Response to Issues Identified

Issue 1. "Suspensions should not be automatically reduced to written reprimand and the Chief should be able to consider all past misconduct in future discipline."

Response:

- Under the current requirements a reduction to a written reprimand is not automatic, but is only applicable to suspensions of 3 days or less, and requires a waiver of the Officer's right to arbitration.
- Under the proposed Agreement, language had been added to exclude suspension Under Policy 200, Response to Resistance and Policy 328, Biased Based Profiling:
- In the event the Chief believes the conduct should not be reduced to a written reprimand he can take into account the nature of the misconduct and impose 4 days if this section is not appropriate

Issue 2. "The Chief should be able to discipline an officer if facts emerge after 180 days has passed."

Response:

Prior Labor Arbitrations in Texas under 143.052 have resulted in conflicts about who has to be aware of misconduct for the deadlines to run for the 180 day discovery rule to apply. The proposed language in the Agreement identifies the Assistant Chief or Chief. It also eliminates the criminal law standards for proof, and makes the statutory exception very useful to the Department.

Issue 3. "History of misconduct should be included as a system of deductions from the scoring system used to promote officers."

Response:

- The department currently takes an officer's history of misconduct into account before promotion. He is entitled to do so under what is known as the Rule of 3.

- Local Government Code Sections 143.031 - 143.038 dictate the manner in which promotions are to be made. The Chief of Police must promote the individual having the highest score unless the Chief states a "valid reason" for bypassing that person. Courts have found that disciplinary history constitutes a "valid reason." This is currently being done by Department policy in the promotional process and each officer who is discipled is so advised in the suspension papers.

Issue 4: “Citizens should be able to make phone and online complaints, and management should be able to make a preliminary review of any evidence without a “verified” statement.”

Response:

On-line and verbal complaints which are not-sworn, as well as anonymous complaints are permitted in the proposed agreement.

Issue 5: “The Citizens Review Panel should be able to freely ask questions, subpoena witness and evidence, and listen to witnesses at the same time as the panel hears from police officers and union reps.”

Response:

The City sought this authority in multiple proposals. The proposed Agreement expands the role of the panel and their scope of access and authority, including questions at the panel meetings. No subpoena is necessary for access to evidence. Current provisions already allow access by the Panel of all evidence. The only persons who are interviewed in private by the Panel are Internal Affairs officers who may discuss (g) file materials which are not subject to disclosure publicly beyond the CRP. Union reps do not address the CRP in private and traditionally have not done so in the public session either.

Issue 6: “The Office of Police Monitor should have the power to initiate investigations, even if a citizen has not filed a complaint.”

Response:

The Police Monitor already has this ability, but it has been greatly enhanced by the new definition of “complaint” which now includes non-sworn to anonymous, phone, or email complaints.

Issue 7: “Stop sealing records of misconduct in 143.089(g), as can be done through this contract. Publish and make readily available to the public internal affairs transcripts of interview with officer and all final disciplinary decisions.”

Response:

The City is bound by 143.089(g) without a Contract change. The Association was willing to broaden this access for the Panel Members, but not to make it public in the absence of discipline imposed.

Issue 8: "Reports/recommendations should all be released to the public without expurgation based on the city legal's determination that other possible exceptions to the Public Information Act could be claimed."

Response:

There is no provision in the Statute that allows a meet and confer Agreement to supersede generally applicable state law. The Texas Public Information Act and other statutory privacy provisions are not laws that can be modified through this Agreement.

Additionally raised by the Justice Coalition:

Drug Testing for performance enhancing substances like steroids:

The current Agreement already provides for both reasonable suspicion and random drug testing. Steroids are being tested for under the current Agreement and the Association has specifically agreed this is appropriate.