Tentative Agreement 12.21.2021

ARTICLE 14
City Property/Off-Duty Employment Office

Section 1. Introduction.

The existing policies for off-duty employment shall prevail, except that on matters involving jurisdiction or conflict of interest, the Chief shall have the right to amend the existing policies, subject to grievance procedure outlined in Article 15 of this Agreement. Provided, however, this article shall no longer permit a distinction between public and private events nor between for-profit and non-profit entities.

Section 2. Off Duty Office.

The City shall establish an office staffed to coordinate off-duty employment needs with City facilities. The Off Duty Office will be staffed with one Sergeant and a minimum of two additional sworn personnel, or up to four additional sworn personnel at the discretion of the Chief, along with sufficient civilian personnel. In the event the Chief decides to reduce the number of sworn personnel he shall notify the President of the Association in writing of the anticipated adjustment at least thirty (30) calendar days prior to implementation. Sworn personnel will be used to determine law enforcement staffing needs for events at City facilities and for issuing orders as necessary to sworn personnel assigned to work an off-duty job. Civilian personnel shall be used for all other Off Duty Office purposes. The City will provide office space, on-duty transportation and necessary office equipment at the Henry B. Gonzalez Convention Center as well as at the Alamodome.

Section 3. Use of Sworn Personnel at City Facilities.

A. The City shall utilize only sworn Officers for the purposes of providing security, crowd control, and other police-related activities at all City facilities. This shall not include ticket takers, badge checkers, or individuals whose duty is to enforce house rules. The Association recognizes that the City has legitimate reasons to work with performers or entertainer's special security needs. The City shall include in every contract for the use of City facilities that any vendor or lessee using said facility shall use only sworn Officers procured through the off-duty employment office for security, crowd control and other police-related activities while using the facility, and that number of Officers determined to be necessary by the off-duty employment office shall be paid by the vendor or lessee.

For the purposes of this article, City facilities shall include only the following:

(1) The Convention Center Exhibit Halls and Banquet Halls or future expansions

(2) The Lila Cockrell Theater

(3) Market Square

(4) Market Square's Centro de Artes Ballroom; Fiesta Room; and Farmers Market

(5) La Villita

(6) The Alamodome

B. All Officers assigned to work at City facilities on an off-duty basis shall be compensated as follows. Police Officers, regardless of seniority or other compensation, shall be paid at 1.2 times the officer's straight time rate (not including longevity) for an Officer at Step C of the salary schedule found in Attachment 2 of this agreement. All supervisors, regardless of rank or seniority, shall be paid at 1.2 times the straight time hourly rate for a Sergeant at Step A of the salary schedule (not including longevity) if working in a supervisory capacity for the vendor. The straight time rate shall be computed by multiplying the Officer's appropriate monthly rate from Attachment 2 by twelve (12) months and dividing that product by 2080 hours in a work year. All payments will be made utilizing the Officer's bi-weekly payroll check.

C. The office of the Chief of Police shall have the responsibility of staffing all City facilities with sworn Officers. The number of officers needed at any one such property or facility shall be within the exclusive prerogative of the Chief. The Chief shall establish and maintain a Department Procedure for administering this Section. The Procedure shall include sign-up, notification on a rotating basis, and other policies necessary for the administration of this Section.

D. The City agrees to pay Officers who work any Fiesta events and related activities in an off-duty capacity at Fiesta Pay, which shall be base plus longevity, times two (2). The City agrees to maximize the use of off-duty personnel who have signed up on the volunteer roster, and to minimize the use of on-duty personnel, subject to the other provisions herein. Fiesta activities and events will be those that are defined in the Official Fiesta Calendar published each year by the City and the Fiesta Commission. Events such as basketball games, concerts, or trade shows unrelated to Fiesta during the calendar days of Fiesta shall be paid at the regular overtime rate unless insufficient volunteers sign up for such events, then all volunteers whether or not from Fiesta volunteer roster shall receive Fiesta pay. Easter Sunday will not be covered under this Section but is covered under Article 20, Holidays, Section 1.

E. The City and the Association shall not grant any exceptions to this Article, with the sole provision being that Officers who "volunteer" their time without remuneration, of any type, may work charitable events. "Volunteers" are not exempt from the requirements for off-duty employment at City facilities, even where such volunteers under this paragraph are working on

City facilities, and written permission for volunteers to work at City facilities must be approved by the Office of the Chief or his designee.

F. Nothing in this Article precludes the City from utilizing personnel from private security companies to provide day-to-day security for any of the facilities listed in paragraph A above.

G. The City shall first be required to call or otherwise make available the opportunity for off-duty placement to SAPD personnel, and then to non-SAPD certified peace officer City employees. After having done so, the City may fill any remaining need for certified personnel with employees of other agencies outside the City organization.

H. The Association, on behalf of the Department, will apply and coordinate any paperwork necessary to comply with the Private Security Act of Texas.

I. Section 7(p)(1) of the Fair Labor Standards Act makes special provisions for Officers of public agencies that, at their own option, perform off-duty employment. This FLSA section provides that the City may facilitate the employment or affect the conditions of the Officer's off-duty employment. Additionally, the City may keep a roster and select from the roster, negotiate the Officers pay, retain a fee for administrative expenses, require the individuals who are hiring the officers to pay the costs directly to the City and establish procedures for the Officers to receive their pay, and require Officers to observe normal standards of conduct during their off-duty employment and enforce such requirements through disciplinary action

Since the off-duty employment provision was placed into the Agreement in 1988, the City and the Association have worked together to assure compliance. The Agreement of 1988 established an off-duty employment office and established off-duty compensation at the rate of 1.5 times an Officer's overtime rate in accordance with the Officer's rank. This was renegotiated in 1994 and reduced to 1.2 times the straight time for an Officer at Step C. Additionally in 1994, the City agreed to provide Officers the opportunity to take compensatory time instead of pay for off-duty purposes. This was considered a pass through of the pay benefit and was not intended or designed to impugn the separate and independent employer relationship outlined in Section 7. This Agreement removes the compensatory time payment allowance to eliminate any challenge to that relationship. In furtherance of the Agreements, the City has paid Officers in the rare instances where vendors did not pay. This was considered an important benefit to Officers and not designed or intended to alter the separate and independent status of outside interests utilizing City facilities. The City and the Association have a continued relationship within the scope of the Agreement that allows the City to negotiate Officer pay rates and conditions of off-duty employment while maintaining a separate and independent status from the individuals contracting to utilize City facilities and off-duty Police Officers.

J. Officers participating in the off-duty employment opportunities provided through this Agreement are working off-duty for the lessees of city facilities and not for the City or the

Department. In the event of any ruling or holding by a Court or any determination by the Department of Labor that non-payment by vendors makes the City liable for FLSA overtime as the employer of Officers, the City may require that officers sign an agreement agreeing to look solely to the vendor for payment; provided, however, that the City will implement reasonable practices for collection of accounts in order to achieve collection of such amounts in a commercially reasonable manner

K. In the event of any ruling or holding by a Court or any determination by the Department of Labor that results in altering or changing the benefits provided by this Agreement under this Article or challenges the ability of the City to determine compensation under this Article, the Association agrees that the City shall not be subject to provide additional wages, compensation, or incentives of any kind beyond that which is specified in this Article for purpose of off-duty employment at City facilities. To assure this outcome, the City and the Association agree to meet within ten (10) calendar days of the ruling, holding, or determination in an effort to resolve any conflicts with this Agreement. In the event that a compromise cannot be reached within the ten (10) calendar day window period, the City and the Association will submit all unresolved issues within thirty (30) calendar days before a neutral arbitrator selected by the parties. If the parties are unable to agree on an arbitrator, the parties will each submit the name of a qualified neutral person with DOL, judicial, or litigation experience in overtime and FLSA compliance in matters involving law enforcement officers. The two neutrals will select a third qualified neutral with the same experience who shall serve as the chairman of the arbitration panel. The dispute shall be submitted to the arbitration panel within ten (10) calendar days of their appointment. The hearing shall be conducted under Rules 5-10 of the Expedited Labor Arbitration Rules appended hereto as Attachment 1. The arbitration panel shall determine a decision within thirty (30) calendar days of their appointment. The arbitration panel's authority is limited to all claims or issues under this section; however under no case shall the arbitration panel issue a ruling that has the effect of changing compensation rates provided by this section. The decision shall be final and binding on all parties, and this process shall be exclusive for all claims or issues relating to the ruling, holding or determination which initiates the process. Officers seeking redress for off-duty employment grievances not relating to such issues shall do so on an individual basis and in accordance with the Grievance procedure of this Agreement.

L. Officers shall be paid, in addition to the compensation for hours worked for lessees using City facilities, the City "special event" parking rate, which shall be an additional cost charged to the lessee as a part of total Officer security costs. This parking reimbursement shall be paid for one parking rate per day.

Date: 1·18·2022

For the City

For the Association