

MEMORANDUM OF UNDERSTANDING

BETWEEN AND FOR THE

CITY OF FRESNO

AND

**OPERATING ENGINEERS, LOCAL UNION NO. 3
(Airport Public Safety Supervisors - Unit 15)**

**Fiscal Years
2011-2012**

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<u>LEGEND</u>	
***	= deleted old language
[\$ deleted]	= section/subsection deleted
[\$\$ deleted]	= two or more sections/subsections deleted
bold type	= new language

ARTICLE I

PREAMBLE

A. PURPOSE

This Memorandum of Understanding (MOU), entered into between the City of Fresno, hereinafter referred to as the City, and Operating Engineers Local Union No. 3, hereinafter referred to as the Union, representing the Fresno Airport Public Safety Supervisors Association, hereinafter referred to as FAPSS, Association or Unit, has as its purpose the establishment of wages, hours, and other terms and conditions of employment, and to promote collaboration in the resolution of issues affecting all parties. The parties have met and conferred in good faith and have freely exchanged information, opinions and proposals and have reached agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

B. DEFINITIONS

Unless the particular provision or the context otherwise requires, and, except to the extent that a particular word or phrase is otherwise specifically defined in this MOU, the definitions and provisions contained in Sections 3-101, 3-201, 3-501 and 3-603 of the Fresno Municipal Code, hereinafter FMC, shall govern the construction, meaning, and application of words and phrases herein. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

C. GOVERNING LAWS

The legal relationship between the City and its employees and the City and the Union is governed by Chapter 10 of Division 4 of Title 1 of the Government Code (Section 3500 et seq., commonly known as the Meyers-Milias-Brown Act), applicable provisions of the Public Employment Relations Board (PERB), as may be amended from time to time, and Article 6 of Chapter 3 of the FMC, and the Public Safety Officers Procedural Bill of Rights Act, Government Code Section 3300 - 3312. In the event of any conflict between said laws and this MOU, or in the event of conflicts in interpretation, said laws shall govern.

ARTICLE II

EMPLOYEE RIGHTS

A. GENERAL

The rights of employees are set forth in FMC Section 3-604 and said section presently reads as follows:

"Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations including, but not limited to, wages, hours, and other terms and conditions of employment. Employees shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employees shall be interfered with, intimidated, restrained, coerced, or discriminated against by the City or by an employee or an employee organization because of his [or her] exercise of any of these rights. No management employee or confidential employee shall act as a representative of any employee organization which represents employees other than management employees or confidential employees."

B. NONDISCRIMINATION

The provisions of this MOU shall apply to and be exercised by all members of the Union consistent with state and federal nondiscrimination statutes.

C. EMPLOYEE RESPONSIBILITIES

All employees in the FAPSS Unit acknowledge that the City shall consider the positions and proposals of the Union as the meet and confer positions and proposals of all employees, individually and collectively, in said Unit.

D. PERSONNEL FILES

1. The Human Resources Division, under the direction of the Director of Personnel Services, shall maintain the official personnel file for each employee. Access and inspection of personnel files shall fall under the guidelines of Section 3306.5 of the California Government Code known as the Public Safety Officers Procedural Bill of Rights Act. Each employee may review, or authorize in writing its review by a designated representative, subject to reasonable rules and regulations, and receive a copy of all material placed in either his or her official file or departmental file. No

instrument shall be placed in a public safety officer's personnel file, until he or she has reviewed it, and shall follow the guidelines as stated in Section 3305 of the California Government Code.

If an employee disagrees with the content of a document placed in either file, or requests said document to be removed from the file if believed to be obsolete, it shall be the right of the employee to submit a response to the Director of Personnel Services to be attached to the document in question. Within thirty (30) calendar days of receipt of said request, the City shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the City refuses to grant the request, in whole or in part, the City shall state in writing the reasons for refusing the request and that written statement shall be included in the appropriate file. Personnel files are considered confidential and access is limited.

2. Documents, including performance evaluations, retained in the officer's departmental file shall be forwarded to the officer's new department if the officer transfers, promotes, or demotes. The file should be forwarded to the Personnel Services Department when the officer leaves City service.
3. Inquiries regarding employment references shall be administered in accordance with existing City policies.

ARTICLE III
CITY RIGHTS

A. GENERAL

1. The rights of the City include those rights enumerated in FMC Section 3-605, as the same may be amended from time to time. Specifically:
 - “(a) The exclusive rights of the City include, but are not limited to, the right to
 - (1) determine the missions of its constituent departments, divisions, commissions, and boards;
 - (2) set standards of service and municipal fees and charges;
 - (3) determine the procedures and standards of selection for employment, assignment, transfer, and promotion;
 - (4) direct its employees;
 - (5) take disciplinary action;
 - (6) relieve its employees from duty because of lack of work or for other legitimate reasons;
 - (7) maintain the efficiency of governmental operations;
 - (8) determine the methods, means, and personnel by which government operations are to be conducted;
 - (9) determine the content of job classifications;
 - (10) take all necessary actions to carry out its mission;
 - (11) exercise complete control and discretion over its organization and technology of performing its work.”
2. The rights of the City include the determination of staffing levels, including but not limited to, staffing by shift and class.
3. All other rights formerly or presently enjoyed by or vested in the City on the effective date of this MOU and not mentioned in Section 1.(a), above are

retained by and reserved to the City unless explicitly waived by the City by resolution of the Council or by Council-approved MOU.

4. Nothing in this MOU shall be construed as delegating to others the authority conferred by law on the City, or in any way abridging or reducing such authority.
5. This MOU is not intended to restrict consultation in good faith with the Union regarding matters within the right of the City to determine.

ARTICLE IV
RECOGNITION

A. UNION RECOGNITION

The City recognizes Operating Engineers Local Union No. 3 (OE3), as the exclusive bargaining agent representing the Fresno Airport Public Safety Supervisors Unit (FAPSS) and therefore, shall meet and confer in good faith promptly upon request by the Union and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on an MOU. In order that the meet and confer process includes adequate time for full consideration of the proposals of both parties and for the resolution of any impasse, the City will entertain proposals from the Union as early as March 1, in the year that the MOU expires.

B. UNION OFFICERS

A written list of the Executive Board Members of the Union shall be furnished to the City immediately after their designation and the Union shall notify the City promptly in writing of any changes of such members.

C. UNION BULLETIN BOARDS

The Union may use designated portions of City Bulletin Boards in the City Facilities in which members of this Unit are on duty.

D. UNIT DESCRIPTION

1. The Unit consists of all employees holding a permanent position, as defined in FMC Section 3-202, in the class of Airport Public Safety Supervisor listed in Exhibit 8 of the Salary Resolution, as such Unit may be modified from time to time in the manner designated in the FMC.
2. The class of Airport Public Safety Supervisor shall remain allocated to the Department of Airports under the supervision of the Public Safety Division.
3. The parties agree to meet and confer at a mutually acceptable time following Council approval of this MOU for the purpose of determining the need for any modification(s) to the job specifications of an Airport Public Safety Supervisor.

E. CITY RECOGNITION

The Union recognizes the City Manager of the City of Fresno, or such person as may be designated in writing, as the designated representative of the City, and shall meet and confer in good faith promptly upon request by the City and continue for a reasonable period of time in order to exchange freely information, options, and proposals, and to endeavor to reach agreement on an MOU.

F. RECOGNITION OF MUTUAL OBLIGATION

The Union and the City recognize and acknowledge their mutual obligation and responsibility to effectuate the purposes set forth in, and to adhere to the conditions and clauses set forth in, this MOU.

G. STRIKES

No unlawful strikes of any kind shall be caused or sanctioned by the Union during the term of this MOU.

H. UNILATERAL ACTION

In the event the meet and confer process for a successor MOU results in an impasse, as defined in the FMC, the City shall not take unilateral action regarding wages, hours, and other terms and conditions of employment prior to completion of the impasse procedures outlined in the FMC.

ARTICLE V

SCOPE OF REPRESENTATION AND GRIEVANCES

A. GENERAL

“Scope of Representation” means all matters relating to employer-employee relations, including, but not limited to wages, hours, and other terms and conditions of employment. Employee rights as set forth in FMC Section 3-604, and City rights, as set forth in FMC Section 3-605(a), are excluded from the scope of representation.

B. GRIEVANCE PROCEDURE

1. A grievance is a dispute concerning the interpretation or application of any existing City policy, written rule or regulation governing personnel practices or working conditions, including this MOU. A grievance involves the claimed misapplication or misinterpretation of a rule or regulation relating to an existing right or duty; it does not relate to the establishment or abolishment of a right or duty. This procedure shall not apply to any dispute for which there is another established resolution procedure, including but not limited to appeal to the Civil Service Board, Retirement Board, unfair employer-employee relations charge, fact-finding procedure, or as outlined below.
2. A written grievance must set forth the rule, regulation, policy, or specific section of the MOU claimed to have been violated, describe the specific incident or circumstances of the alleged violation, and specify the remedy sought. Any dispute between the parties as to the grievability of an issue or as to whether the requirements of this procedure have been met shall be presented to the Grievance Advisory Committee. The Committee shall rule on the dispute before proceeding with the hearing. The Committee will be bound by the agreement of the parties regarding timeliness.
3. At the request of the grievant, the Union may represent employees covered by this MOU on grievances under the grievance procedure.
4. The parties agree that it is in their mutual interest to resolve grievances at the earliest possible opportunity. In an effort to further this goal, Union Officers designated under this MOU shall be excused without loss of compensation from their regular duties for such time as is necessary to attend and represent the grievant at grievance hearings, beginning at the first level of supervision.
5. The procedure and sequence in filing and processing a grievance shall be as follows:

- a. The employee and/or Union representative shall discuss the grievance with the grievant's immediate supervisor before a written grievance may be filed.
 - (1) If the grievance is not settled through this discussion, it either may be discussed with the next highest supervisor or a written grievance may be filed with the grievant's immediate supervisor. A written grievance must be filed, with a copy being sent to Labor Relations, within eighteen (18) calendar days from the date the grievant becomes aware, or should have become aware of, the issue or incident giving rise to the problem.
 - (2) Upon receipt of a written grievance, the immediate supervisor shall give the grievant a written reply within ten (10) calendar days.
- b. Should the grievant not be satisfied with the answer received from his/her immediate supervisor, the employee may, within ten (10) calendar days, file an appeal to the Department Head. The Department Head shall have ten (10) calendar days after receipt of the appeal to review the matter, investigate and provide a written answer to the appeal, explaining clearly the decision or proposed action and reasons thereof. The Department Head may confer with the grievant, the grievant's representative and appropriate supervisors in an attempt to bring about a harmonious solution.
- c. The City, the grievant and/or Union may mutually agree to waive steps one (1) and two (2) and proceed directly to hearing by the Grievance Advisory Committee when the issue is one over which the grievant's supervisor or Department Head has no jurisdiction.
- d. If the grievant is not satisfied with the decision of the Department Head, he or she may, within ten (10) calendar days after receipt of the written reply, file a request for a review of the Department Head's decision to the Grievance Advisory Committee. The review/appeal to the Grievance Advisory Committee shall be reviewed by the Union before it is delivered to the Labor Relations Division.
- e. The City, the grievant and/or Union may agree to seek resolution of the grievance through mediation using the services of the State Mediation and Conciliation Service, prior to hearing by the Grievance Advisory Committee. Time limits for processing of the grievance are automatically extended for as long as mediation is in process.

- f. The Grievance Advisory Committee shall be comprised of three (3) members: One selected by the Union, one selected by the City, and the Chairperson. The Chairperson may be chosen either by mutual agreement of the Union and the City, or by the "strike" method from a list of neutrals provided by the State Mediation and Conciliation Service. If the Chairperson is selected by the strike method from the list of neutrals provided by the State Mediation and Conciliation Service, then the Grievance Advisory Committee shall be comprised exclusively of the selected neutral.
 - (1) Fees and expenses of the chairperson shall be paid half by the City and half by the Union or the individual grievant(s); provided, however, that the Grievance Advisory Committee may recommend that the City or the Union or the individual grievant(s) pay the total of such fees and expenses should it find that, but for the unreasonableness of that party's posture, the convening of the Committee would not have been necessary. The City and the Union shall select a chairperson within fourteen (14) calendar days of the receipt of a grievance requesting review by a Grievance Advisory Committee by the Labor Relations Division.
 - (2) The neutral Grievance Advisory Committee shall be bound by the language of the MOU, City AO, ordinances, rules, and regulations, and department rules and regulations consistent therewith in considering any issue properly before them. The neutral Grievance Advisory Committee shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue not so submitted. The neutral Grievance Advisory Committee may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits, prior to the date the grievance was timely filed.
- g. A date for the Grievance Advisory Committee to convene will be set within thirty (30) calendar days from the date that a grievance reaches the Labor Relations Division, provided it meets all criteria for the filing and processing of a grievance.
- h. All time limits herein may be extended by mutual agreement of the parties.
- i. The Grievance Advisory Committee shall conduct an evidentiary hearing, interview witnesses, and consider all relevant documents prior to submitting its conclusions and recommendations to the City Manager within thirty (30) calendar days of its last meeting.

- j. The City Manager shall review the decision of the Department Head and recommendations of the Grievance Advisory Committee, and shall render a written decision to the employee within fourteen (14) calendar days after receipt from the Grievance Advisory Committee.
- k. Failure of the grievant to file an appeal within the specified time limit shall constitute an abandonment of the grievance process. Failure of the responsible supervisor or official of the City to render a decision within the specified time limit established by this procedure shall automatically move the grievance to the next higher level for action, without action required of the grievant.

ARTICLE VI

DUES DEDUCTION AND UNION BUSINESS

A. GENERAL

Pursuant to and in accordance with Section 3502.5 of the Government Code and all the provisions therein, the City and the Union agree that all employees in this Unit shall be required, as a condition of continued employment, to join the Union or to pay the Union a Service Fee. The procedures governing dues deductions, agency shop, hold harmless obligations, religious and conscientious objections, and financial reporting requirements, shall be as provided in Government Code Section 3502.5.

B. DUES CHECK-OFF

Rules governing dues check-off are set forth in FMC Section 3-620, as may be amended from time to time.

1. The City shall deduct union dues, benefit premiums, and/or both upon proper authorization by FAPSS members.
2. If a member in the Unit desires the City to deduct dues or benefit premiums from the member's paycheck, a deduction authorization shall be made upon a Dues Deduction Authorization card.
3. The Service Fee shall consist of, and not exceed the standard initiation fee, periodic dues, and general assessments of the Unit. The Unit shall neither require a non-member of the Unit to make any payment to a Political Action Committee, nor shall the Union include as a part of the Service Fee any amount to be used for political purposes.
4. A Dues Deduction Authorization card may be revoked by a member in the Unit, and the dues or benefit deduction canceled, only during the months of November and December of any year. If a member in the Unit desires to revoke a dues deduction authorization card, a dues deduction revocation shall be made upon a Dues Deduction Revocation Card. Dues Deduction Authorization and Revocation cards shall be available at the Finance Department, Payroll Section and at the Personnel Services Department.
5. In the event an employee covered hereunder does not authorize deduction of either Unit dues or a Service Fee from the employee's paycheck and does not make such payment directly to the Unit, the Unit shall provide a certification to the City of such failure. Prior to such certification, the Unit shall notify the employee of its intent to provide certification to the City and

give the employee an opportunity to respond within thirty (30) calendar days. Certification shall be on a form provided to the City. Such failure by an employee shall constitute grounds for termination by the appointing authority.

6. Upon written authorization by a retired member of the Unit, the City shall deduct credit union payments and Unit dues monthly from the retirement check of such retired member and forward same to the credit union or Unit as designated in such authorization.

C. EXCEPTIONS TO DUES DEDUCTION AUTHORIZATION CARD

Should a Unit member's salary become insufficient to cover other legal and required deductions, no dues deductions or deposit shall be made. When a member is in a non-pay status for an entire pay period, no dues deductions shall be made from future earnings to cover that pay period, nor may the member be required to deposit the amount which would have been deducted if the member had been in pay status during that period. In the case of a member who is in a non-pay status during only a part of the pay period, and whose salary is insufficient to cover other legal and required deductions, no dues deduction or deposit shall be made.

D. DUES DEDUCTION CHECK

1. The deduction check covering all such deductions shall be transmitted, at least monthly, to:

OPERATING ENGINEERS LOCAL UNION NO. 3
FRESNO PUBLIC EMPLOYEES DIVISION
4856 N. Cedar Avenue
Fresno, California 93726

Should the Unit elect to have the deduction check transmitted to an address other than that set forth above, the Unit shall so indicate by written notice to the City's Finance Department, Payroll Section, with a copy of the Labor Relations Division. The City shall transmit the deduction check to the address specified in the notice as early as is practicable after receipt of such notice.

2. The deduction check shall be made in favor of:

OPERATING ENGINEERS LOCAL UNION NO. 3
FRESNO PUBLIC EMPLOYEES DIVISION

E. UNION BUSINESS

1. The City shall allow a reasonable number of employees of this Unit a reasonable amount of time off without loss of compensation when members are conducting contract negotiations within the scope of representation.
2. Approval of time off pursuant to subsection E.1, above, shall not be unreasonably withheld, however the City may deny use of time, if the time off requested would preclude the Department from maintaining the efficiency and needs of governmental operations.
3. Each fiscal year of this agreement, the Union may require members of the Union to donate four (4) hours of their monthly vacation leave accrual levels (denoted in Section VII E. 2. Vacation Leave), to the Union, which shall be placed in a time bank and administered by the Department for Union business use. The donated time shall be used by business officials of the Union to attend conferences, training, and to conduct Union business as needed, and directed by the Union. The Department is not required to grant time off for Union business if it will require filling the position on an overtime basis. The Union shall have the responsibility of notifying the Finance Department and Labor Relations when the hours are to be donated. Upon receipt of this notification, the Finance Department shall deduct the designated hours at the next feasible pay period.
4. Any time spent by the Union President, and by members designated by the Union to be on such business, shall be deducted from the Union's time banked balance. It is further agreed by the parties that once accrued vacation leave is donated to the Union, the City no longer has any obligation to compensate, either in cash or in equivalent time off, such members.

ARTICLE VII

COMPENSATION AND BENEFITS

A. GENERAL

All economic benefits provided by Council ordinance or formal Council resolution and not otherwise clearly and explicitly modified or restricted in this MOU shall be continued without alteration during the term of this MOU.

B. SALARIES AND PREMIUM PAY

[§ deleted]

1. Salaries:

2.

a. **Effective September 6, 2010, salaries for current employees in Airport Public Safety Supervisor positions shall be adjusted as reflected on Exhibit I, Table 2.**

b. **Employees hired after July 1, 2010 shall be paid at the rate noted in Exhibit I, Table 2.**

2. Movement Between Steps & Employee Performance Evaluations

a. Movement to applicable Steps will be based upon Annual Performance Evaluations upon a satisfactory rating as set forth in Section 2. (Salary Step Plan) of the City's Salary Resolution, effective on the employee's anniversary date of their current class.

b. The City and the Association agree to meet and confer prior to the implementation of any modifications to the current performance evaluation process.

3. Premium Pay:

[§ deleted]

Bilingual Certification Program - The bilingual certification program consists of a City administered examination process whereby employees may apply for the bilingual examination, and if certified by the examiner, receive bilingual premium pay for interpreting and translating. Bilingual premium pay is not pensionable under the first or second tier of the City Fire and Police Retirement Systems.

- a. Bilingual certification examinations will be conducted in December of each year. During the examination noticing period, examination applications will be available at the Personnel Services Department, Human Resources Division and City department personnel units.
 - (1) In order to qualify for the December examination, the application must be received by the Human Resources Division during the month of November, but no later than the last regular business day of November.
 - (2) Bilingual examination application deadlines are not appealable or grievable.
- b. Bilingual certification examinations are conducted for Cambodian, Hmong, Laotian, Sign, Spanish and Vietnamese languages.
- c. The bilingual premium pay rate for certified permanent employees is one hundred dollars (\$100) per month, regardless of how many languages for which an employee is certified.
 - (1) Certified employees may interpret/translate for departments/divisions they are not assigned to, provided the requesting department/division has a demonstrated customer service related need, and has obtained approval from the certified employee's supervisor.
 - (2) Certified employees shall not refuse to interpret/translate while on paid status. Refusal shall result in appropriate disciplinary action. Certified employees may be assigned to any incident or investigation requiring their bilingual skills and may be required to prepare written reports related to the incident or investigation. The objective of this policy will be to utilize department resources in the most efficient way possible.
 - (3) Except in the event of an emergency, bilingual employees who are not certified shall not be required to interpret/translate.

C. FRESNO CITY EMPLOYEES HEALTH AND WELFARE TRUST

The City and the Association agree that the Fresno City Employees Health and Welfare Trust has the sole authority to determine the benefits that will be provided during the term of this MOU. The sole responsibility of the City under this clause is to provide a set dollar amount to be contributed to the Trust on behalf of the employee represented by the Association. The City's contribution will be eighty percent (80%) of the premium established by the Fresno City Employees Health and Welfare Trust Board. **The City's contribution will be adjusted if at least one**

MOU covering safety employees (Fire Basic, Fire Management, Police Basic, or Police Management) agree to a new rate. The new rate shall be equal to the rate agreed to in one of the aforementioned MOU's. During periods of open enrollment or due to a change in circumstances as defined by the Trust, an employee may opt to contribute the amount necessary to make up the difference through payroll deductions, or accept a reduced coverage option.

The parties also agree to work collectively in conjunction with their Board representatives to research and recommend potential cost-saving measures for the Health & Welfare Trust, which may include a choice of health program options based on individual need or preference, including a reduced option equivalent to the City's premium contribution, a separate rate for single employees with no dependents, or other flex plan programs; mandatory generic mail order drug maintenance for employees who require prescription drug therapy for any period of 90 days or more; or other measures that may be identified as this work progresses.

D. HOURS AND WORK SCHEDULES

1. The * * * **workweek/work cycle** * * * work period under FLSA * * * **will be determined by management in accordance with the needs of the * * * Airport * * * with the understanding that employees perform both law enforcement and fire protection duties under the definitions of FLSA and are considered to be covered under the law enforcement positions.**
2. **Effective September 6, 2010, the Unit will be placed on a 14 day work period with a schedule consisting of three twelve (12) hour shifts in one week and four twelve (12) hour shifts in another week. As noted below, this work period and schedule can be changed with appropriate notice.**

[§ deleted]

3. Work schedules are established solely at management's discretion based upon the need to provide service to the public * * * and * * * operational efficiency requirements. Work schedules may be rotated, at management's discretion. Such decisions shall not be appealable or grievable.
4. **Management will provide thirty (30) calendar days written notice of a change in work schedules to employees and the Union. A copy will be sent to Labor Relations. Prior to the expiration of said thirty (30) calendar days and upon a written request, the Union will be provided an opportunity to discuss the schedule change.**

E. LEAVES AND HEALTH REIMBURSEMENT ARRANGEMENT (HRA)

1. Holiday Leave

- (a) **Effective September 6, 2010**, employees shall accrue * * * **eight and two thirds (8 2/3)** hours per month * * * as holiday leave in lieu of the Holidays recognized in FMC Section 3-116.
- (b) Employees in this Unit may request payment and be compensated for up to forty eight (48) hours or twenty-five percent (25%) of their holiday leave balance, whichever is greater, each fiscal year during the term of this MOU. The employee's request to be paid must be received by the Department payroll clerk at least ten (10) calendar days prior to the next biweekly pay period. Employees must cash out a minimum of twelve (12) hours.

2. Vacation Leave

- (a) * * * **Effective September 6, 2010, employees** shall accrue vacation leave hours for each completed calendar month of employment as reflected below. Employees with less than ten (10) years of continuous employment are allowed to accrue * * * **320** hours of vacation leave, and employees with ten (10) years or more continuous employment are allowed to accrue * * * **400** hours of vacation leave.

Years of Continuous Employment	Accrual Rate (hrs./mo.)
Less than 10	* * * 10
More than 10	* * * 13.33

- (b) No employee's vacation accumulation shall cease due to refusal by the City to grant vacation leave prior to the employee reaching the vacation accumulation limit applicable to the employee's position and length of service. In the event an employee requests in writing vacation leave one (1) month prior to the month in which the limit would be reached, and such request is refused, the Director of Aviation or designee shall extend the employee's accumulation limit for ninety (90) days during which time the employee shall be scheduled for vacation leave sufficient to reduce the employee's balance below the accumulation limit.

3. Sick Leave

Effective September 6, 2010, employees shall accrue sick leave at the rate of * * * **eight (8)** hours for each completed calendar month of employment, with unlimited accumulation. The FMC, City Administrative Orders, departmental policies, procedures, rules and regulations concerning sick leave usage and administration will continue to apply. Administrative Order 2-19.1, Attendance Policy, shall no longer apply to members of this Unit.

4. Family Sick Leave

Effective September 6, 2010, employees in this Unit shall be allowed up to * * * **forty-eight (48)** hours of accrued sick leave per fiscal year for Family Sick Leave. Family Sick Leave shall be used for those purposes defined in the California Labor Code.

5. Supplemental Sick Leave

On July 1st and each July thereafter of each fiscal year during the term of this MOU, employees in this Unit shall * * * **be credited** forty (40) hours of Supplemental Sick Leave. * * * However, if an employee is absent from work on a leave without pay status on July 1st, the additional forty (40) * * * hours shall be prorated and received upon the employee's return to work. This Supplemental Sick Leave accrual may only be utilized if the employee has completed six (6) months of employment, and,

- (a) Once sick and/or vacation leave has been exhausted;
- (b) As service credit on an hour-per-hour basis upon retirement;
- (c) Cashed out at retirement or separation from the City, or
- (d) Used in the performance of community activities during the course of the employee's normal work day, with the appropriate approval.

Accruals shall be prorated for employees hired after July 1st but shall not be reduced if the employee is on leave due to a job related injury.

6. Leave Conversion

Employees who were previously assigned to a 56 hour schedule and had leave calculated at a rate commensurate with a 56 hour schedule shall have accumulated holiday, vacation and sick leave converted by a factor of 1.4 upon conversion to a 14 day work period with 12 hour shifts.

7. Health Reimbursement Arrangement

The City currently maintains a Health Reimbursement Arrangement (HRA) that qualifies as a "health reimbursement arrangement" as described in Internal Revenue Service (IRS) Notice 2002-45 and other guidance published by the IRS regarding HRA's. The City agrees to maintain the HRA such that it will continue to qualify as a health reimbursement arrangement for the term of the MOU.

At service retirement, or at a disability retirement if a Tier I or Tier II member is otherwise eligible for service retirement, or upon resignation if the employee is otherwise eligible for service retirement, employees * * * who have used one hundred twelve (112) hours or less of sick leave * * * used for sick time (excluding only hours used for Workers' Compensation benefits and/or protected leaves such as Family & Medical Leave, and Family Sick Leave, and/or Bereavement Leave) in the 24 months preceding their date of retirement, will be credited with an account for the employee under the HRA to be used solely to pay premiums for medical insurance (including COBRA premiums). The "value" of the account shall be determined as follows:

- The number of accumulated sick leave hours in excess of 240 hours at the time of retirement multiplied by 40% of the employee's then current hourly base rate of pay.
- The hourly base rate of pay for * * * employees shall be the equivalent of the monthly salary for an employee as reflected in the salary tables, multiplied by twelve (12) months then divided by 2,080 hours; or

[§ deleted]

The HRA accounts shall be book accounts only – no actual trust account shall be established for any employee. Each HRA book account shall be credited on a monthly basis with a rate of earnings equal to the yield on the City's Investment Portfolio (provided that such yield is positive).

The HRA accounts shall be used solely to pay premiums for medical insurance (including COBRA premiums) covering the participant, the participant's spouse (or surviving spouse in the event of the death of the participant), and the participant's dependents. Once a participant's account under the HRA has been reduced to \$0, no further benefits shall be payable by the HRA. If the participant, the participant's spouse, and the participant's dependents die before the participant's account under the HRA has been reduced to \$0, no death benefit shall be payable to any person by the HRA.

While this provision is in effect, eligible employees shall not be allowed to cash out any accumulated or accrued sick leave at retirement.

F. WORKERS' COMPENSATION

New language on pay received for absences due to on the job injuries are for injuries which occur on or after January 1, 2010. Any injuries covered prior to January 1, 2010, are covered by provisions of previous MOU's.

1. Notwithstanding the provisions of FMC Section 3-118, an employee who suffers an injury/illness in the course and scope of City employment shall receive * * * **one hundred percent** (* * * **100%**) of base rate of pay.
 - (a) Compensation for an accepted claim for a work related injury or illness shall begin following the first three (3) days * * * after the employee leaves work as a result of the injury or illness. However, this waiting period shall be waived and compensation shall begin on the first day of a work related injury or illness only if:
 - (1) The employee is hospitalized as an inpatient for at least twenty-four (24) hours; or,
 - (2) the employee is absent from work fourteen (14) days or more; or,
 - (3) the employee is placed on light duty at any time during the first three (3) days * * *.
2. Partial days of absence due to a work related injury or illness, including the day of injury or illness, shall be at full pay and shall not count toward the exclusion period; however, this time shall be recorded as work related injury/illness absence.
3. At the employee's option, in the event work related injury/illness pay from the City is not provided during the first three (3) days of absence* * * due to the work related injury or illness, the employee may take sick leave, vacation or holiday for that period.
4. If the employee opts to use sick leave, vacation or holiday for the first three (3) days * * * and it is later determined that work related injury/illness pay under paragraph 1. (a), above, beginning on the first day of a work related injury or illness is appropriate, the leave time shall be restored to the employee's pay or leave balance will be adjusted accordingly.
5. If the employee is placed on sick leave, vacation or holiday pending determination as to whether the injury or illness is industrial, and the injury or illness is determined to be industrial, sick leave, vacation or holiday shall be restored within thirty (30) calendar days of such determination provided that

the employee has submitted all necessary documents relevant to their Workers' Compensation claim, and the employee placed on work related injury/illness leave as provided herein.

6. If the employee is placed on sick leave, vacation or holiday pending determination as to whether the injury or illness is industrial, and the injury or illness is determined not to be industrial, sick leave, vacation or holiday shall not be restored.
7. Retirement benefits shall not be reduced as a result of compensation paid at the * * * **one hundred** percent (* * * **100%**) rate level of compensation established herein. Changes in contribution by the City and employee shall be in accordance with the applicable retirement code sections.
8. Taxes shall not be withheld on compensation at the * * * **one hundred** percent (* * * **100%**) rate which is paid due to an injury or illness sustained in the course and scope of employment with the City. In the event Federal tax regulations are amended to include compensation received while absent due to injury or illness suffered in the course and scope of employment as taxable income, the provisions of subsection 1. above regarding salary shall be of no force and effect.
9. Notwithstanding the provisions of the FMC, for the first sixty (60) days of absence in any fiscal year, benefits, including but not limited to holiday leave accumulation and uniform allowance, shall continue to accrue.

G. UNIFORM ALLOWANCE

Employees shall receive \$790.00 per year as a uniform purchase and maintenance allowance and paid in semi-annual installments on the last pay period in December and June.

ARTICLE VIII

HEADINGS, SAVING CLAUSE AND FULL UNDERSTANDING

A. HEADINGS

MOU article, provision, and paragraph headings (includes exhibits, addenda, attachments, agreements, and side letters) contained herein are solely for the purpose of convenience only and shall not affect the construction or interpretation of any language of this MOU.

B. SAVING CLAUSE:

In the event any article, section, or portion of this MOU should be held invalid and unenforceable in any court of competent jurisdiction, such decision shall apply only to the specific article, section, or portion thereof specifically specified in the Court's decision, and upon issuance of such a decision, the City and the Association agree to immediately meet and confer upon a substitute for the invalidated article, section, or portion thereof.

C. FULL UNDERSTANDING:

It is intended that this MOU sets forth the full and entire understanding of the parties, and any previous understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded and terminated in their entirety. Side letter agreements and agreements attached to this MOU shall continue in full force subject to the terms contained therein, or in the absence of specified terms, the side letters and agreements shall terminate upon the expiration of this MOU. Any side letter agreements and agreements entered into during the term of this MOU shall continue in force subject to the terms and conditions set forth in each side letter. Further, neither party shall be bound by any promise or assurance that is not explicitly covered in the MOU, in a side letter of agreement, or agreement signed by both parties.

ARTICLE IX
TERMINATION

The provisions of this MOU shall be in full force and effect from July 1, **2010** * * * to June 30, **2012** * * *, subject to the Sections (A. B., and C.) below.

- A. This MOU shall become effective only after ratification by the members of the Association, followed by City Council approval and the expiration of the waiting period for the Mayor's action provided in Charter Sections 605 and 609, and shall remain in full force and effect through June 30, **2012** * * *.

- B. During the term of this MOU, should either party desire to modify its terms or to meet and confer as to matters within the scope of representation not addressed in this MOU, the party requesting any change shall request in writing to meet and confer on the item(s), which item(s) shall be specified in writing.

- C. During the term of this MOU, either party may refuse any request by the other to meet and confer without explanation if the item is directly considered and specifically addressed herein, or if the specific item was included in a written proposal from the party making the request during the meet and confer process which led to this MOU. It is further agreed, however, that this section shall not prohibit the City from requesting to meet and confer on changes to federal, state or City statutes, and City Administrative policies referred to or cited in this MOU, in which case the request to meet and confer shall not be refused.

IN WITNESS WHEREOF, the parties hereto set their hands this 7th day of September, 2010.

**FOR OPERATING ENGINEERS
LOCAL UNION NO. 3:**

Original Signed
FRED KLINGEL
Chief Negotiator
Business Representative

Original Signed
DAVID MARQUEZ
Airport Public Safety Supervisor

Original Signed
MICHAEL LACKY
Airport Public Safety Supervisor

Original Signed
PAUL PRESNO
Airport Public Safety Supervisor

FOR THE CITY OF FRESNO:

Original Signed
KENNETH PHILLIPS
Chief Negotiator
Labor Relations Manager

Original Signed
LORI M. NAJERA
Sr. Human Resources Analyst

Original Signed
CORA "Corky" MONTANEZ
Management Analyst III

Original Signed
STEVEN SHUBIN
Senior Accountant Auditor

**APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE**

BY: Original Signed
Deputy City Attorney

EXHIBIT I
 Airport Public Safety Supervisors - Unit 15

Table I Airport Public Safety Supervisors - Unit 15 Salaries - Effective July 1, 2008					
STEP	A	B	C	D	E
Airport Public Safety Supervisor	5995	6293	6610	6941	7286

Table II Airport Public Safety Supervisors - Unit 15 Salaries - Effective September 6, 2010					
STEP	A	B	C	D	E
Airport Public Safety Supervisors hired before July 1, 2010*	6170	6480	6805	7144	7503
Airport Public Safety Supervisors hired after July 1, 2010*	5396	5664	5949	6247	6557

*To be calculated as if working 40 hours per week.