the City as an employer concerning grievances, labor disputes and conditions of employment affecting those firefighters. Good labor relations between the City and the AFA, including a duly negotiated and ratified labor agreement, is integral in AFD achieving its purpose, mission, vision, goals and core values.

**INTERROGATORY NO. 10:** Identify any documents that account for the use of association business leave hours from inception of ABL through 2012-2013.

**RESPONSE:** The City objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Subject to and without waiver of the foregoing objections, the City maintains payroll records, spreadsheets, and reports that reflect usage of ABL.

**INTERROGATORY NO. 11:** Identify all City firefighters who used association business leave from inception of ABL through 2012-2013 and for what purposes they used it.

**RESPONSE:** The City objects to this interrogatory as compound. The City further objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Subject to and without waiver of the foregoing objections, see COA 15–21.

**INTERROGATORY NO. 12:** Identify all CBA-approved political activities City firefighters engaged in from inception of ABL through 2016 using association business leave.

**RESPONSE:** The City objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone.

**INTERROGATORY NO. 13:** Describe the criteria, standards, or factors the City uses to determine whether association business leave requests are authorized by the CBA.

**RESPONSE:** The criteria, standards, and factors are set forth in Article 10 of the CBA.

**INTERROGATORY NO. 14:** Describe the criteria, standards, or factors the City uses to determine if requested association business leave constitutes a prohibited political activity as described in Article 10 of the CBA.

**RESPONSE:** The criteria, standards, and factors are set forth in Article 10 of the CBA.

**INTERROGATORY NO. 15:** Identify each and every past instance where the City discovered that association business leave was used (intentionally or inadvertently) for prohibited political activity described in Article 10 of the CBA.

**RESPONSE:** The City objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Subject to and without waiver of the foregoing objections, the City is currently unaware of any such use.

**INTERROGATORY NO. 16:** For each instance described in your answer to Interrogatory No. 15, please describe the efforts or remedies undertaken to restore to the City and its taxpayers the value lost.

**RESPONSE:** The City objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided.



Even if it has not, it may be decided on the pleadings alone. Subject to and without waiver of the foregoing objections, not applicable.

**INTERROGATORY NO. 17:** Describe how the City controls and directs the day-to-day activities of AFA's president.

**RESPONSE:** The City objects that this interrogatory is vague as it is unclear what is intended by "controls" and "directs." The City further objects that this interrogatory is vague and overly broad in that it is not limited to the AFA President's activities while on ABL. The City additionally objects to this interrogatory on the ground that the discovery sought is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible information. The claim that ABL violates the Gift Clause has already been decided. Even if it has not, it may be decided on the pleadings alone. Subject to and without waiver of the foregoing objections, the AFA President is required to report ABL hours used. Additionally, the AFA President would be held to the AFD Code of Conduct while on ABL.

**INTERROGATORY NO. 18:** Describe the basis of the City's position that it is immune from suit and immune from liability.

**RESPONSE:** The City's contentions regarding its immunity are set forth in the City's pleas to the jurisdiction filed in this case, which are incorporated by referenced as though fully set forth herein.

# EXHIBIT 15

3. The Excel document with the name “COA 880 ABL Data Dump (ABL)” is a true and correct copy of the data from all Association Business Leave (“ABL”) requests submitted through the survey program Formsite for the time period August 12, 2015 through December 12, 2018. This record, and the data contained in it, is kept in the regular course of the City of Austin Fire Department’s business, it was the regular course of business of the City of Austin Fire Department for an employee with knowledge of the act or event recorded to make the record or to transmit

information thereof to be included in such record, and the record was made at or near the time of the act or event recorded or reasonably soon thereafter.

My name is Carlyn K. Cheney, and I am an employee of the City of Austin. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in Travis County, State of Texas, on this the 25th day of January, 2019.

  
Carlyn K. Cheney

# EXHIBIT 16

  
Sameer S. Birring