



**ARTICLES OF AGREEMENT
BETWEEN**

**THE CITY OF BROWNSVILLE, TEXAS
AND**

**FRATERNAL ORDER OF BROWNSVILLE POLICE OFFICERS, INC.
DOING BUSINESS AS THE**

**BROWNSVILLE POLICE OFFICERS'
ASSOCIATION
CHARTER NO. 290577**

**FOR FY 2008-2009
THROUGH FY 2013-2014
(Executed April 21, 2009)**

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**LABOR AGREEMENT BETWEEN THE
CITY OF BROWNSVILLE, TEXAS &
THE BROWNSVILLE POLICE OFFICERS' ASSOCIATION
FY2008-09 THROUGH FY 2013-14**

PARTIES, PURPOSE, PREMISES, & SCOPE

ARTICLE 1. PURPOSE OF AGREEMENT

Section 1. This Agreement is between the CITY OF BROWNSVILLE, TEXAS (hereafter "City") and THE FRATERNAL ORDER OF BROWNSVILLE POLICE OFFICERS, INC. d/b/a Brownsville Police Officers' Association, Charter 290577-01 (hereafter "the "Association" or "BPOA").

Section 2. This Agreement is recorded in written form as required by The Texas Fire and Police Employee Relations Act, Chapter 174, Texas Local Government Code (hereafter "TLGC").

Section 3. The intent of this Agreement is to comply with the requirement that the City provide compensation and conditions of employment in accordance with the requirements of the Texas Fire and Police Employee Relations Act, Chapter 174, Local Government Code.

Section 4. This Agreement is also intended to provide for a equitable and harmonious procedures for the resolution of differences in accordance with the grievance procedures specified herein.

ARTICLE 2. RECOGNITION & AUTHORITY CLAUSE

Section 1. The City recognizes the Association as the sole and exclusive bargaining agent for the unit consisting of sworn, certified, full-time paid employees who regularly serve in a professional law enforcement capacity with the City's Police Department, excluding the Police Chief.

Section 2. The Association recognizes the City Manager or his designated representative or representatives as the sole representative of the City for the purpose of collective bargaining. The Association and the City agree to bargain in good faith in all matters presented by either party for collective bargaining.

ARTICLE 3. DURATION - EVERGREEN CLAUSE

Section 1. This Agreement shall be effective upon execution and shall remain in full force and effect beginning on its effective date, as defined below, through September 30, 2014, or until a successor agreement is reached, whichever is later.

Section 2. The effective date of this Agreement except Article 29, shall be the date after which the terms of this Agreement have been approved by the police bargaining unit, as well as upon satisfaction of any and all other conditions imposed by the City Commission to implement this Agreement.

Section 3. Either party shall notify the other in writing by April 1st of any year in which the contract expires that it desires to modify the Agreement.

Section 4. In the event that such notices are given, negotiations shall begin no later than May 1st of that year.

ARTICLE 4. SAVINGS CLAUSE

Section 1. If any provision of this Agreement or application of such provision should be rendered or declared invalid by any court of competent jurisdiction or by any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect for the duration of this Agreement.

ARTICLE 5. COMPLETE AGREEMENT & WAIVER

Section 1. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, 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 life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement.

ARTICLE 6. NO STRIKE, NO LOCK-OUT

Section 1. Neither the Association, its officers or agents, nor any of the employees nor City management, City official, including elected officials or any employee of the City of Brownsville covered by this agreement, will engage in, encourage, sanction, support or suggest any strikes, slow downs, mass resignations, mass absenteeism, the willful absence from one's position, stoppage of work or the absence in whole or in

part of the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing or coercing change in the conditions or compensation or the rights, privileges or obligations of employment.

Section 2. In the event that an employee or agent of the City violates this Article, the Association President or City Manager shall immediately notify any such employee or agent of the City in writing to cease and desist from such action and shall instruct them to immediately return to their normal duties. Any or all employees who violate any of the provisions of this Article may be discharged or otherwise disciplined. The City and the Association reserve the right to pursue any and all legal remedies available in the event of a violation of this Article.

ARTICLE 7. STATUTORY OVERRIDE PROVISIONS; CIVIL SERVICE RULES

Section 1. The provisions of this Agreement preempt all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.

Section 2. It is the specific intent of the PARTIES to this Labor Agreement, that any express written provision that specifically provides for a procedure, a standard, or a practice other than what is provided for in the Civil Service Statutes, Chapters 141 through 143, TLGC, is intended to override the applicable statutory provision as allowed by Chapter 174, TLGC.

ARTICLE 8. RELATIONSHIP TO OTHER LAWS, RULES & POLICIES

Section 1. Civil Service Law. The PARTIES understand and agree that under the provisions of §174.006, Texas Local Gov't Code, that a state or local civil service provision prevails over a collective bargaining contract negotiated under Chapter 174 unless the collective bargaining contract specifically provides otherwise.

Section 2. Other Laws. Nothing in this agreement is intended to detract from any rights, privileges, duties that an individual bargaining unit member may have under civil rights or anti-discrimination laws, whether state or federal, which a public employee would otherwise have in the absence of this Labor Agreement.

Section 3. Other Rules & Regulations. The duly adopted Civil Service Rules & Regulations, Police Department Standard Operating Rules, Procedures and General Orders, shall continue to apply and be enforced by management, except as otherwise specifically provided for in this Labor Agreement. See §174.006(a), TLGC.

ARTICLE 9. MANAGEMENT RIGHTS

Section 1. Except as otherwise specifically provided in this Agreement, the Association recognizes that the City has the sole and exclusive right to exercise all the rights or functions of management. The term "rights or functions of management" shall include but not be limited to:

- A. Direct the work of its employees to include the scheduling and assignment of overtime work.;
- B. Hire, promote, demote, transfer, assign and retain employees in positions within the City, subject to applicable Civil Service regulations;
- C. Suspend or discharge employees for just cause;
- D. Maintain the efficiency of governmental operations;
- E. Relieve employees from duties because of lack of work or other reasons subject to Civil Service regulations;
- F. Utilize the Police Department in emergency situations to protect life and property.
- G. Determine the methods, processes, means, and personnel by which operations are to be carried out;
- H. The determination of safety, health and property protection measures for the Police Department.
- I. The selection, promotion, or transfer of police officers to supervisory or other managerial positions subject to the provisions of Chapter 143, Local Government Code.
- J. The determination of policy affecting the selection or training of police officers.
- K. The establishment, modification, and enforcement of police department rules, regulations and orders.
- L. The transfer of work from one position to another within the Classified Service of the Police Department subject to the provisions of Chapter 143, Local Government Code.
- M. The transfer of police officers from one house, district, or subdivision to another.
- N. The scheduling of operations and the determination of the number and duration of hours of assigned duty per week.

Section 2. Management rights as herein referred to shall not be exercised in an arbitrary or capricious manner.

ARTICLE 10. MAINTENANCE OF STANDARDS

Section 1. All standards, privileges and working conditions enjoyed by the City of Brownsville police officers at the present time which are not included in the Agreement shall remain unchanged for the duration of the Agreement, so long as those standards, privileges and working conditions do not interfere with the operation of the department as determined by the management. The City agrees that it will not diminish the strength of the Police Department during the term of this Agreement.

Section 2. The Employer has the right to create and implement departmental rules and regulations. Employees shall receive copies of such rules and regulations upon publication. The Association may be called upon by the Police Chief to provide information and advice concerning the Police Chief's decision-making process regarding such rules and regulations. Such rules and regulations are to be provided within a reasonable time. A copy of any rule change shall be posted in the common area at least 15 days prior to the effectiveness of the rule change. A copy of any rule change shall also be delivered to the President of the Association.

ARTICLE 11. PROFESSIONAL STANDARDS & PRODUCTIVITY

Section 1. The Association agrees that the employees which it represents should individually and collectively perform loyal efficient service; that it will uphold high standards of professionalism and safety practices; that it will help to minimize absenteeism, tardiness, carelessness, and any other conditions which adversely affect or hamper the efficiency of operations of the City; and that it will cooperate in promoting and advancing the morale of its employees and the welfare of the City.

Section 2. The parties recognize that delivery of essential protective services in the most efficient and effective manner is of paramount importance and interest to the City and the Association. Maximized productivity is recognized to be a mutual obligation of both parties. Work procedures, schedules and assignments may be established and/or revised from time to time at the discretion of the Chief and the City so long as no right under this Agreement is violated.

ACCOMODATIONS FOR ASSOCIATION ACTIVITY

ARTICLE 12. ASSOCIATION ACTIVITY

Section 1. The City recognizes the Association as the sole and exclusive bargaining agent for the unit consisting of sworn, certified full-time paid employees who regularly serve in a professional law enforcement capacity with the City's Police Department, excluding the Police Chief.

Section 2. The Association recognizes the City Manager or his designated representative or representatives as the sole representative of the City for the purpose of collective bargaining. The Association and the City agree to bargain in good faith in all matters presented by either party for collective bargaining.

Section 3. Neither the Association, nor its officers, agents, representatives, or members will intimidate, interfere with, or coerce police officers. No Association activity or Association business of any kind will be carried on during working hours or on City property without express permission in advance from the Chief of Police. Violation of this section by any police officer shall be just cause for disciplinary action. Failure of the City to enforce any of the provisions of this section in any one or more instances shall not be considered a waiver of any of the provisions of this section.

Section 4. No police officer shall be discharged, disciplined, or discriminated against because of activity on behalf of the Association which does not interfere with the discharge of his duties or any assignments, or violate any of the provision of this Agreement.

Section 5. The Association shall endeavor to conduct all necessary Association business during non-working time of the greatest number of police officers required for such business, to the greatest extent possible.

Section 6. The six officers of the Association (President, Vice-Presidents, Secretary and Treasurer) shall be granted leave from duty with pay for all membership meetings of the Association when such meetings take place at a time during which such officers are scheduled to be on duty, provided that such absences shall not interfere with the operation of the Department. The leave with pay shall be limited to one meeting per month not to exceed two (2) hours per meeting.

Section 7. The three elected delegates of the Association negotiating committee shall be assigned to the day shift on any bargaining meeting dates and shall be granted leave from duty with full pay for all meetings between the City and the Association for the purpose of negotiating the terms of an agreement. Negotiation meeting time shall encompass an hour ahead and an hour behind a regularly scheduled meeting.

Section 8. The elected delegates, officers or members of the Association shall be granted leave from duty with full pay to attend Association activities. Such leave with pay shall not exceed a total of two hundred fifty (250) days during this six-year contract term. All such requests shall be directed to the Police Chief or his designee by the BPOA President.

Section 9. The Police Chief may assign the BPOA President to the day shift where the Chief believes it would facilitate effective labor/ management relations.

Section 10. The Association, as the legally recognized bargaining agent for Brownsville police officers shall have the sole and exclusive right to conduct the following activities:

- A. Sole and exclusive right to maintain a union bulletin board at the Police Department;

- B. Sole and exclusive right to payroll deduction of dues as set out in that Article;
- C. Sole and exclusive right to make presentation to new recruits of up to one (1) hour in length during the first and last week of academic instruction; and
- D. Sole and exclusive right to conduct a one (1) hour class of instruction to new cadets regarding the contract and labor relation issues.
- E. Sole and exclusive right to use police facilities to conduct meetings. Other organizations that purport to represent police officers are not prohibited from using other, non-police city facilities under the same conditions that any other organization would be allowed to use such facilities.

Section 11. No other organization that purports to represent police officers in employment matters shall be permitted to engage in any of the above activities on City property or, if a City employee, while on duty.

Section 12. The Association shall indemnify, defend and hold the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or as a result from any conduct taken by the City for the purpose of complying with this Article.

ARTICLE 13. PAYROLL DEDUCTION OF DUES

Section 1. The City shall deduct on a regular basis dues from the pay of all police officers who hereafter voluntarily authorize such deduction in writing on a form provided for this purpose by the Association:

- A. The amount of Union dues will be uniformly assessed against all police officers who are Association members;
- B. Each authorization given under this section shall state that it is irrevocable for a period of one (1) year or until the termination date of this Agreement, whichever occurs sooner, and is automatically renewable for another year unless written revocation of check-off authorization is given to the City during the Thirty (30) day period immediately preceding the end of the period of irrevocability;
- C. The Association initially notifies the City as to the amount of dues to be deducted. Such notification will be certified by the City in writing over the signature of the authorized officer or officers of the Association.

Section 2. The Association shall indemnify, defend and hold the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or as a result from any conduct taken by the City for the purpose of complying with Section 1 of this Article.

Section 3. It is understood by the City and the Association that payroll deduction of dues described above shall be only for the period of the existence of an executed Agreement between the City and the Association. The City shall not grant payroll

deduction to any employee organization that is eligible to be the bargaining agent for Brownsville police officers without the expressed written consent of the Association.

Section 4. The Association shall be entitled to specify one additional payroll deduction which shall be the same for all employees who exercise this option.

Section 5. The City is committed to compliance with this requirement to the extent applicable under 141.008, TLGC, so long as the City preserves any rights allowed to it under the statute.

ARTICLE 14. BULLETIN BOARDS

Section 1. The City shall permit the Association reasonable space for bulletin boards in each of the respective police stations at the Association's cost. The City shall not grant approval of a bulletin board to any employee organization eligible to be the bargaining agent for Brownsville police officers without the express written permission of the Association.

Section 2. The Association will only post notices of Association meetings, Association recreational and social affairs, notices of Association elections and appointments and results of Association elections, all of which pertain to the Association, provided that such notices are first approved by the Chief of the Department. Any postings of an inflammatory nature are expressly prohibited. There shall be no posting regarding any political candidate or candidates nor of any political matter as per the authority of Section 143.071 and 143.086, TLGC.

ARTICLE 15. LABOR RELATIONS COMMITTEE

Section 1. There shall be a labor relations committee made up of three representatives of the Association and three designees of the City, including the Police Chief. This committee shall meet at mutually agreeable times and places; provided, however, at least three (3) meetings per year will be held.

Section 2. The purpose of these meetings shall not be to engage in collective bargaining or grievance handling but shall be to improve communications between the Association and the Administration. The meetings held under this provision shall not be public and shall not be for the purpose of abusing or attacking any person.

CLASSIFICATION PROVISIONS

ARTICLE 16. CLASSIFICATIONS & POSITIONS

Section 1. Wages and salary shall be implemented in accordance with the provisions of this Article and the City Ordinance implemented by the City Council to accept and ratify this Agreement.

Section 2. In the event that the City creates new rank classifications, they shall be implemented in compliance with Chapter 143 of the TLGC and the Parties to this Agreement shall re-open the contract for the sole purpose of negotiating compensation, hours and other conditions of employment for the new rank classifications. In the event that the City eliminates a rank classification, such elimination shall be comply with all provisions of Chapter 143 of the TLGC.

Section 3. The current rank structure and salary classification is that set out in the Wages & Salaries Article of this labor agreement.

ARTICLE 17. COMMANDER POSITIONS

Section 1. The Police Chief may appoint each person occupying an authorized position in the classification immediately below that of the Police Chief. The total number of persons appointed to the classification immediately below the Police Chief may not exceed three (3). A person appointed to such position must:

A. Be employed by the municipality's police department as a sworn police officer;

B. Have at least five years continuous service in that department as a sworn police officer; and.

C. Be certified by the Texas Commission on Law Enforcement Officer Standards and Education at the Master Peace Officer level, or have attained and Advanced Peace Officer Certification and Associate's degree or 65 college hours from an accredited college or university and must have served as a bona fide law enforcement officer for at least ten years; and,

D. Must be serving in the highest existing civil service rank below that of the Chief of Police at the time of appointment.

- 1) This last provision shall be prospective only and does not apply to any of the existing appointees holding the title and position of Commander at the time of execution of this labor agreement.

Section 2. A person appointed under this section serves at the pleasure of the Police Chief and, notwithstanding any other provision of this agreement, all wages, hours, benefits and other conditions of employment regarding such position shall be subject to change or creation by the Police Chief in his sole unfettered discretion.

Section 3. A person removed from the position by the Police Chief shall be reinstated in the department and placed in the same classification, or its equivalent, that the person held before appointment. The person retains all rights of seniority in the department.

Section 4. If a person appointed under this section is charged with an offense in violation of civil service rules and indefinitely suspended, the person has the same right and privileges of a hearing before the commission in the same manner and under the

same conditions as a classified employee. If the commission, a hearing examiner, or a court of competent jurisdiction finds the charges to be untrue or unfounded, the person shall immediately be restored to the same classification, or its equivalent, that the person held before appointment.

ARTICLE 18. PROMOTION ASSESSMENT CENTER

Section 1. The Chief of Police may submit a proposal for creating an assessment center provision for use in any or all promoted ranks, if such proposal is submitted the Association agrees to meet for the purpose of reaching agreement on the proposal and may submit any tentatively agreed to proposal to its membership for ratification. If the proposal is ratified by the membership, it shall become a part of this Agreement for the term of the Agreement.

ARTICLE 19. SERGEANTS' PROMOTIONAL ELIGIBILITY

Section 1. The parties agree that a police officer must have been a Brownsville police officer for a period of five (5) years immediately preceding the written test in order to be eligible to compete in the promotional procedure for the position of sergeant.

ARTICLE 20. PROBATIONARY PERIODS & PRECEDENCE

Section 1. Persons receiving appointment to the Police Department shall serve a probationary period of twelve (12) consecutive months. During such probationary period, the employee may be dismissed by the Police Chief for any reason and without appeal. Upon completion of the probationary period, continuous service for purpose of seniority shall start from the date of the initial employment.

Section 2. At the completion of twelve (12) month probationary period, the police officer will officially become a Civil Service employee. Upon the completion of the first twelve (12) months, the officer will be eligible for a longevity increase. Longevity increases thereafter shall be applicable as specified by Section 141.032, Local Government Code.

SALARY, WAGES, FISCAL BENEFITS

ARTICLE 21. SALARY & WAGES (RE-WRITTEN)

Section 1. Base Pays:

Ranks & Patrol Grades	Base pay as of October 1, 2008
Commanders (appointed)	(Chief's Discretion)
Lieutenant	\$60,192
Sergeants	\$52,340
Patrol IV (4 yrs & up)	\$45,513
Patrol III (3 to 4 yrs)	\$43,124
Patrol II (2 to 3 yrs)	\$38,000
Patrol I (1 to 2 yrs)	\$35,328
Probationary (0 to 1 yr)	\$28,131

- A. FY 2008-09: 0% to base pay; all ranks;
- B. FY 2009-10: 0% to base pay; all ranks;
- C. FY 2010-11: 0% to base pay; all ranks;
- D. FY 2011-12: 3% to base pay; all ranks, except for Sergeants, who shall receive 4.9% to base pay;
- E. FY 2012-13: 3% to base pay; all ranks, except for Sergeants, who shall receive 4.9% to base pay;
- F. FY 2013-14: 3% to base pay; all ranks.

Section 2. Longevity Pay

- A. Calculated pursuant to Section 141.032, TLGC

Section 3. Seniority Pay

- A. The seniority pays shall continue in accordance with the following table; provided, however, that seniority pays shall be paid on a pro-rata basis:

Seniority Years Of Service	Seniority Pays Per Year (Pro-Rated)
6 Years	\$1,200
8 Years	\$3,000
12 Years	\$4,040
16 Years	\$5,080
20 Years	\$6,120

Section 4. Certification Pay

A. Master Peace Officer: The City shall pay each member of the classified service of the Police Department holding a master peace officer certificate granted by the Texas Commission on Law Enforcement Officer Standards and Education the sum of \$225.00 per month.

B. Advanced Certificate: The City shall pay each member of the classified service of the Police Department holding an advanced certificate granted by the Texas Commission on Law Enforcement Officers Standards and Education the sum of \$175.00 per month.

C. Intermediate Certificate: The City shall pay each member of the classified service of the Police Department holding an intermediate certificate granted by the Texas Commission on Law Enforcement Officers Standards and Education, the sum of \$120.00 per month.

Section 5. Assignment Pays (various types):

A. Investigative duties. Effective October 1, 2002, employees assigned to investigative duties, specifically identified as SIU, Training, Internal Affairs, Property/ Evidence, Jail, Communications and CID shall be paid an additional \$.50 (fifty cents) per hour assignment pay while in those assignments. Effective October 1, 2003, this assignment pay shall be increased to a total of \$1.00 (one dollar) per hour.

- 1) Assignment pay under this Section shall not apply to employees who may be temporarily assigned to these duties solely for the convenience of the employee for purposes of recuperation from injury or illness, etc.

B. Tactical Team.

- 1) Effective October 1, 2004, employees assigned to the Tactical Team shall be paid an additional \$25.00 per pay period as special service pay.

C. Any Other Existing Assignment Pays.

- 1) same as in previous contract, if any

Section 6. Shift Differential Pay

- A. Officers assigned to the uniform services (patrol duties), whose shift begins at 10:45PM and ends at 6:45AM shall be paid an additional \$1.00 (one dollar) per hour shift differential for those hours worked.

Section 7. Amortized Supplemental Pay. In addition to the foregoing pays, the City shall pay an amortized supplemental pay in the amounts indicated below to each member of the bargaining unit, other than Probationary Officers and the Commanders. This pay shall be paid out in a pro-rated formula throughout each fiscal year, and shall constitute a supplemental pay only for the fiscal year in which it is denominated, and shall not be cumulative.

- A. \$2,400.00 per fiscal year

B. If this labor agreement has not been superseded by a new or modified agreement by the conclusion of its stated term, thereby triggering the evergreen provisions of this labor agreement, the amortized supplemental pay provisions specified above shall be continued on a pro-rata basis into the subsequent fiscal year, and thereafter, and such pro-rata payments under this category of pay shall remain in effect unless and until superseded by a new or modified agreement ratified between the parties.

Section 8. The foregoing pay provisions shall be prospective only and shall be implemented on a pro-rata basis beginning with the first full pay period after ratification of this labor agreement by both parties and when all conditions to its effectiveness have been triggered.

ARTICLE 22. PAID TIME OFF - SICK LEAVE

Section 1. Sick leave for persons covered by this Agreement shall accrue only as specified under Section 143.045, TLGC.

Section 2. Sick leave is a privilege that is to be used for the sole purpose of providing wage continuation when an employee is incapacitated due to a bona fide illness, medical treatment, for exposure to contagious disease when the employee's presence and duties may jeopardize the health of others, and for attending to immediate family members (father, mother, spouse, son or daughter) who are sick or injured or as otherwise allowed by FMLA.

Section 3. Sick leave may not be used for any purpose other than stated in this Article. Example of this would be sick leave used in conjunction with any other vacation or leave of absence. The Chief may require that employees report by telephone or other means prior to scheduled work shift if they are ill and cannot be physically present for work. Failure to report will result in the employee being on an “unauthorized absence” and may result in disciplinary action.

Section 4. The Chief may not deny sick leave payment if an employee is in compliance with Section 2. above, but may require that a doctor’s statement be presented by any employee absent for over a consecutive 48 hour period, whether duty or off-duty hours, and reserves the right of verification to ascertain whether a bona fide illness exists as specified in Section 143.045, TLGC.

Section 5. If an employee is found to be in violation of this Article that employee may be disciplined by the Chief.

Section 6. Administrative disputes over abuse of sick leave privileges may be administratively appealed to the Civil Service Commission, whose decision shall be final.

Section 7. Sick leave will not be paid or accrued for any period of absence if an employee becomes incapacitated due to the use of illegal drugs or narcotics or the excessive use of drugs or alcohol.

Section 8. Accumulate sick leave will be paid to terminating personnel based on the following:

<u>Years of Service</u>	<u>Days Paid</u>
1-5	15
6-10	30
11-15	60
16-19	90
20-21	130
22-23	160
24	200
25+	240

Section 9. Employees will be allowed to convert unused vacation time to sick leave subject to the following restrictions:

A. Employees will be notified on or about August 1 of each year of any unused vacation time subject to conversion to sick leave. Employees may schedule such time off through the following January 1.

B. If an employee is unable to schedule such time off, an additional ninety (90) day period will be allowed for use of such time. Employees who are denied use of the unused vacation time during the extended period may agree with the Police Chief to have the unused vacation time paid in cash in lieu of conversion to sick leave.

Section 10. Beginning January 1, 2001, any officer who completes a calendar year and does not use any sick time shall be credited with two (2) additional vacation days.

Section 11. After the effective date of this labor agreement, no employee shall accrue sick leave beyond 240 days; provided, however, that any employee who has at the time this contract an accrual in excess of 240 days shall retain those accrued days, but shall not continue to accrue any additional days unless and until the number of accrued days should fall below 240 days, at which time the employee shall be subject to the maximum accrual contained in this labor agreement.

ARTICLE 23. SICK LEAVE DONATION

Section 1. The City hereby gives a member of the bargaining unit the authority to donate his or her accrued sick leave time for the benefit of another bargaining unit member upon written request of a donating member to the Chief of Police.

Section 2. It is agreed by the parties that the purpose of this Article is to provide additional sick leave benefits to a member in the event of a serious health condition as defined by FMLA.

Section 3. The donating member who elects to donate accrued sick leave to another member, recognizes and agrees that the donated leave shall be deducted from his/her accrued sick leave account and shall not be refunded. Donations shall be in increments of no less than one hour.

Section 4. The Association represents and agrees that it has the authority, as the duly recognized bargaining agent, to bind individual members of the bargaining unit to the terms of this Article. It further agrees to indemnify and otherwise hold the City harmless from any administrative, judicial, or contractual complaints that may be raised by individual members in connection with this provision.

ARTICLE 24. PAID TIME OFF – ANNUAL LEAVE

Section 1. Annual leave shall accrue according to the following schedule:

<u>Years of Service</u>	<u>Accrual Rate</u>
1-7	15 per year
8-11	18 per year
12-15	19 per year
16+	20 per year

Section 2. Employees who terminate employment with the City for any reason shall be paid for annual leave at a maximum of fifteen (15) days accrued.

ARTICLE 25. HOLIDAYS & HOLIDAY PAY

Section 1. The following days shall be treated as holidays for purposes of this Agreement:

- 1) New Year's Day – (January 1st);
- 2) Martin Luther King Day;
- 3) Good Friday;
- 4) Memorial Day,
- 5) Independence Day (July 4th);
- 6) Labor Day;
- 7) Veteran's Day;
- 8) Thanksgiving Day;
- 9) Thanksgiving Friday; and,
- 10) Christmas Day (December 25th).

Section 2. No other holidays that the City may chose to recognize during a given fiscal year shall be paid to bargaining unit members nor shall they be treated as a holiday for purposes of this Agreement.

Section 3. In addition to their regular rate of pay, Employees shall be paid at the rate of time and a half (1-1/2) for the holidays listed above, regardless of whether the Employee actually works on the holiday listed above.

Section 4. Payment of holiday pay shall be deferred to the first business day in December.

A. Provided, however, that holidays already paid at the implementation of this Agreement shall not be paid again; and,

B. Provided further that holiday pay shall include payment for only those holidays that have occurred prior to the payment date, with the exception of the Christmas holiday for that year, which shall be paid in advance.

Section 5. The City and the Association agree that funds representing holiday pay may be deposited by the City in a special escrow account with a banking institution prior to date of disbursement.

Section 6. In the event that an officer calls in sick on a holiday, and has not called in sick the workday before or after the holiday, that officer must submit a U.S. doctor's certificate as a condition to being paid the holiday pay for the holiday. This Section does not diminish the Chief's rights under the Article related to Sick Leave contained in this Agreement.

ARTICLE 26. ACTING PAY

Section 1. Whenever a police officer is required to serve as an acting supervisor (sergeant or above) for a minimum of four (4) full consecutive days, the officer shall be compensated at the rate for that position or rank while so acting. The higher pay will be authorized, along with the officers' normal longevity pay, upon the completion of the fourth full working day in the acting rank and shall be retroactive to the first day in which the acting rank was authorized and assumed.

Section 2. All acting assignments will be offered on the basis of qualifications and requirements for such assignment in the judgment of the Chief or his designated representative.

ARTICLE 27. CIVIC DUTIES; PAID TIME FOR VOTING

Section 1. Pursuant to the provisions of federal, state and local laws, an employee whom the Chief determines does not have sufficient time outside his working hours within which to vote shall be given time off with pay to vote in any federal, state or local election. Such time off taken shall not exceed two (2) hours and shall be taken at hours specified by the Chief.

ARTICLE 28. CIVIL EMERGENCY

Section 1. In event that a warning is issued by the weather bureau of a pending natural disaster (hurricane, flood, and tornado) it shall become the duty of every officer to comply with applicable rules including contact, via telephone or in person, to the commander in charge or the shift commander to find out what shift he or she is assigned to. It is presumed that the officers are aware of news and pending weather that affect our City and is no defense that they were not aware of the pending dangers.

Section 2. The City shall, in the event that officers are assigned to work through a natural disaster and in the ensuing time of havoc, take reasonable measures under the circumstances to provide food, water and sanitary facilities to these officers on duty.

Section 3. Negotiated Pay. Work performed during an emergency as declared by the Police Chief shall be paid a negotiated rate of time and a half, regardless of whether an overtime rate is required by state or federal law, provided such time occurs during a period officially declared by appropriate state and federal authorities as a recognized disaster.

OTHER EMPLOYMENT BENEFITS

ARTICLE 29. HEALTH CARE BENEFITS

Preamble regarding effectiveness of this Article. The Association agrees to the following changes to health care benefits upon execution of this Agreement. The changes will take effect on October 1, 2009. If at any time during the term of this agreement, the City voluntarily negotiates health care benefits with the fire fighters which are more favorable to the firefighters than provided by the plan contained in this Article, the Association will receive health care benefits equal to that agreement negotiated with the firefighters beginning on the effective date of that agreement.

Section 1. The bargaining unit agrees to go from a 90/10 in network plan to an 85/15 in network plan, and the bargaining unit agrees to go from a 70% non network plan to a 65% non network plan.

Section 2. The City shall provide health care benefits to each full time member of the bargaining unit. Each employee shall contribute \$114.38 per month for the family plan and \$89.82 for the employee and one (1) dependant plan. The employee contribution for single coverage shall be \$15.00 per month. In the event that the City determines that it is more cost effective to create, or contract for, a City Clinic, the Association agrees to re-open negotiations on that issue and that issue alone. The Employer shall absorb one hundred percent (100%) of any increases in costs during the term of the contract.

Section 3. The City shall allow retired bargaining unit employees to be eligible for group health care benefits under provision of law or applicable insurance contract. The benefits of such insurance shall be the same as for the active employees, as such benefits may be increased or decreased from time to time. Continued participation in the plan shall be contingent on payment of the full premium for single coverage, employee and one dependent or family coverage when applicable. The retiring employee must notify the City at least 30-days prior to retiring, of his/ her intention to continue to be a participant in the group health insurance program. Employees who voluntarily elect to retire pursuant to TMRS requirements may exercise one of the following two options at the time of retirement.

A. The employee and the employer shall each pay 50% of the full premium for single coverage from the date of retirement through the date on which the employee reaches age 65, upon availability of Medicare or upon enrollment in an alternative primary group health insurance program through another employer, whichever occurs first; or,

B. The employee shall continue to participate in the plan, contingent upon payment of the full premium. Then, upon attaining 50 years of age, the City shall pay the premium for single coverage until the employee reaches age 65, upon availability of Medicare, or upon enrollment in an alternative primary group health insurance program through another employer, whichever occurs first. The requirement that the officer has obtained 20 years of service applies to this and all sections of this Article.

Section 4. Premium payment by the employee under any option discussed above must be received in the finance department on or before the tenth day of the month preceding the month for which the premium payment is made. If payment is not received, the City shall send a letter notifying the employee of this delinquent payment by certified mail to the employee's last known address. Full payment must be received on or before the 15th calendar day following the date such certified letter is sent by the City, or coverage will be terminated. The provisions of this paragraph shall not apply to any employee who retires prior to October 1, 1996.

Section 5. The City shall contribute thirty dollars (\$30.00) per month per bargaining unit employee under this Section. The contribution will be toward a dental insurance program designated in writing by the Association.

Section 6. Members of the bargaining unit shall participate in the Health Plan provided to other City employees. The following parameters, which the parties agree are included in this plan shall apply to health care benefits provided to bargaining unit members:

A. The pre-existing conditions, extended maternity coverage, and waiting period provisions of the health plan shall be the same as civilian (non-civil service) employees.

B. Employees shall receive a prescription benefit with a \$10.00 co-payment for each generic prescription and a \$20.00 co-payment for each non-generic prescription.

C. Doctor visit co-pays shall be capped at no more than \$20.00 per visit, but in no event more than that paid by civilian employees.

D. Deductibles shall be @ \$200.00 per calendar year per individual and \$600.00 per calendar year for a family.

E. Maximum co-insurance payment for an employee and family shall be \$1500.00 per calendar year.

F. Maximum out-of-pocket expense in a calendar year shall be \$800.00 for an individual, \$1600.00 for a member and one dependent and \$2,800.00 for a member and family. In the event that both spouses work for the City of Brownsville, the maximum of \$2,800.00 applies to only one spouse.

Section 7. Re-Opener Clause. The Association agrees that, if during the term of this labor agreement, the City notifies the Association of its intent to alter or modify its health benefit plan in subsequent fiscal years, the subject matter shall be reopened for further negotiation. Reopener shall be limited to health care benefits and premiums contributions during the term of any existing labor agreement.

Section 8. Sections 6 notwithstanding, the City agrees that there will be no reopener on this Article during the term of this Agreement, that is, until 9/30/2014.

ARTICLE 30. LIFE INSURANCE

The City shall provide a Ten Thousand Dollar (\$10,000.00) term life insurance policy for the protection of every full time permanent member of the classified service.

ARTICLE 31. TUITION REIMBURSEMENT

Section 1. Effective January 1, 2003, if an employee provides a copy of a degree plan with the Department, that employee shall be reimbursed by the City for books required in the course and tuition for each class successfully completed from an accredited college or university.

Section 2. The employee must submit verification of successful completion with a grade of C or better in order to receive the reimbursement. The City may cap the total amount paid out per calendar year at \$20,000.00.

Section 3. Reimbursement shall be paid for each calendar year in January of the following year for all approved requests. In the event that such requests exceed the annual cap, payment shall be made on a pro-rata basis as determined by the Chief of Police.

ARTICLE 32. FUNERAL LEAVE

Section 1. Five (5) consecutive calendar days of special leave of absence with pay shall be granted to all members of the department immediately following a death within his immediate family. The term immediate family shall include only: father, mother, sister, brother, wife, husband, mother or father-in-law, son, daughter, son-in-law, daughter-in-law, and grandparents or grandchild of either the employee or his spouse.

Section 2. In case the employee is on annual or sick leave at the time of death, no special leave with pay shall be granted.

Section 3. All leaves under this clause shall be approved by the Chief or his designate representatives. The Chief may approve and additional two (2) days of funeral leave in special circumstances.

ARTICLE 33. PENSION & RETIREMENT

Section 1. The City agrees to continue its retirement plan of one hundred percent (100%) of service credits for all active employees in the classified service of the municipality as mutually agreed upon in the 1976 contract of agreement between the City and the Association.

Section 2. The City agrees to adopt, after execution of the Agreement, relevant Texas Municipal Retirement System (TMRS) provisions which will allow bargaining unit members, if otherwise eligible, to contribute monies to the TMRS system to purchase credit for prior military service to the extent authorized under applicable TMRS provision. This provision shall be limited by, and to, the requirements of TMRS law or rule. Provided, however, in no event will the City's entire costs of complying with this "military buy-back" provision exceed \$9,000.

Section 3. The City may, in its discretion, create an early retirement program.

ARTICLE 34. EQUIPMENT; GEAR, ETC.

Section 1. The City shall furnish (without cost) all police officers' gear necessary to perform their duties. Police officers' gear shall include:

- A. Service Pistol;
- B. Sam Brown Belt or Sally Brown Belt;
- C. Ammo carrier;
- D. Handcuffs;
- E. Chemical mace and mace pouch;
- F. Night stick and holder;
- G. Belt keepers;
- H. Pistol holder;
- I. Holster and ammo pouch for detectives.

Section 2. If the equipment meets or exceeds the standards established by the City, the police officers shall have the right to use their own equipment; however, the City is not obligated to furnish such equipment to police officers electing to use their own equipment. It is understood by both parties hereto that the equipment so furnished by the City shall be and remain the property of the City of Brownsville and is to be relinquished to the City upon termination of the employment for any reason. If any

police officer shall lose or damage such equipment through negligence or misuse, the police officer assumes full responsibility for the replacement thereof.

Section 3. The City shall maintain at all times a portable radio (e.g., walkie-talkie) in those uniform and detective police vehicles necessary under normal shift requirements, but in no event to exceed fifteen (15) portable radios. This requirement may be waived by the City in the event of an emergency. An "emergency" shall be defined as a situation requiring the enforcement of law, direction of traffic or other police functions that dictate the assignment of more uniform or detective police vehicles or personnel than ordinarily utilized under normal shift requirements.

Section 4. The City may deny to any officer use of a portable radio under this Article where the officer has displayed a continuing tendency to physically or verbally abuse the portable radio or use the radio in a non-police activity.

ARTICLE 35. CLOTHING ALLOWANCE

Section 1. Members of the uniformed force shall be authorized issuance of five (5) year-round uniforms. It shall be the responsibility of each uniformed police officer to maintain these uniforms in a good condition at all times. The City shall make every reasonable effort to maintain the current quality of uniform clothing provided employees.

Section 2. Police personnel in the detective division shall receive the amount of \$66.66 per month (or \$200.00 quarterly). Said clothing allowance shall be discontinued upon the officer's reassignment to the uniformed services.

Section 3. Uniformed officers shall receive \$20.00 per month (\$60.00 quarterly).

Section 4. The City will replace outer uniform clothing damaged or worn out through fair wear and tear in the line of duty. Damaged or worn out uniform clothing shall be turned in at the time a replacement purchase is made. Replacement of outer uniform clothing is limited to the following:

- A. Uniform trousers, shirts, and cap;
- B. Uniform black leather belt;
- C. Police jacket;
- D. Raincoat;
- E. Police Windbreaker.

Section 5. At the request of the individual employee assigned to the detective division, the City will agree to provide one (1) uniform cap, one (1) uniform shirt, and one (1) pair of uniform trousers. The individual detective division employee shall agree to have the clothing allowance mentioned in Section 2 above, reduced accordingly to off-set the total cost of the above mentioned uniform items.

Section 6. The parties shall designate and provide a service pin or ribbon recognizing continuous service in five (5) year increments.

Section 7. The City shall create the designation of Senior Police Officer within the Classification of Police Officer for 10 years or longer shall be designated a Senior Police Officer. The designation shall be non-supervisory and will not have any rank insignia; however the Chief and Association shall agree upon a pin to be worn on the uniform designating such employees as Senior Police Office.

PAY CYCLES; SCHEDULES; EXCHANGES, ETC.

ARTICLE 36. HOURS OF WORK; OVERTIME PAY

Section 1. All productive hours in excess of 40 hours in a work period, defined as seven (7) days, shall be paid at the rate of time and one-half of the employee's regular straight-time hourly rate of pay including all specialty pay, incentive pay, shift differential pay, assignment pay or any other additional pay, except for the clothing allowance.

Section 2. For purposes of this Article, productive hours shall be defined as:

- A. Actual hours worked;
- B. Vacation leave;
- C. Comp time leave;
- D. Paid military leave;
- E. Paid funeral leave;
- F. Paid Association leave time as defined in this agreement;
- G. Lunch periods and break periods that are paid as of the effective date of this agreement.

Section 3. Sick leave utilization shall not be counted as productive hours for the purposes of calculating whether an employee has worked more than forty hours in a work period.

Section 4. An employee required to work at any time other than his/her regularly scheduled shift shall be paid a minimum of two hours at the overtime rate of pay, and thereafter, shall be paid at his/her regular rate of pay until such time that the employee shall have exceeded forty productive hours in the work period.

- A. This provision does not apply when an employee is called in within two hours of the beginning of his/her regularly scheduled shift. In that event, such employee shall be paid at the overtime rate for the actual hours worked prior to the beginning of his/her regularly scheduled shift.

Section 5. If an employee is called or subpoenaed to give testimony in connection with duties performed within the course and scope of his or her city employment, the employee shall be paid a minimum of two hours at the overtime rate of pay, and thereafter, shall be paid at his/her regular rate of pay until such time that the employee shall have exceeded forty productive hours in the work period.

A. Stand-by status shall not be counted as productive time for purposes of this Section.

Section 6. If an employee on sick leave, vacation leave or compensatory time leave is called or subpoenaed to give testimony in connection with duties performed within the course and scope of his or her city employment, the employee shall be deemed to be at work (with a minimum of two hours work at the overtime rate of pay) and the time so spent shall not be charged to the employee's accumulated leave.

Section 7. The City will endeavor to distribute overtime equally among employees insofar as practicable during the period of this Agreement.

Section 8. Overtime shall be authorized by the Chief or his designated representative. The discretion is hereby given to the employee to elect between receiving cash compensation or accruing compensatory time for overtime worked under these conditions to the extent allowable under applicable state or federal law.

Section 9. The granting of compensatory time off shall be at the discretion of the Chief of the department or his designated representative. In the event compensatory time off is refused, the officer requesting the time off shall have the right to apply for and receive cash payment in lieu of compensatory time on a following paycheck.

ARTICLE 37. EXCHANGING TOURS OF DUTY

Section 1. The Police Chief or his designated representative may grant the request for any two (2) members of the Police Department to exchange tours of equally qualified and of equal rank and that such a trade will not disrupt normal police department operations.

Section 2. Under no circumstances will overtime or working out of classification pay be demanded by an employee for time worked during the "trade off time."

ARTICLE 38. PERSONNEL FILES & DISCIPLINE RECORDS

Section 1. The Police Chief shall be the custodian of personnel files and will comply with the requirements of applicable law.

Section 2. Upon written request by an employee, made to the Police Chief, the employee's disciplinary record will be purged in accordance with applicable law and the terms of this Labor Agreement:

A. Written evidence of counseling, warnings and reprimands will be removed from personnel files following twelve (12) consecutive months of discipline-free service.

B. Evidence of suspensions will be purged as follows:

- 1) suspensions of 1-15 days after three years discipline-free service; and,
- 2) suspensions of 16-30 days after five years discipline-free service,
- 3) provided however, that up to two (2) written counseling, warnings or reprimands which occur before one year from the 3 year or 5 year expiration date of any suspension purging period shall not operate to prevent purging of the employee's personnel file.

Section 3. For purposes of this Article, the removal or "purging" of files shall be only from the civil service personnel file (the (a) file) to the departmental file (the (g) file). No actual destruction of records shall occur that is not specifically authorized by law.

ARTICLE 39. DRUG TESTING

Section 1. Any testing performed under this Article shall be performed by a certified testing laboratory and the sample taken shall be a "split" and a second test performed in the event of a positive result on the first test.

A. The City may require an officer to submit to urine testing for substance abuse for just cause.

B. The City may require random testing under the following conditions:

- 1) The City and the Association shall meet and shall place slips of paper with the employee numbers of all members of the bargaining unit and the Chief of Police in a receptacle that the slips of paper can be drawn from. The Association President or his designee shall draw 50 slips from the receptacle and the employees whose numbers are drawn shall be required to submit a urine sample within four hours of the drawing for drug screening.
- 2) These random drawings shall be conducted on random dates.

C. In the event that a person whose number is drawn is not available within four hours, the Chief may require testing of that person at the Chief's discretion within 30 days.

Section 2. Only an officer who tests positive on both samples of the drug testing may be disciplined.

Section 3. The cost for testing under this Article shall be paid by the City.

Section 4. Any officer who is disciplined as a result of testing under this Article is entitled to all appeals that he/she is entitled to for any other disciplinary offense.

ARTICLE 40. LEGAL DEFENSE SERVICE

Section 1. The City hereby acknowledges its statutory obligations to provide a civil legal defense pursuant to the provisions, and under the conditions set forth in §180.002, TLGC or any successor provisions.

ARTICLE 41. OFF-DUTY EMPLOYMENT

Section 1. Employees providing any police-related duties for employers other than the City of Brownsville shall execute a waiver of liability form provided by the City.

Section 2. When a City owned facility is leased or rented after the execution of this Agreement, for a function at which security is required as determined by the Chief of Police or his designee, the lessee shall be required to hire a minimum of 2 Brownsville Police Officers for security. The Chief may require that more than 2 officers be hired if he determines it necessary for security and/ or safety of the officers or the public.

Section 3. This requirement shall be a part of any lease agreement required by the City and the lessee may be directed to the Association President for the purpose of obtaining officers names who might work the event on an extra-job basis with a pay rate of thirty (\$30.00) per hour, except for Christmas Eve and New Years Eve when the rate will be \$40.00 per hour.

DISPUTE RESOLUTION PROCEDURES

ARTICLE 42. GRIEVANCE PROCEDURES

Section 1. Scope of Grievance Procedure. The City and Association agree that the purpose of this grievance procedure is to provide a just and equitable method for resolving disagreements between the parties regarding the interpretation of the provisions of this Agreement. Matters involving the interpretation, application, or alleged violations of a specified provision of this Collective Bargaining Agreement shall be subject to this grievance procedure. This grievance procedure shall not apply to any disciplinary matter.

Section 2. Any civil service employee with a grievance shall first discuss such grievance with his supervisor up to and including the Police Chief prior to invoking the formal grievance procedure called for in this Article. If the informal grievance has not been resolved within five (5) business days after the police chief has received it, the formal grievance procedures set out in this Article may be invoked.

A. **Step 1.** A formal grievance must be initiated by an aggrieved employee or the Association. The aggrieved employee or Association representative must reduce the entire grievance and all reasons to writing and present the signed, written, dated grievance along with the provision of the Agreement which the grievant feels has been violated, to the Police Chief through the Shift or Division Commander within fifteen (15) business days after the employee knew, or should have known with a reasonable exercise of diligence, of the facts which gave rise to the grievance without regard to informal process described above, i.e., the five (5) business-day informal process included in the fifteen (15) business-days described in this step. Otherwise, the grievance shall not be considered. During these fifteen days, the employee shall be pursuing the informal grievance process discussed above. The Police Chief or his designee shall have up to ten (10) business days to respond in writing to the grievance. Failure to respond shall be considered a denial.

B. **Step 2.** If the grievance is not satisfactorily settled in Step 1, the aggrieved employee shall submit the grievance to the Association President for consideration by the Association Grievance Committee to determine if a grievance exists. The grievance committee shall render its decision within fifteen (15) business days of the President's receipt of the grievance from the aggrieved employee. In the event that the Grievance Committee determines that a grievance exists, the Association shall proceed to Step 3. In the event that the Grievance Committee determines that no grievance exists, there shall be no further action taken under this procedure.

C. **Step 3.** If the grievance is accepted by the Association at Step 2, the grievance shall be submitted by the Association President to the City Manager or his designee within five (5) business days after receiving the written decision from the Association Grievance Committee. The City Manager shall then attempt to resolve the grievance to the satisfaction of all parties concerned. The City Manager or his designee must answer in writing within ten (10) business days. Failure to respond shall be considered a denial.

D. **Step 4.** (Contract Interpretation Issues) If the grievance has not been satisfactorily resolved in Step 3, final disposition may be made by voluntarily resorting to arbitration. Absent such agreement the dispute may proceed to a District Court of the State of Texas pursuant to applicable law.

Section 3. Failure of the grievant to comply with the time limits set forth above shall result in settlement of the grievance based upon the last answer received by the grievant, and no further action may be taken by the aggrieved employee or the Association concerning the facts giving rise to the particular grievance involve. Time limits may only be extended by written agreement between the Police Chief and the Association President.

Section 4. Anything in the Agreement to the contrary notwithstanding, the following matters is not subject to the grievance procedure of this Agreement:

- A. Any grievance which is not filed in accordance with the provision set forth above or which does not meet the definition of a grievance as set forth in Section 1 of this Article; or
- B. Any matter which would requires a change from the wages, rates of pay, hours or work, grievance procedure, working conditions, and all other terms and condition of employment as set forth in this Agreement; or,
- C. Any matter which is not covered by this Agreement; or
- D. Any matter covered by the City Charter, City of Brownsville, City Ordinances, Statues, Rules and Regulations or Constitutional Provisions; or
- E. Any matter subject to the State of Texas and/ or City of Brownville Fire and Police Civil Service Rules and Regulations except disciplinary action by the Employer.

Section 5. The existence of this grievance procedures or the submission by an employee of any grievance to the grievance procedure provided in this Article shall not be a waiver of, or constitute a bar to, any legal action or remedy an employee may have; provided, however, that the exhaustion of this grievance procedure shall be a condition precedent to the initiation of any further legal action by the affected employee. If, however, disciplinary action is involved, such action shall only be reviewable by binding arbitration and, after binding arbitration, by resort to the courts in appeal of the decision of the arbitrator pursuant to applicable Texas law or rule.

ARTICLE 43. POLICE OFFICER BILL OF RIGHTS

Section 1. Employees being questioned as an object of investigation which a reasonable person could believe will lead to reprimand, suspension, discharge or criminal prosecution shall be entitled to the following privileges insofar as feasible under the circumstances and upon request of the employee:

- A. No less than 48 hours notice of any hearing or questioning;
- B. Questioning at a police station unless another location is warranted by the facts;
- C. Notification of the nature of the investigation;
- D. Notice of the nature of the allegations made against the officer;
- E. Right to the presence of a representative of the officer's choice during questioning if so requested by the officer.
- F. Notice of legal rights which must be afforded person accused of criminal conduct, as required by law;

G. Copy of the employee's written statement derived from questioning if signed by the employee.

H. Nothing in this section shall prohibit the Department from expanding an investigation or initiating a new investigation based on new information brought to light during the course of any investigation.

Section 2. In all investigations alleging serious misconduct or criminal activity by a police officer and which are initiated as the result of a citizen complaint, the complaining citizen(s) shall be required to submit a sworn, notarized affidavit taken by the Officer assigned to investigate the complaint. For purposes of this section, "serious misconduct" means some act or failure to act by a police officer which, if found to be true, could result in the suspension or termination of the officer against whom the complaint is lodged.

Section 3. The provisions of this Section do not preclude the Chief from conducting administrative investigations, nor does it preclude the Chief from ordering an internal investigation for complaints other than serious misconduct or criminal activity. However, if such investigation develops into allegations of serious misconduct or criminal activity, the first paragraph of this Section applies.

Section 4. This Article shall in no way infringe upon the Employer's right and power to fully investigate matters it deems important.

Section 5. This Article shall in no way infringe upon the Employer's right and power to discipline employees.

Section 6. If the Employer violates any of the provisions of this Article, such violation shall not affect the disciplinary action by the Employer unless such action was based solely upon facts derived from the violation of the Article.

ARTICLE 44. DISCIPLINARY APPEAL PROCEDURES

Section 1. Disciplinary matters are exempt from the informal and formal grievance procedure set out in this Agreement, except as provided herein.

Section 2. If an Employee suffers discipline and chooses to appeal that disciplinary action, the Employee shall give written notice to the City Manager or his designee of his intent to arbitrate such discipline within fifteen (15) business days of receiving written notice of the disciplinary action.

Section 3. Within five (5) business days thereafter, the City and the disciplined employee may agree upon; a 3rd party hearing examiner but if no such agreement is reached within five (5) business days, then the disciplined employee has fifteen (15) business days to request a list of qualified neutrals from the Federal Mediation and Conciliation Service or the American Association of Arbitrators.

Section 4. The party requesting the hearing examiner shall strike the first name from the list. Such list of arbitrators shall consist of active members of the National Academy of Arbitrators only.

Section 5. The cost of the hearing examiner shall be shared by the parties. Any other costs related to this Step shall be assumed by the party incurring such costs.

Section 6. The hearing examiner shall have the same duties and powers as the civil service commission created under Chapter 143, TLGC, including the right to issue subpoenas.

ARTICLE 45. RULES OF PROCEDURE FOR HEARINGS

Section 1. The following procedures are hereby established for the conduct of hearings relating to grievances and appeals of disciplinary matters.

Section 2. The Employee and Employer shall have the following rights:

- A. To exchange with the City's representative, prior to the hearing, the names of witnesses to be called;
- B. To require the arbitrator or hearing examiner to subpoena witnesses;
- C. To be represented by legal counsel;
- D. To present evidence, testify and argue the evidence;
- E. To confront and cross-examine adverse witnesses (subject to the reasonable discretion of the arbitrator or hearing examiner to admit hearsay evidence);
- F. To be found guilty only by a preponderance of the evidence;
- G. Upon application of a party, the arbitrator or hearing examiner may order the exchange of standard information relating to the grievance or disciplinary hearing.

Section 3. Judicial rules of evidence need not be strictly followed. However, the decision must be based solely on relevant and competent evidence.

Section 4. Witnesses may be placed under oath.

Section 5. All hearing shall be public.

Section 6. Proceedings may be continued or recessed by the arbitrator or hearing examiner in the interest of justice or for the convenience of the parties involved, except in no event beyond the 30 day limit for rendering a decision.

Section 7. An arbitrator or hearing examiner shall excuse himself from hearing a case in which the subject matter or circumstances are such as to seriously impede his ability to render an impartial decision.

Section 8. The arbitrator or hearing examiner shall render a decision stating which charges it finds to be true.

Section 9. Conclusions reached by the arbitrator or hearing examiner shall be based solely on evidence adduced at the hearing. The arbitrator or hearing examiner shall not communicate with parties or witnesses relating to the facts or subject matter of the case without the consent of the employee and the City's attorney or representative.

ARTICLE 46. IMPASSE PROCEDURES

Section 1. Mediation. The parties will make a meaningful effort to settle matters arising for negotiations through the bargaining process and will only resort to subsequent third party neutral proceedings after they exhausted all avenues of mutual agreement available to them. If an impasse in negotiations results after full and complete negotiations, either party or both parties may request the services of a mediator from the Federal Mediation and Conciliation Service.

Section 2. The mediator shall have no authority other than to attempt to help the parties to arrive at a mutually agreeable settlement. The mediator shall be responsible for determining whether or not the parties have indeed arrived at an impasse in bargaining. If the mediator has any reason to believe the parties are not at a true impasse in bargaining, he or she shall have the responsibility to remand the parties to further negotiations in an attempt to resolve the differences between them. If the mediator is convinced that the parties have arrived at a bona fide impasse in negotiations, he shall certify such fact to these parties who then have the following options open to them.

Section 3. Fact-finding. If after mediation, settlement has not been reached between the parties concerning negotiable issues which were subject to mediation, then either party may by written notification to the other request the remaining unresolved matters be submitted to a fact-finding panel.

Section 4. The fact-finding panel shall only be presented with unresolved issues which were subject to the mediation process. Within five (5) days of receipt of the written request for fact-finding, the parties shall request a list of seven (7) qualified neutrals who shall be active members of the National Academy of Arbitrators from the Federal Mediation and Conciliation Service. Each party shall alternately strike three (3) names from the list. The parties shall determine who shall strike first by a coin toss. The remaining individuals shall be designated the fact-finder. The Employer shall be responsible for appointing an additional fact-finder to represent its interests and the Association shall be responsible for appointing an additional fact-finder to represent its interests. The three fact-finders shall then constitute the fact-finding panel.

Section 5. The parties shall exchange written final offers on each remaining unresolved issue no later than ten (10) calendar days before the date of the fact-finding hearing. The fact-finding panel shall be served a written copy of each party's final offer on each outstanding unresolved bargaining matter within five (5) calendar days before the date of hearing.

Section 6. The fact-finding panel shall only have jurisdiction to consider issues involving mandatory items of negotiations.

Section 7. The fact-finders shall establish dates and places of hearings. The hearing shall be closed to the public. The fact-finders shall afford all parties full opportunity to examine and cross-examine all witnesses and to present evidence pertinent to the dispute including briefs in support of their respective cases.

Section 8. The fact-finders shall conduct the hearings and render their decision with the objective of achieving a prompt, peaceful and just settlement of disputes. The factors which must be given weight by the fact-finders in arriving at a recommended decision shall be:

- A. comparison of total compensation of police officers in cities of a comparable nature;
- B. relevant cost of living information;
- C. overall compensation and fringe benefits presently received by employees involved, and the interest and welfare of the public including financial liability;
- D. fiscal responsibility of the City; and economic and non-economic impact of the various offers upon present or future levels of service or programs provided by the City to its citizens and other City employees;
- E. the hazards of employment; physical, educational and mental qualifications; and job training and skills required of Brownsville police officers.

Section 9. The fact-finders shall consider each argument and all evidence presented by the parties and addresses them in well-reasoned, professionally written findings of fact and recommendations to resolve the dispute. The written decision shall be served on both parties not more than thirty (30) days from the conclusion of the hearings or submission of briefs whichever occurs later.

Section 10. Within fifteen (15) days after receipt of the findings of fact and recommendations, each party shall notify the other in writing whether they accept any of the recommendations of the fact-finders. If the parties do not accept the recommendations of the fact-finders, they shall attempt to settle the dispute. If no settlement has been reached after thirty (30) days from receipt of the notice by either party rejecting the recommendations, then the fact-finders' findings of fact and recommendations shall be published by either party.

Section 11. Within three (3) days after the findings of fact and recommendations are published, the party rejecting the recommendation shall publicize through a detailed written document each reason for rejecting the recommendation of the fact-finding panel.

Section 12. All costs of fact-finding shall be borne equally by the parties involved in the dispute, except costs for the parties' respective representatives and witnesses.

Section 13. If, within ten (10) days after the recommendations have been made public the parties have not agreed to a contract, unresolved issues shall, at the request of either party, be submitted to a referendum election according to the following procedures which shall be binding on the parties:

A. the election shall be held on the first date permissible under state law;

B. party rejecting fact-finders' recommendation shall pay three-fourths (3/4) of the cost of the referendum. If both parties reject any recommendations, each shall pay one-half (1/2) of the cost;

C. each party shall be entitled to submit two and only two unsettled issues to the voters. The existing contract shall, therefore, be changed only by the outcome of the referendum issues and prior agreements reached by the parties.

Section 14. Civil Service laws shall not be subject to the referenda;

Section 15. Referenda will be conducted in a cost efficient manner.

Section 16. Citizen Voter Participation. Parties hereto agree that for the duration of this contract:

A. No effort will be made by the Association to require the City to amend the City Charter to provide for citizen voter participation as a method of resolving collective bargaining impasses between the City and Association;

B. No referendum concerning police department manning levels will be conducted or processed; and,

Section 17. No referendum for increased wages or benefits shall be conducted or processed under applicable provisions of the Texas Revised Civil Statutes Annotated.

MISCELLANEOUS PROVISIONS

ARTICLE 47. ME TOO CLAUSE

Section 1. If the City voluntarily negotiates an across-the-board wage increase or new fringe benefits to all members of the FLSA non-exempt civilian workforce or all firefighters which exceed that granted the police officers for the year in question, the bargaining unit shall be granted the same improvement.

Section 2. This Article is not intended to include issues negotiated by the City with the Firefighters Union in a collective bargaining contract if (1) the firefighters agree to exclude police union negotiated issues in their "me-too" contract language; and (2) as long as such language remains in the firefighters contract.

Section 3. Sections 1 and 2 notwithstanding, the Association agrees that this Article shall not apply to any increase or new fringe benefit enjoyed by any other city employee or group of employees during years 1, 2, and 3 of this Agreement, that is,

until 9/30/2011. The intent of this Section is to negate the validity of any Me Too claim or grievance during the first three years of this Agreement.

ARTICLE 48. RESIDENCY REQUIREMENTS

Section 1. Residency requirements shall be as provided by applicable City ordinance, rule or regulations.

ARTICLE 49. PARKING

Section 1. The City shall provide, without cost to employees on duty, adequate parking space, whether off-street, adjacent to or within a reasonable distance from Police Department facilities.

ARTICLE 50. OTHER

Section 1. The City will give each employee, and to each new employee when hired, a printed copy of this Agreement.

Section 2. The parties understand and agree that the provisions of this labor agreement shall be implemented prospectively only beginning on the date on which the labor agreement is ratified by the police bargaining group, and any other conditions imposed by the City Commission as a condition precedent to the effectiveness of this Agreement.

Section 3. Reopener on Certification Pay, Assignment Pay, and Shift Differential Pay. The City agrees that, beginning October 1, 2011, the salary elements consisting of Certification Pay, Assignment Pay, and Shift Differential Pay may be reopened for further negotiation. This Reopener shall be limited to these elements of pay and no other provision of this Agreement. The deadline for the Association to give notice of an intent to reopen under this section shall be 120 days prior to the end of the fiscal year preceding the fiscal year for which these pay elements will be negotiated.

ARTICLE 51. DEFINITIONS

For purposes of this Labor Agreement, the following definitions shall apply:

Agreement or Labor Agreement - refers to this Collective Bargaining Agreement, also referred to as the Labor Agreement, negotiated between the CITY OF BROWNSVILLE and the Association;

Association – refers to the BPOA, the duly recognized bargaining agent for the City of Brownsville police officers; see also Union;

- Bargaining Agent** - refers to duly recognized Association that serves as the exclusive bargaining agent for the CITY OF BROWNSVILLE police officers under Chapter 174; TLGC;
- Bargaining Unit** - all full time police department employees, except the Police Chief, and any civilian employees;
- Budget (Fiscal) Year**- refers to a city's fiscal year commencing on October 1 and ending on September 30 of the subsequent year.
- Business Days** – shall be defined as Monday through Friday during normal business hours of 8:00 o'clock am to 5:00 o'clock p.m. and shall not include Saturdays, Sundays, or holidays, except as otherwise specifically defined in this Agreement.
- Calendar Year**- refers to a year beginning on January 1 and ending on December 31 of that year.
- CBA** - refers to a Collective Bargaining Agreement and, when specified, to this Agreement;
- Chapter 143** - refers to the provisions of Chapter 143, Texas Local Government Code in effect at any given time, unless otherwise specified;
- Chapter 174** - refers to the provisions of Chapter 174, Texas Local Government Code in effect at any given time, unless otherwise specified;
- Civil Service** - refers to the classified civil service system organized pursuant to Chapter 143, the Texas Local Government Code;
- Civil Service Commission or CSC** – refers to the duly appointed body appointed under the provisions of Chapter 143, TLGC for the City of BROWNSVILLE;
- Civil Service Statutes** – shall refer to the civil service statutes contained in the Texas Local Government Code, specifically those codified in Chapters 141 through 143, TLG;
- City** - refers to the home rule municipality organized under the laws of the State of Texas known as the CITY OF BROWNSVILLE, TEXAS;
- City Manager** - refers to the City Manager appointed under the City Charter or his or her designated representative;
- City Management** – refers to the administrative chain of authority within the City's administrative structure starting within the Police Department and rising through to the City Manager and, if necessary, the City Commission;
- Classified Service** - refers to the civil service classifications, including all rights, obligations, privileges, procedures, and protocols established by Chapter 143;
- Department** - unless otherwise specified, refers to the CITY OF BROWNSVILLE POLICE DEPARTMENT;

Disciplinary Action – shall encompass any personnel action or decision by the department head that is subject to appellate review under one or more provisions of Chapter 143, TLGC, or as otherwise specified in this labor agreement;

Employee – unless otherwise specified, shall refer to law enforcement personnel who qualify as members of the bargaining unit;

FMLA - refers to the Family Medical Leave Act;

FLSA - refers to the Fair Labor Standards Act;

Grievance - is defined as any dispute, claim, or complaint involving the interpretation, application or alleged violation of any provision(s) of the Agreement as raised by the Grievance procedures in this Agreement.

Holidays – refers to those holidays observed in accordance with the terms of this Labor Agreement.

Immediate Family Member - except as otherwise specifically provided for in this agreement, has the same meaning as contained in the Family Medical Leave Act and is limited to the employee, the employee's spouse and any minor children.

Labor Agreement - is this Collective Bargaining Agreement negotiated between the Parties.

Longevity Pay – refers to that statutorily required component of pay based on years of service as a police officer for the CITY OF BROWNSVILLE; compare Seniority Pay;

Member – refers to a police department employee who is a bargaining unit member as defined by Chapter 174, TLGC;

Overtime Pay, Negotiated – shall refer to overtime pay established and determined as a consequence of the negotiated terms of this Labor Agreement, which is contractual in nature and not imposed as a matter of state or federal law or statute.

Overtime Pay, Statutory – shall refer to overtime pay established and determined by reference to state and/or federal law.

Paid Time Off – refers to any time period for which an employee is entitled to receive pay without actually being at work for that time period.

Parties – refers to the CITY OF BROWNSVILLE and the Association jointly.

Personnel file, Civil Service – refers to a police officer's personnel file maintained by the Civil Service Director under §143.089(a), TLGC; Also referred to as the "(a) file";

- Personnel file, Departmental** – refers to a police department file on a police officer’s maintained by the Chief of Police under the authority of §143.089(g), TLGC; Also referred to as the “(g) file”;
- Police Administration** – refers to Police Department personnel who have supervisory authority over other police officers, who are involved in the administration of the Department;
- Police Chief** - refers to the Police Chief appointed as the department head for the Police Department, and includes the Police Chief’s designated representative;
- Police Department** - refers to that department of the CITY OF BROWNSVILLE responsible for law enforcement activity for the City;
- Police Officer(s)** - refers to those City employees certified or licensed by the State of Texas to serve as full time law enforcement officials under Texas law;
- Regular Rate of Pay** – refers to that rate of pay required to be included in the calculation of a police officers’ overtime rate of pay for purposes of the FLSA;
- Seniority or Seniority Pay** – refers to that component of pay based on years of service as a police officer for the City of Brownsville, which is negotiated by this Agreement; compare Longevity;
- TLGC** – shall refer to the “Texas Local Government Code” unless otherwise specified.
- Union** – refers to the Association, here the BPOA, that serves as the duly recognized bargaining agent for the City of BROWNSVILLE law police officers or its successors in interest; see also Association.

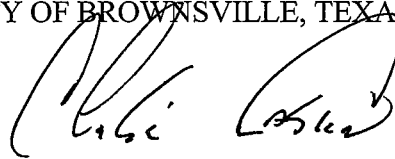
SIGNATURE PAGE


THE FOREGOING INSTRUMENT AS BEEN DULY AND PROPERLY REVIEWED AND APPROVED BY EACH OF THE SIGNATORIES INDICATED BELOW (executed in duplicate originals):

THE CITY OF BROWNSVILLE, TEXAS

(Authorized by City of Brownsville City Commission on 4/21/2009)

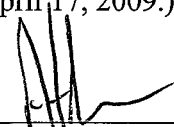
By: 
HON. PAT AHUMADA, MAYOR
CITY OF BROWNSVILLE, TEXAS

By: 
CHARLIE CABLER – CITY MANAGER
CITY OF BROWNSVILLE, TEXAS

By:  Dated: 4/21/2009
ESTELA VON HATTEN
CITY SECRETARY - WITNESS

BROWNSVILLE POLICE OFFICER'S ASSOCIATION ('BPOA')

(Approved by Membership Vote in accordance with BPOA voting procedures on April 17, 2009.)

By: 
TONY FLORES
PRESIDENT, BPOA, CLEAT

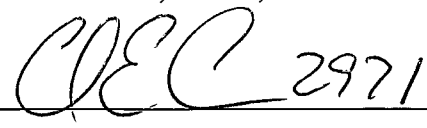
By:  Dated: 4/21/2009
WITNESS

EXHIBIT "A"

Grievance No. _____

CITY OF BROWNSVILLE, TEXAS
POLICE DEPARTMENT STANDARD GRIEVANCE FORM

Grievance Submittal

Employee must use this form, or one substantially like it, for filing grievances with the Association Grievance Committee and subsequent steps of the procedure.

Name Address City/State/Zip Phone

Division Title/Rank Station/Shift Phone

A. Factual Basis of the Grievance. Include date, time, place, and employees or individuals involved. If more space is needed, continue on a separate sheet of paper, and attach to this form.

B. Contract Articles, Terms, Etc. Believed to be Violated. Identify specific provisions of the Contract. Use supplement form if necessary.

C. Remedy or Adjustment Sought. Use supplement form if necessary.

Employee Signature

Date

Association Representative

Date

Grievance Forms

P.M.A

EXHIBIT "B"

Grievance No. _____

POLICE DEPARTMENT GRIEVANCE FORM
ASSOCIATION GRIEVANCE COMMITTEE FINDINGS AND SUBMITTAL

Grievance Committee's Submittal. Refer to Grievance cause number for employee's statement of facts.

Name address City/State Phone

Division Title/Rank Station/Shift Phone

Association Grievance Committee Statement

The Association Grievance Committee met and reviewed the above referenced grievance and reached the following Conclusion(s) on the Subject Grievance.

GRIEVANCE COMMITTEE RECOMMENDATION

Forward for Adjustment _____

Reject Grievance _____

Grievance Committee Representative

Date

Association Representative

Date

P.M.A.