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August 31, 2012

**INTERIM  
ARTICLE 11  
PROMOTIONS**

The following provisions become effective upon ratification of this Interim Article 11.

**Section 1. Time to Fill Vacancies.**

- (a) If an eligibility list exists on the date a vacancy occurs, the City shall fill the vacancy from that existing eligibility list as soon as administratively feasible, but not later than sixty (60) days after the vacancy occurs. Notwithstanding Texas Local Government Code (“TLGC”) Section 143.108(b), meeting this deadline precludes any liability for back pay or retroactive seniority for that position.
- (b) Notwithstanding TLGC Section 143.108(b), for the ranks listed below, when a vacancy occurs and an eligibility list does not exist, the vacancy shall be filled within one hundred eighty-five (185) days after the date the vacancy occurs from the list that the CSC shall provide within one hundred eighty (180) days after the date the vacancy occurs. The liability for back pay and seniority rights for a position listed below shall commence from the one hundred eighty-sixth (186<sup>th</sup>) day after the date the vacancy occurs in that rank. This provision shall be effective only for the ranks listed below for promotions filled from the first eligibility list established after the ratification of this Interim Agreement.

- 1. Communications Senior Captain
- 2. Communications Chief

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3. Communications Deputy Chief
4. Assistant Arson Investigator
5. Arson Investigator
6. Chief Inspector
7. Assistant Fire Marshal
8. Deputy Chief

- (c) After the first eligibility list established after ratification of this Interim Agreement, for the ranks listed above, when a vacancy occurs and an eligibility list does not exist, the vacancy shall be filled within one hundred twenty five (125) days after the date the vacancy occurs from an eligibility list the commission shall provide within one hundred twenty (120) days after the date the vacancy occurs. The liability for back pay and seniority rights for a position under this subsection shall commence from the one hundred twenty-sixth (126<sup>th</sup>) day after the date the vacancy occurs in that rank.
- (d) Notwithstanding any other provision of this Article, the filling of vacancies for the ranks of Captain and Engineer/Operator that result from the filling of vacancies that exist on the ratification date of this Interim Agreement in the rank of Senior Captain, shall be in accordance with the Civil Service Act, Chapter 143 of the TLGC. That will mean that if a Captain is promoted to Senior Captain off of the next Senior Captain eligibility list and the effective date of that promotion is the 95<sup>th</sup> day after the position was vacated, then the Engineer/Operator promoted to Captain to fill that vacancy will come from the Captain's eligibility

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list in effect on the 60<sup>th</sup> day after the Senior Captain vacancy was filled by operation of law. Likewise, the Firefighter promoted to fill the resulting Engineer/Operator vacancy will come from the Engineer/Operator eligibility list in effect on the 60<sup>th</sup> day after the Captain vacancy was filled by operation of law.

The following chart is offered only by way of example of operation of the above language. The information in the chart should not be construed as a promise of promotion to any specific individual, nor should the dates be relied upon as the date of any actual promotion or list.

Rank	Vacated	Date Vacancy Filled	List Vacancy Filled From
Sr. Captain	July 15, 2011	July 15, 2011 +95 days = October 18, 2011 promotional backdate.	Next Senior Captain List*
Captain	October 18, 2011	October 18, 2011 + 60 days = December 17, 2011	2010 Captain List**
E/O	December 17, 2011	December 17, 2011 + 60 days = February 14, 2012	2011 E/O List***

\*Sr. Captain List 2009 expired May 1, 2011; no subsequent list exists as of August 2012.

\*\*2010 Captain List created November 18, 2010; expires November 17, 2012.

\*\*\*2011 E/O list created August 3, 2011 remains current and in effect until August 2, 2013.

- (e) All other vacancies, not specifically addressed by this Article shall be governed by TLGC Section 143.108.

**Section 2. Examination Notice.**

- (a) Notice of the examination is sufficient if posted prior to the ninetieth (90<sup>th</sup>) day before the scheduled date of the examination notwithstanding the actual date if rescheduled as provided below. Sources shall be posted as prescribed by Section 143.029(a) of the TLGC, except as modified by this Article.
- (b) The Department may require members to sign up to take the examination according to the terms specified in the notice of the examination.
- (c) The actual date of the examination may be rescheduled for up to sixty (60) days in the event of circumstances beyond the City's control, including but not limited to extraordinary weather events or other emergencies. In the event of a rescheduling, no further notice of the examination is required other than the new time, place, and date of the rescheduled examination, notwithstanding TLGC Sections 143.029 and 143.107.
- (d) Notice shall be given pursuant to Section 143.107, except as modified by this Article, and tests administered in compliance with Section 143.104 of the TLGC.
- (e) For the ranks of Captain and Senior Captain, source material notice shall be accompanied by an informational test guide, which shall include a brief description of the various examination components, the number of exercises to be used, and sample, representative questions and exercises.

**Section 3. Examination Eligibility.**

- (a) Only members eligible as of the scheduled (or rescheduled) date for the first examination component (if more than one) shall be eligible to sign up for and take the examination.
- (b) Special Eligibility Rules. Notwithstanding Sections 143.106 and 143.028 of the TLGC, any member with five (5) years of seniority in the Department shall be eligible for any promotional examination to the rank of Communications Captain.
- (c) Eligibility for all other tested ranks shall continue to be controlled by Sections 143.028 and 143.106 of the TLGC.

**Section 4. Examination Development Process.**

- (a) The City shall develop a job analysis for each promotional examination given in the Department. This job analysis must be completed before any source material is announced. Each job analysis shall be developed with the participation of internal Subject Matter Experts (“SMEs”). The job analysis shall be prepared under the supervision of professionally qualified personnel (Professionally qualified personnel shall be deemed to be an individual(s) with at least a Ph.D. in Industrial/Organizational (“I/O”) Psychology.)
- (b) The source material selected for the administration of any promotional examination shall be informed by the job analysis for that particular rank. The examination notice shall identify the relevant sections of each text used in each source.
- (c) Written job knowledge examination questions must be taken from the sources.

- (d) When situational judgment questions are authorized by this Article to be used in any promotional examination, the scenarios and correct responses shall be informed by the job analysis and shall not be contrary to HFD Guidelines and other source materials.
- (e) All written examination components shall be administered on the same day. The written components shall be graded immediately and a preliminary raw score provided to the candidate. A preliminary raw score order list shall be prepared and posted.
- (f) Candidates shall have at least ninety (90) days to prepare for any promotional examination (beginning with the source material announcement and ending with the administration of the first examination component). Rescheduling of an examination component pursuant to Section 2 of this Article does not require another ninety (90)-day preparation period for any member who becomes eligible for the examination due to rescheduling.

**Section 5. Promotions to Engineer/Operator.** Except as amended by the Test Review Committee in Section 9 of this Article, the examination for the classification of Engineer/Operator shall continue to be administered pursuant to Chapter 143 of the TLGC.

**Section 6. Promotions to Captain and Senior Captain.**

- (a) **Positions Affected.** This promotional procedure shall apply to the promotion of eligible members to the classified positions of Captain and Senior Captain.
- (b) **Examination Components.** This promotional procedure shall consist of a written job knowledge examination, a situational judgment examination, and

assessment center exercises. The weighting of each component shall be determined by the federal courts in *Dwight Bazile, et al v. City of Houston, In the United States District Court for the Southern District of Texas, Cause No. 4:08-cv-02404*.

- (1) Written Job Knowledge Examination. The number of test items on the written job knowledge examination shall be determined by the test developer, but shall not be greater than one hundred fifty (150) items. A thorough description of the examination component and a reasonable range of the total number of examination items shall be communicated to the candidates in the written orientation guide.
  - (2) Situational Judgment Examination. The number of test items on a situational judgment examination shall be determined by the test developer but shall not be greater than one hundred fifty (150) items. A thorough description of the examination component and a reasonable range of the total number of examination items shall be communicated to the candidates in the written orientation guide.
  - (3) Assessment Center Exercises. The details of the Assessment Center are described in Section 7.
- (c) Examination Orientation. For the ranks of Captain and Senior Captain, the test developer shall conduct at least one (1) candidate orientation, with a question-and-answer (“Q&A”) session, which is videotaped and made available for subsequent review by the candidates. A thorough description of the examination

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component and the definition of each competency to be assessed shall be distributed to the candidates during orientation. The City shall ensure sufficient presentations to allow access by candidates required to work during original presentation. Q&A sessions shall promptly be made available to all candidates for review.

- (d) Final Composite Scoring. The test developer shall determine the point value for each exam item, provided that the maximum combined points available for the examination components (Written Job Knowledge examination, Situational Judgment examination, and Assessment Center Exercises) shall be one hundred (100) points.

Upon completion of all examination components, and after the conclusion of TRC appeals (as hereinafter defined), the City will post a preliminary rank order list pending certification by the CSC. The final score on the eligibility list shall be determined based on the following and shall then be forwarded to the CSC for certification.

- |     |  |       |                        |
|-----|--|-------|------------------------|
| (1) | Examination Component Points           | _____ | Points (100 Maximum)   |
| (2) | Supplemental points                    | _____ | Points (20 Maximum)    |
|     | Total Combined Eligibility List Score: | _____ | Points (120) (Maximum) |
- (Current practice tie breaking rules shall continue in force.)

**Section 7. Assessment Center** The following requirements are intended to serve as safeguards for security and integrity of process:

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- (a) Assessment Center exercise scoring process shall incorporate the use of predetermined criterion for performance standard (for example Behavior Anchored Rating Scales “BARS”).
- (b) Assessors shall score the assessment without regard to the candidate’s race, color, gender, ethnicity, religion, age, disability, sexual orientation, genetic information, gender identity, pregnancy, national origin, or other legally protected characteristic. Each assessor shall receive written and oral admonitions regarding this point prior to commencing assessment scoring.
- (c) Qualifications of Assessors. The test developer shall begin contacting eligible fire departments no later than the date of the test announcement. HFD may assist in the process of contacting eligible fire departments.
  - (1) Assessors shall be screened during the recruiting process to ensure compliance with the below qualifications.
    - (i.) Shall not reside in Houston-Sugarland-Baytown Metropolitan Statistical Area;
    - (ii.) Shall not be a current or former employee of the City or the Association;
    - (iii.) Shall currently be in a rank equivalent to the direct supervisor of the rank being tested and shall have at least two (2) years experience in that rank at the time of selection;
    - (iv.) Shall serve in a municipal fire department in the United States with a minimum population of 400,000;

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- (v.) Shall not be related by blood or marriage, within the second degree of consanguinity or affinity, to any candidate for promotion.
- (2) If by the thirtieth (30<sup>th</sup>) day prior to the scheduled (or rescheduled) assessment, qualifications (iii.) and (iv.) above have resulted in an insufficient number of assessors engaged to assess any examination, then the test developer shall be permitted to engage assessors with the following criteria:
- (i.) Assessors must have held for at least two (2) years a rank equivalent to the direct supervisor of the rank being tested or may have held one rank above that of direct supervisor.
  - (ii.) Assessors may, be retired, provided that they may not be retired from their municipal fire department longer than two (2) years at the time of the scheduled assessment, and provided that they meet provision (2.)(i.) above.
  - (iii.) Shall serve in a municipal fire department in the United States with a minimum population of at least 200,000.
- (3) If by the fifteenth (15<sup>th</sup>) day prior to the scheduled (or rescheduled) assessment, an insufficient number of assessors have been engaged to assess any examination, the test developer shall identify the number of assessors lacking and shall submit a list of available assessors who have otherwise been disqualified by the requirements above. The list shall not identify the assessor by name, but shall identify the City and State of fire

- department served, their total years of fire service experience, and their last rank as well as the reason for prior disqualification from assessing. The City and the Union will alternately select assessors from the list, beginning with the Union, until all necessary assessors have been engaged.
- (4) The City shall notify the Association in writing within seven (7) days of invocation of the expanded Assessor qualifications in (2) above and will provide the number of Assessors that were lacking as of the thirtieth (30) day prior to the scheduled assessment.
- (5) Assessors shall recuse themselves from the scoring of any candidate personally known to them.
- (6) All assessors shall undergo full assessor training prior to administration of each promotional assessment scoring, regardless of previous training or experiences as an assessor.
- (d) For the first examination in each eligible rank administered after the adoption of this Interim Agreement, the Assessment Center exercises will be administered first and scoring shall be finalized as soon as feasible. The written examination components shall be administered after administration of the assessment center, but in no case more than thirty (30) days later. Thereafter, the parties shall evaluate the feasibility of continuing this sequence of examination administration and shall determine the order of future examination administrations during negotiations of the successor agreement to the 2011-2014 Agreement.

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- (e) Assessment Center exercises shall be recorded in video format. Process safeguards shall be implemented by the test administrator to identify and correct technical problems at their earliest possible instance and to manage such technological complications in a systematic and fair approach.
- (f) Both the City and the Association shall each be entitled to have one (1) observer present during the administration of the Assessment Center, but shall not be permitted to observe any candidate's actual assessment exercises. Observers shall be subject to the security and safeguard procedures as determined by the test administrator and may be ejected by the test administrator for non-compliance with the same or for otherwise disrupting the assessment center.
- (g) Assessment Scoring Procedure.
  - (1) Each candidate's video tape shall be independently assessed by two different panels of assessors.
  - (2) Assessor panels will consist of at least two (2) scoring assessors. This does not preclude the test administrator from allowing more assessors or allowing assessors to rotate. At least one of the assessors per panel shall have served as an assessor at least once before HFD selection.
  - (3) Each panel shall reach a consensus grade as to the exercise scored.
  - (4) The test administrator shall compare the grades of the two panels' scoring of the exercise.
    - (i.) If the grades match, that is the candidate's grade for that exercise.

- (ii.) If the grades do not match, but do not vary by thirty (30) percent or more, then the two panel grades are averaged. This is the candidate's grade for that exercise.
  - (iii.) If the grades do not match and vary by thirty (30) percent or more, then the two panels reconvene into one panel which must reach a consensus grade for the candidate on that exercise. This is the candidate's grade for that exercise.
- (5) The final Assessment Center grade reached pursuant to this subsection shall be final and unappealable, with the sole exception of a violation of this Interim Agreement, which may be brought pursuant to the Grievance Procedure in Article 14.

**Section 8. Promotions to All Other Ranks.**

- (a) Positions Affected. This promotional procedure shall apply to the promotion of eligible members to all classified positions for which an examination is to be held except Engineer/Operator, Captain, and Senior Captain.
- (b) Written Job Knowledge Examination. Each eligible promotional candidate who receives a grade of at least 70% shall be considered to have passed the examination, and failing same shall not proceed further. The test can consist of not less than 100 and not more than 150 questions totaling a grade of 100.
- (c) Final Composite Scoring. The final score on the eligibility list shall be determined based on the following, determined as of the date of the examination.

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Captain/Senior Captain Equivalent Grades:

- (1) Written examination points \_\_\_\_\_ Points (100 Maximum)  
(2) Supplemental points \_\_\_\_\_ Points (20 Maximum)  
Total Combined Eligibility List Score: \_\_\_\_\_ Points (120) (Maximum)  
(Current practice tie breaking rules shall continue in force.)

District/Deputy Chief or Equivalent Grade:

- (1) Written examination points \_\_\_\_\_ Points (100 Maximum)  
(2) Supplemental points \_\_\_\_\_ Points (21 Maximum)  
Total Combined Eligibility List Score: \_\_\_\_\_ Points (121) (Maximum)  
(Current practice tie breaking rules shall continue in force.)

**Section 9. Examination Review Procedures for Engineer/Operators, Captains and equivalent ranks, and Senior Captains in Emergency Operations.**

This section shall apply to Engineer/Operators, Captains, Communication Captains, Inspectors, Investigators, and Senior Captains in Emergency Operations.

- (a). Appeals of the written job knowledge examination and the situational judgment examination shall be submitted to a Joint Labor/Management Testing Review Committee ("TRC"). For each applicable examination held, the TRC members shall be appointed upon the expiration of time for all written appeals and rebuttals. The TRC shall be composed of two (2) Association appointees, two (2) City appointees, and a fifth member selected by the four (4) appointed members. All appointees must be of at least the same rank tested for or the immediate

supervisory rank of the rank tested for by exam. The TRC shall identify a chair to facilitate the meetings and to sign the TRC's written decision.

- (1) Any candidate who has taken the written components may, within ten (10) business days of the posting of the preliminary examination results, review his/her examination results and file an appeal of any question(s) on the test.
- (2) These appeals shall be filed on the forms and in the manner determined by the City in writing and distributed to the candidates.
- (3) The City shall post the questions appealed and the basis for the appeal for ten (10) business days. During this time, candidates wishing to oppose the appeal may file a written rebuttal. The test developer/administrator may also file a written comment on either the appeal or the rebuttal, or both.
- (4) All posted appeals and rebuttals shall conceal the identity of the candidate challenging the item.
- (5) The TRC shall consider the appeals, the rebuttals, and any input from the test developer/administrator and render a written decision on each appeal within seven (7) business days from the expiration of the ten (10) business day rebuttal period in (9)(a)(3) above.
- (6) The TRC shall be provided reasonable administrative facilities and support. TRC members shall be covered on City business, but whenever possible TRC members shall conduct TRC business during scheduled on-duty time.

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- (b) The decision of the TRC shall be final and unappealable, with the sole exception of a violation of this Interim Agreement, pursuant to the Grievance Procedure in Article 14.

**Section 10. Supplemental Points for Ranks above Engineer Operator.** The final score shall be determined by adding the supplemental points as applicable below to the examination component(s) cumulative grade, after review of challenges by the Test Review Committee or the Civil Service Commission.

- (a) Seniority points (0.5 for each year of service) \_\_\_\_\_ Points (10 Maximum)
- (b) Seniority in Rank (0.5 for each year in rank) \_\_\_\_\_ Points (5 Maximum)

Seniority in Rank points shall be awarded as follows:

- (1) For first-line supervisory examinations, (i.e., Captains, Communications Captain, Investigator, Inspector), 0.5 points shall be awarded for every complete year of service in the rank of Engineer/Operator, or higher in any classification(s), as of the Examination Date to a maximum of five (5) points.
- (2) For mid-level supervisory examinations, or higher, (i.e., Senior Captains, Senior Investigator, Senior Inspector, Senior Communications Captain and above), 0.5 points shall be awarded for every complete year of service as of the Examination Date in the rank immediately below in the same classification up to a maximum of five (5) points.
- (3) Members appointed to the rank of Assistant Chief, Executive Assistant Chief, or Fire Chief shall be awarded 0.5 points for every complete year of

service in rank, as of the Examination Date which shall be applied to their highest tested rank immediately preceding their appointment, up to a maximum of five (5) points.

(c) Certification (Texas Commission on Fire Protection)

Highest Level and one Certification Only:

Intermediate Certificate \_\_\_\_\_ Points (1)

Advanced Certificate \_\_\_\_\_ Points (2)

Masters Certificate \_\_\_\_\_ Points (3)

(Any Commission Certification may be used for any Promotional examination.)

(d) Education (Highest Level Only)

Captain/Senior Captain or Equivalent Grade:

60 College Semester Credit Hours or Associate Degree \_\_\_\_\_ Points (1)

90 College Semester Credit Hours or higher \_\_\_\_\_ Points (1.5)

120 College Semester Credit Hours or Bachelor Degree \_\_\_\_\_ Points (2)

District/Deputy Chief or Equivalent Grade:

Associate Degree \_\_\_\_\_ Points (1)

Bachelor Degree \_\_\_\_\_ Points (2)

Masters Degree \_\_\_\_\_ Points (3)

(Grades do not round up; multiple certifications are not cumulative; hours or degrees are not cumulative; degrees must be from an accredited college or university), see 143.112, TLGC.

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Supplemental points shall be determined and verified during the period between announcement and the administration of the first examination component. Seniority and seniority in rank points shall be calculated and set as of the date of the administration of the first examination component. Certification and education points shall be calculated and set as of the date in the announcement, but in no event earlier than three (3) weeks prior to the administration of the first examination component.

**Section 11. Eligibility Lists.**

- (a) For all promotional examinations, a final, official rank order eligibility list shall be created in accordance with Chapter 143 of the TLGC, as amended by this Article, and shall be certified by the CSC.
- (b) Eligibility lists shall remain in effect for two (2) years beginning on the certification of the new eligibility list or the expiration of the previous eligibility list for that rank, whichever occurs last. Vacancies created during the interim period between the expiration of a previous eligibility list and certification of a new eligibility list shall be filled from the new eligibility list.
- (c) Eligibility lists shall expire at midnight (12:00 a.m.) on the last day of the two (2) year life of the list (for example: List certified on January 1, 2012. List expires on December 31, 2013, at midnight (12:00 a.m.)).

**Section 12. Preemption.** To the extent that any provision of this Article conflicts with or changes any provision in Chapters 141, 142 and 143, including Sections 143.029, 143.030, 143.032, 143.033, 143.036, 143.107, 143.108, of the TLGC, or any other statute, executive

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order, local ordinance, or rule, this Article shall supersede such provisions, as authorized by Section 174.005 and 174.006 of the TLGC.

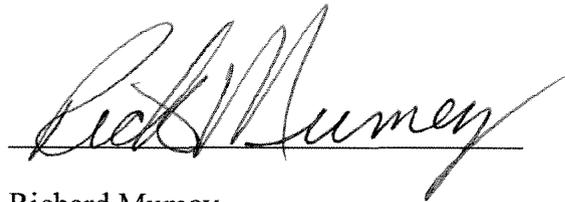
**Section 13. Reopener.** Both parties recognize and agree that this Article is subject to amendment and either side may initiate a reopener after any substantive ruling of the federal courts in *Dwight Bazile, et al v. City of Houston, In the United States District Court for the Southern District of Texas, Cause No. 4:08-cv-02404*. The Association has agreed to the inclusion of situational judgment and assessment center exercises for the ranks of Captain and Senior Captain pursuant to the court's ruling and shall not be construed as a waiver of the Association's right to appeal a final judgment in the *Bazile* litigation.

**Section 14. Exhibit C.** Exhibit C "Promotional Examination Schedule" to the 2011 Agreement between the City of Houston and the Houston Professional Firefighters Association, Local 341 International Association of Firefighters is hereby revoked.

Signed this 31<sup>st</sup> day of August, 2012.



Natalie DeLuca, Assistant City Attorney  
Chief Negotiator for the City



Richard Mumey  
Chief Negotiator for the Association

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Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor Annise D. Parker, City of Houston

\_\_\_\_\_  
Jeffrey Caynon, President  
Houston Professional Fire Fighter's Association  
Local 341

ATTEST:

COUNTER-SIGNED:

\_\_\_\_\_  
Anna Russell, City Secretary

\_\_\_\_\_  
Ronald C. Green, City Controller

APPROVED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Terry Garrison, Fire Chief

\_\_\_\_\_  
David Feldman, City Attorney