

**A MEMORANDUM OF
UNDERSTANDING
BETWEEN
CITY OF MESQUITE, TEXAS
AND
MESQUITE POLICE ASSOCIATION**

EXPIRES SEPTEMBER 30, 2010

TABLE OF CONTENTS

PREAMBLE..... 4

ARTICLE 1 DEFINITIONS..... 4

ARTICLE 2 AUTHORITY AND RECOGNITION..... 5

ARTICLE 3 ASSOCIATION RIGHTS..... 5

Section 1. Payroll Deductions..... 5

Section 2. Association Access..... 6

ARTICLE 4 HOLIDAYS, SICK LEAVE AND VACATION..... 7

Section 1. Holidays for Compressed Work Schedule Officers 7

Section 2. Sick Leave..... 7

Section 3. Vacation 7

ARTICLE 5 PROMOTIONS..... 8

Section 1. Eligibility for Promotion 8

Section 2. Promotional Examination Procedure 8

Section 4. Preemption 9

ARTICLE 6 APPEALABLE AND NON-APPEALABLE SUSPENSIONS 9

Section 1. Suspensions of Five (5) Days or Less..... 9

Section 2. Preemption..... 9

ARTICLE 7 INITIAL HIRING 10

Section 1. Probationary Period 10

Section 2. Examinations for Entrance Position 10

Section 3. Certified Lists..... 10

Section 4. Appointments 10

Section 5. Effect of Contract Expiration 11

Section 6. Preemption..... 11

ARTICLE 8 COMPENSATORY TIME 11

ARTICLE 9 APPOINTMENTS OF ASSISTANT CHIEFS	12
Section 1. Appointment of Assistant Chief.....	12
Section 2. Preemption.....	13
ARTICLE 10 CLOSING STATEMENTS.....	13
Section 1. Complete Agreement	13
Section 2. Savings Clause.....	13
Section 3. Duration and Termination.....	13

PREAMBLE

It is the intent and purpose of this Agreement, entered into by the City of Mesquite, Texas, hereinafter referred to as “the City” and Mesquite Police Association, hereinafter referred to as “the Association,” to achieve and maintain harmonious relations between the parties and discuss issues of mutual concern, as provided in the Texas Local Government Code, Chapter 142, Subchapter B. The Agreement has been reached through the process of Meet and Confer with the objective of fostering effective cooperation between the City and its Officers.

ARTICLE 1 DEFINITIONS

1. “Agreement” refers to this Meet and Confer Agreement, negotiated between the City of Mesquite and the Mesquite Police Association.
2. “Association” means the Mesquite Police Association.
3. “Calendar days” means each day inclusive of weekends and holidays.
4. “Chief” means the Chief of Police of the City of Mesquite, *including any interim or acting Chief of Police.*
5. “City” means the City of Mesquite.
6. “City Manager” means the City Manager of the City of Mesquite.
7. “Commission” means the Fire Fighters and Police Officers Civil Service Commission of the City of Mesquite.
8. ”Department” means the Police Department of the City of Mesquite.
9. “Director” means the Director of the Fire Fighters and Police Officers Civil Service Commission.
10. “Officer” means a sworn Police Officer employed in the City of Mesquite Police Department.
11. “Party” or “Parties” means the City of Mesquite and the Mesquite Police Association.
12. “Police Officer” means a person who is a peace officer under Article 2.12, Code of Criminal Procedure or other law and who is employed by the City of Mesquite.
13. “TLGC” means the Texas Local Government Code.

**ARTICLE 2
AUTHORITY AND RECOGNITION**

The City of Mesquite recognizes the Mesquite Police Association as the sole and exclusive bargaining agent for the covered Police Department police officers described in the petition for recognition, excluding the head of the law enforcement agency and excluding the two (2) Assistant Police Chiefs, the employees exempt under Subsection (b) of §142.058, TLGC, in accordance with Subchapter B of Chapter 142, TLGC, and the petition.

It is intended to include all permanent paid sworn police officers of the Police Department who have been hired in substantial compliance with the provisions of Chapter 143, TLGC, excluding the exempt employees named above, but does not include civilians or other employees. It is not intended to deny local control by the City over wages, rates of pay, hours of work, or other terms and conditions of employment except as expressly provided by this Agreement under §142.059, TLGC.

**ARTICLE 3
ASSOCIATION RIGHTS**

Section 1. Payroll Deductions

A. The City shall deduct a bi-weekly amount from the pay of each individual Officer who has voluntarily authorized such membership dues deduction for remittance to the designated bona fide employee association. After execution of this Agreement, Officers who wish to join the Association, Texas Municipal Police Association or Combined Law Enforcement Associations of Texas (collectively “designated organizations”) will complete and sign the appropriate City form to authorize the bi-weekly deduction amount. The Association and designated organizations may change the amount of the deduction with thirty (30) calendar days notice to the City in writing. Within ten (10) working days following the end of a calendar month, the City will remit payment directly to the designated association along with a list of the amount of deduction taken from each officer. The City will remit deducted amounts directly to the Association and designated organizations unless and until such payroll deductions are modified or revoked by the affected officer.

B. During the term of this Agreement, other authorized payroll deductions will be permitted. Officers who are current members of the Association or other designated organizations may continue to utilize automatic payroll deductions, as in the past. Officers who are currently having membership dues deducted as of the date this Agreement is ratified will not be required to submit new dues deduction authorization forms. After that date, an officer seeking to become a new member in a designated organization and to pay dues to that organization by automatic payroll deductions must join the Association in order to utilize automatic payroll deduction for payment of such membership dues.

C. Any individual member of the bargaining unit wishing to voluntarily withdraw authorization for deductions must personally sign the appropriate form as required by the City.

D. THE ASSOCIATION SHALL INDEMNIFY, DEFEND THE CITY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS OR OTHER FORMS OF LEGAL ACTION THAT MAY ARISE OUT OF, OR BY REASON OF, ANY ACTIONS TAKEN BY THE CITY, OR ANY EMPLOYEE OF THE CITY IN COMPLYING WITH PROVISIONS OF THIS ARTICLE. THE ASSOCIATION AND THE CITY SHALL JOINTLY SELECT AND DIRECT COUNSEL RETAINED FOR SUCH DEFENSE AND THE ASSOCIATION SHALL FURTHER ASSIST AND COOPERATE WITH THE CITY DURING SAID DEFENSE.

Section 2. Association Access

Subject to reasonable advance notice from the Association and approval from the Chief or the Chief's authorized designee, the Association may be permitted reasonable access to the premises of the Police Department for the purpose of administering this Agreement, in a manner that does not interfere with the functions of the Police Department.

The Association shall have the exclusive right to maintain an association bulletin board. Such bulletin board shall be at the Association's sole expense. The Bulletin Board shall be maintained in good condition by the Association and shall be encased and capable of being locked with a key provided to the Chief of Police or his designee.

Any material posted must be dated and signed by the Association official generating the same. The Association shall have the right to post on its bulletin board material pertaining to legitimate Association activities and interests under the following guidelines:

1. Materials shall be directed toward dissemination of Association information such as social and recreation events, association meetings, association elections, and legislation and judicial decisions affecting Members of the bargaining unit.
2. Any concerns on the part of the City or the Chief of Police about whether the content of posted material complies with this Article shall be brought to the attention of an Association executive board member for review and adjustment as soon as the concern arises. The Chief of Police may direct material considered objectionable to be removed from the bulletin board.
3. Materials may not contain any personal attacks, inflammatory material, obscene, lewd, distasteful or immoral material, material abusive of any person or organization, or material disruptive of City or Police Department operations.
4. At no time shall the bulletin boards contain any political endorsement, whether at the local, state or federal level.

**ARTICLE 4
HOLIDAYS, SICK LEAVE AND VACATIONS**

Section 1. Holidays for Compressed Work Schedule Officers

Officers working a ten (10) hour patrol shift (Compressed Work Schedule) will accrue holidays on the basis of eight (8) hours for each holiday observed by the City. For example, for calendar year 2009, such Officers are entitled to a total of seventy two (72) hours of holiday leave with pay (9 holidays at 8 hours per holiday) which total will be advanced on January 1, 2009. Officers assigned to a 10-hour shift must schedule holiday hours in advance, as part of the existing vacation request procedure. Holidays are subject to supervisory review and approval based on manpower levels. Officers assigned to ten-hour shifts will schedule at least seventy (70) hours of holiday as part of the yearly vacation request process. The remaining two (2) holiday hours (after taking seven 10 hour holidays) can be taken with compensatory time or vacation leave. Officers working a ten (10) hour shift who move to an eight (8) hour shift during the calendar year must immediately restore the holiday hours used equal to the rest of the holidays for the year (based on eight (8) hour holiday) by either agreeing to work the rest of the holidays for the calendar year or agreeing to the equivalent hours being charged to their vacation balance. If an Officer terminates his employment, a calculation of actual holiday hours earned verses holiday hours taken will be made. If the officer has taken more holiday hours than hours earned by the passing of each actual holiday, the Officer's vacation leave balance will be reduced by the excess hours previously taken. If the officer does not have sufficient vacation hours remaining, the balance of the holiday hours equivalent may be taken from any accrued sick leave for which the officer is eligible for payment or if insufficient, his final pay. This section shall supersede TLGC §142.0013(c) and TLGC §143.046 to the extent of any conflict.

Section 2. Sick Leave

Notwithstanding TLGC §143.045, Officers will accrue and use sick leave on the basis of hours. A "working day" shall mean an eight (8) hour day. An officer who leaves the classified service for any reason is entitled to payment for his/her accumulated sick leave but not more than 720 hours of sick leave. This section shall, to the extent of any conflict, supersede TLGC §143.045, any state statute, city ordinance, city policy, police department rule or local civil service rule.

Section 3. Vacation

Notwithstanding TLGC §143.046, Officers will be entitled to earn a minimum of one hundred twenty (120) hours of vacation leave per year. A working day shall mean an eight (8) hour day and this provision shall, to the extent of any conflict, supersede TLGC §143.046, any state statute, city ordinance, city policy, police department rule or local civil service rule.

ARTICLE 5 PROMOTIONS

Section 1. Eligibility for Promotion

Notwithstanding TLGC §143.028(b), Officers are not eligible for promotion to the rank of Sergeant unless the person has served in the Mesquite Police Department at least five (5) years immediately before the date the promotional examination is held. Officers are not eligible for promotion to the rank of Lieutenant or Captain unless the person has served in the Mesquite Police Department in the next lower rank for at least two years immediately before the date the promotional examination is held. This provision shall, to the extent of any conflict, supersede §143.028(b), any state statute, city ordinance, city policy, police department rule or local civil service rule.

Notwithstanding TLGC §143.031, each *Sergeant* promotional examination is open to each police officer who for at least five (5) years immediately before the examination date for the rank of Sergeant has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

This provision shall, to the extent of any conflict, supersede §143.031, any state statute, city ordinance, city policy, police department rule or local civil service rule.

Section 2. Promotional Examination Procedure

A. Procedure.

All promotional examinations shall consist of a written examination pursuant to TLGC Chapter 143 except as modified by this section. On or before March 1, 2009 and February 1 of each year thereafter, the Association President may submit its written recommendations derived from the officers eligible to take the examination in question on March 1, 2009, and eligible on February 1 for each year thereafter to the Chief of Police for source material for the promotional examinations for sergeant, lieutenant and captain, which recommendations are not binding on the Chief of Police who retains sole discretion to select the source material for police promotional examinations.

B. Modifications

The Association may develop alternate promotional procedures and systems for Sergeant, Lieutenant, and /or Captain for recommendation and presentation by the Association President to the Chief by March 1, 2009 and by February 1 for each year thereafter. The recommendation by the Association President shall be derived from those officers eligible as of March 1, 2009, and by February 1 for each year thereafter, to take the examination in question. If the Chief finds a recommended procedure and system achievable and in the best interest of the department, the Chief shall order the procedure and system be adopted for use by the department, except where the promotional process is already in progress on that date, without the necessity of any further action by the Commission.

Section 3. Promotional Eligibility List.

Promotional eligibility lists in effect on the effective date of this Agreement shall continue in effect until their date of expiration or sooner exhausted.

Section 4. Preemption

The provisions of this Article supersede all contrary provisions in TLGC Chapter 143, any state statutes, local ordinance, executive orders, legislation, or rules adopted by the state or by a political subdivision, including a civil service commission.

**ARTICLE 6
APPEALABLE AND NON-APPEALABLE SUSPENSIONS**

Section 1. Suspensions of Five (5) Days or Less

The parties agree that when an Officer is suspended without pay by the Chief of Police for 1, 2, 3, 4, or 5 days the Officer may elect to proceed as follows:

A. **Suspensions that may not be appealed.** At the time of receipt of the statement of suspension, the Officer may forfeit vacation or holiday time equal to the length of the suspension, or forfeit for any number of full days combined with the remaining period to remain suspended without pay, to serve the suspension with no break in service for purposes of seniority or promotion. The forfeited vacation or holiday time will not constitute hours worked. In the event an officer has received a disciplinary suspension within the preceding 24-month period, the officer may only forfeit vacation or holiday time with the Department head's permission. The officer must agree that there is no right to appeal the suspension nor right of review before any administrative body or judicial body if this method of suspension is chosen and the officer must sign a waiver of appeal and agree to the suspension.

B. **Suspensions that may be appealed.** If the officer does not elect to proceed under (a) above, the officer may either serve the suspension or appeal the suspension as set forth in Texas Local Government Code §143.053.

Section 2. Preemption

The provisions of this Article supersede all contrary state statutes, local ordinance, executive orders, legislation, or rules adopted by the state or by a political subdivision, including a civil service commission.

It is the specific intent of the Parties to this Agreement, that any express written provision that specifically provides for a procedure, a standard, or a practice other than what is provided for in Subchapter D of the Texas Local Government Code Chapter 143, is intended to override the applicable statutory provision as allowed by Subchapter B of the Texas Local Government Code Chapter 142.

ARTICLE 7 INITIAL HIRING

Section 1. Probationary Period

A person appointed to a beginning position in the Mesquite Police Department must serve a probationary period of eighteen months beginning on that person's date of employment as a police officer of the City Of Mesquite. The provisions of this Section shall supersede Texas Local Government Code §143.027 to the extent of any conflict.

Section 2. Examinations for Entrance Position

The City shall provide for entrance examination for the police department in accordance with Chapter 143 except as provided herein. The entrance examination for the police department may be administered by the City to individual applicants, at multiple locations within and outside of the City or state, and at different times as determined by the Director.

Section 3. Certified Lists

Applicants shall be ranked by highest passing score on the entrance examination (an additional 5 points shall be added to a passing grade on the written examination of an applicant who has an honorable discharge from the United States Armed Forces). Applicants who pass the written entrance examination must participate in and pass the next scheduled physical agility test to be placed on an Eligibility List. Applicants who do not pass the written entrance examination are not eligible to take the physical agility test or proceed further in the hiring process. Applicants rank on the eligibility list shall be based on their score on the entrance examination. Applicants who do not receive a passing grade on the written entrance examination may not retake the examination until after the next scheduled physical agility test. If the applicant receives a failing score on their second attempt at the entrance examination, the applicant is prohibited from taking the entrance examination for a period of two years from the date of the second attempt. Applicants who do not participate in or who fail the next scheduled physical agility test must retake and pass the written entrance examination to be eligible to take the next scheduled physical agility test.

Based on vacancies and the needs of the department, the Director may give another entrance examination and have more than one beginning position Eligibility List in existence at the same time; however, an earlier Eligibility List must have expired or been exhausted before proceeding to hire from the next subsequent Eligibility List.

Applicants already on a certified Eligibility List shall be carried on the List for a period of one year unless sooner disqualified.

Section 4. Appointments

Appointments from the current active Eligibility List for the beginning position in the Police Department shall be made by the Chief of Police in rank order based on the highest score (passing grade plus applicable points for honorable discharge from the United States Armed Forces) unless the person with the highest score is not appointed by the Chief for good and sufficient reason.

Section 5. Effect of Contract Expiration

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

- a. Any hiring process which has been commenced in substantial reliance upon the provisions of this Article;
- b. The length of the “at will” probationary period for individuals in that status prior to the expiration of this Agreement;
- c. Any eligibility list actively in use created under the terms of this Article will remain in effect for its duration unless exhausted sooner, notwithstanding the expiration of this Agreement;

Section 6. Preemption

It is expressly understood and agreed that all provisions of this Article and any procedures developed under the authority granted in this Article shall preempt any statute, Executive Order, local ordinance, City policy or rule which is in conflict with this Agreement and the procedures developed hereunder, including for example and not by way of limitation, any contrary provisions of Chapters 141, 142, and 143 of the Texas Local Government Code, including but not limited to the provisions of §143.021 through §143.027.

ARTICLE 8 COMPENSATORY TIME

As permitted by the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207(o), the City may compensate Officers with compensatory time in lieu of overtime compensation required by the FLSA, 29 U.S.C. § 207. Such compensatory time will be at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by 29 U.S.C. § 207. Officers shall accrue overtime based on a 40-hour work week.

The Officer has the option prior to accepting the work assignment to refuse such compensatory time off and elect to be paid overtime at one and one-half the Officer’s regular rate of pay. This article supersedes any and all *contrary* agreements or understandings related to compensatory time arrived at between the City and any individual member of the bargaining unit during the term of this Agreement. If this Agreement expires, any lawful contracts or understandings that were made with individual Officers regarding compensatory time, including that contained in existing policy, will apply.

Officers shall be allowed to accrue compensatory time up to a maximum accrual of eighty (80) hours. This article does not address the determination of overtime hours which is subject to City policy.

ARTICLE 9
APPOINTMENTS OF ASSISTANT CHIEFS

Section 1. Appointment of Assistant Chief

The Association recognizes the existing right of the Chief of Police to appoint two (2) Assistant Chiefs which is one rank immediately above the rank of Captain and one rank immediately below the Chief of Police in the chain of command. This Article shall create no additional positions within the rank of Assistant Chief nor limit the right of the City to do so in the future. As vacancies occur in the rank of Assistant Chief, the Chief of Police shall either appoint an officer or permanently abolish the position within ninety (90) calendar days in accordance with this Section. Positions within the rank of Assistant Chief shall be filled by the Chief of Police at his sole discretion, within ninety (90) calendar days of a vacancy occurring in that rank. Officers appointed to this rank shall have a minimum of five (5) years experience in a supervisory rank in addition to existing eligibility requirements in TLGC Chapter 143, and be subject to overall City policies and regulations. The appointment of the Chief of Police shall not be subject to any appeal or review under TLGC Chapter 143 or this agreement or to any other administrative or judicial body.

Effective upon execution of this agreement and effective with the promotion of any officer to the rank of Assistant Chief after March 1, 2009 those officers appointed to the rank of Assistant Chief shall be required as a condition of maintaining the appointed rank to obtain, at their own expense and on their own time, a Bachelor's Degree from an accredited college or university within forty eight (48) months after being appointed. Appointees will be required to begin the process of obtaining their degree no more than twelve months after the date of appointment. Assistant Chiefs appointed after March 1, 2009, who have already obtained a Bachelor's Degree prior to being appointed to the rank of Assistant Chief, shall present proof of completion to the Chief of Police within fourteen (14) calendar days of being appointed to the rank. Any officer appointed to the rank of Assistant Chief may be demoted to their last civil service protected rank at the sole discretion of the Chief of Police without appeal to the Commission and/or Hearing Examiner. Any officer appointed to Assistant Chief may, further, voluntarily return to their last civil service protected rank at any time. Upon demotion or voluntary return to that previously-held civil service protected rank pursuant hereto, the officer shall receive thereafter the full benefits provided in Chapter 143, Texas Local Government Code, and this Agreement as if the officer had served in that rank on a continuous basis throughout his tenure as Assistant Chief, and any other non civil service protected appointed rank. If no vacancy exists in the previously held civil service protected rank, the least senior officer in that rank will be demoted and placed on a preference list for promotion prior to appointment of any officer on any eligibility list for that rank. This same process will apply to any lower rank where there exists no vacancy for the demoted officer. An officer appointed to the rank of Assistant Chief may be terminated for cause, provided that such termination shall be subject to appeal in the same manner as applicable to all classified officers in the Department.

Section 2. Preemption

The provisions of this Article supersedes all contrary state statutes, local ordinance, executive orders, legislation, or rules adopted by the state or by City, including the Commission. It is the specific intent of the Parties to this Agreement, that any express written provision that specifically provides for a procedure, a standard, or a practice other than what is provided for in Subchapter B of the Texas Local Government Code Chapter 143, §143.014, and §143.085 is intended to override the applicable statutory provision as allowed by Subchapter B, §142.067 of the Texas Local Government Code Chapter 142.

**ARTICLE 10
CLOSING STATEMENTS**

Section 1. Complete Agreement

The Parties agree that each has had the full and unrestricted right and opportunity to make, advance, and discuss all matters properly within the province of bargaining for a meet and confer agreement. This Agreement constitutes the full and complete Agreement of the Parties and there are no others, oral or written, except as herein contained. No alteration, amendment or variation of this Agreement's terms shall bind the Parties unless made, executed and voted on by the parties as required by Subchapter B of Chapter 142 of the Texas Local Government Code. A failure of the City or Officer to insist in any one or more instances upon performance of any terms or condition of this Agreement shall not be considered as a waiver or relinquishment of the right of the City or the Association to future performance of any such term or condition, and the obligations of the City and the Association to such future performance shall continue in full force and effect.

The provisions of this Agreement shall supersede and preempt, during the term of this agreement and to the extent of any conflict, any contrary provision of Chapter 141, 142 or 143, Texas Local Government Code, or any other state statute as amended from time to time, ordinance, executive order, civil service provision or rule, or rule adopted by the Chief of Police, the City, or the Commission, as provided in Texas Local Government Code §142.067.

Section 2. Savings Clause

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

Section 3. Duration and Termination

This Agreement shall be effective as of the ___ day of _____, 2009. This agreement shall remain in effect until the 30th day of September, 2010.

IN WITNESS WHEREOF, the Mesquite Police Association has caused this agreement to be signed by its President, by order of its membership, and the City of Mesquite has caused this Agreement to be signed by its City Manager on the _____ day of _____, 2009.

MESQUITE POLICE ASSOCIATION

CITY OF MESQUITE

By: _____
President

By: _____
Ted Barron, City Manager

By: _____
Secretary

By: _____
Judy Womack, City Secretary

Approved As to Form:

Elizabeth A. Lunday, Deputy City Attorney